

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC PARENT LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC., GENERAL NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY, LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC HEADQUARTERS LLC, GUSTINE SIXTH AVENUE ASSOCIATES, LTD., GNC CANADA HOLDINGS, INC., GNC GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and GNC PUERTO RICO, LLC

APPLICATION OF GNC HOLDINGS, INC., UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

**APPLICATION RECORD  
(initially returnable June 24, 2020)**

June 24, 2020

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TO: **SERVICE LIST**

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TAB1



Court File No.

CV-20-00642970-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC PARENT LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC., GENERAL NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY, LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC HEADQUARTERS LLC, GUSTINE SIXTH AVENUE ASSOCIATES, LTD., GNC CANADA HOLDINGS, INC., GNC GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and GNC PUERTO RICO, LLC

APPLICATION OF GNC HOLDINGS, INC., UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, c. C-36, AS AMENDED

Applicant

**NOTICE OF APPLICATION**

**TO THE RESPONDENT(S):**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on June 24, 2020, before a judge presiding over the Commercial List via Zoom at Toronto, Ontario due to the COVID-19 crisis.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application, or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have

a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date         JUNE 24, 2020        

Issued by



Local Registrar **G. Irwin**  
Registrar

Address of court office: Superior Court of Justice  
330 University Avenue, 9th Floor  
Toronto ON M5G 1R7

**TO: SERVICE LIST**

## APPLICATION

1. The Applicant, GNC Holdings, Inc., in its capacity as a foreign representative of itself as well as General Nutrition Centres Company, GNC Parent LLC, GNC Corporation, General Nutrition Centers, Inc., General Nutrition Corporation, General Nutrition Investment Company, Lucky Oldco Corporation, GNC Funding Inc., GNC International Holdings Inc., GNC China Holdco, LLC, GNC Headquarters LLC, Gustine Sixth Avenue Associates, Ltd., GNC Canada Holdings, Inc., GNC Government Services, LLC, GNC Puerto Rico Holdings, Inc., and GNC Puerto Rico, LLC (collectively, the “Debtors” or “GNC”), makes application for:

- (a) An interim Order,
  - (i) Abridging the time for service and filing of this Notice of Application and the Application Record and dispensing with service thereof on any interested party other than those served with these proceedings; and
  - (ii) Granting a stay of proceedings in respect of the Debtors and their property and business and in respect of their directors and officers, pending hearing of the application to recognize the proceedings commenced by the Debtors in the United States Bankruptcy Court for the District of Delaware (the “U.S. Court”) under Chapter 11 of Title 11 of the *United States Bankruptcy Code* (the “Chapter 11 Cases”).
- (b) An Order appointing the Applicant as the foreign representative (in such capacity, the “Foreign Representative”) of the Debtors as defined in section 45 of the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the “CCAA”);

- (c) An Order declaring that the centre of main interest for each of the Debtors is the United States of America and recognizing the Chapter 11 Cases as a “foreign main proceeding” as defined in section 45 of the CCAA;
- (d) An Order granting a stay of proceedings in respect of the Debtors until otherwise ordered by this Court;
- (e) An Order appointing FTI Consulting Canada Inc. (“**FTI Canada**”) as information officer (in such capacity, the “**Information Officer**”) in respect of these proceedings;
- (f) An Order requiring the Information Officer to publish notice of this proceeding as required by section 53(b) of the CCAA;
- (g) An Order granting a stay of proceedings (the “**Requested Stay**”), as further described below, in respect of the Debtors and the directors and officers of the Debtors;
- (h) An Order recognizing and enforcing certain of the First Day Orders (as defined below) of the U.S. Court;
- (i) An Order granting the Administration Charge and DIP Lenders’ Charge (each as defined below) and affording them the priority set out below;
- (j) An Order approving the consulting agreement entered into between General Nutrition Centres Company and a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (collectively, the “**Canada Consultant**”); and
- (k) Such further and other Relief as to this Honourable Court may seem just.

2. The grounds for the application are:

**Background**

- (a) GNC is a global health and wellness brand with a diversified, omni-channel business. In its stores and online, the Company sells an assortment of performance and nutritional supplements, vitamins, herbs and greens, health and beauty, food and drink, and other general merchandise featuring innovative private-label products as well as nationally recognized third-party brands, many of which are exclusive to GNC.
- (b) The Applicant is the ultimate parent company of GNC. The other Debtors all operate on an integrated basis and are either direct or indirect wholly-owned subsidiaries of the Applicant.
- (c) GNC's Canadian operations are fully integrated with and entirely dependent on GNC's U.S. operations. Among other things:
  - (i) GNC operates as a consolidated business and all executive management and senior management decision-making for the broader corporate group, including GNC Canada, is centralized in Pittsburgh, Pennsylvania.
  - (ii) Nearly all of the senior executives of the Debtors, including of GNC Canada, are located in the United States. None are located in Canada.
  - (iii) Inventory management and purchasing for GNC Canada's retail stores are managed and coordinated by its U.S. operations.
  - (iv) The cash management system of GNC Canada is managed centrally from the U.S. This includes all treasury functions, accounts receivable and

payable functions, all data processing and payroll functions, and all tracking and reconciliation of intercompany transactions.

- (d) The Debtors have filed the Chapter 11 Cases to effect both a restructuring of their funded debt obligations and operational changes necessary to ensure their continued viability as a going concern.
- (e) Over the past two years, GNC has entered into several transactions that it believes have contributed to the increased profitability and stability of its business; however, faced with the potential maturity of its secured debt obligations and a decline in sales and liquidity caused by the COVID-19 pandemic, the Debtors ultimately had no option other than to commence the Chapter 11 Cases.

**The Chapter 11 Cases each constitute a “Foreign Main Proceeding” in which the Applicant is the “Foreign Representative”**

- (f) The Debtors are all currently parties to the Chapter 11 Cases commenced pursuant to voluntary petitions for relief (the “**Petitions**”) filed in the U.S. Court under Chapter 11 of the *United States Bankruptcy Code* on June 23, 2020 (the “**Petition Date**”).
- (g) The Chapter 11 Cases constitute “foreign proceedings” under section 45(1) of the CCAA.
- (h) The Applicant has been appointed as “foreign representative” of all of the Debtors in the Chapter 11 Cases and, as such, falls within the definition of “foreign representative” under section 45(1) of the CCAA.
- (i) Pursuant to section 46(1) of the CCAA, the Foreign Representative may apply to this Court for recognition of the Chapter 11 Cases.

- (j) Pursuant to section 47(1) of the CCAA, this Court shall make an order recognizing the Chapter 11 Cases if it is satisfied that the application relates to a “foreign proceeding” and that the Applicant is a “foreign representative.”
- (k) Each of the Debtors’ centre of main interest is located in the United States and, as such, the Chapter 11 Cases are a “foreign main proceeding” under section 45(1) of the CCAA.

**The Requested Stay is appropriate in the circumstances**

- (l) Under section 48 of the CCAA, this Court shall, in the case of a foreign main proceeding, exercise its jurisdiction to prohibit the commencement or furtherance of any action, suit, or proceeding against the Debtors, subject to any terms and conditions it considers appropriate.
- (m) The Requested Stay, among other things, prohibits (i) the commencement or furtherance of any action, suit, or proceeding against the Debtors, (ii) the exercise of any rights or remedies against the Debtors subject to certain exceptions, and (iii) any person from discounting, failing to honour, altering, interfering with, repudiating, terminating, or ceasing to perform any right, renewal right, contract, agreement, licence, or permit of the Debtors.
- (n) The Requested Stay is essential to protect the efforts of the Debtors to proceed with the Chapter 11 Cases and to pursue a restructuring transaction.

**Recognition of the First Day Orders is appropriate**

- (o) The Debtors have filed the following first day motions (the “**First Day Motions**”) with the U.S. Court:

- (i) Automatic Stay Comfort Motion for Foreign Entities;
- (ii) Cash Management Motion;
- (iii) Consolidated Creditor Matrix Motion;
- (iv) Critical Vendors Motion;
- (v) Customer Programs Motion;
- (vi) DIP Motion;
- (vii) Equity Trading NOL Motion;
- (viii) First Omnibus Motion to Reject Certain Unexpired Leases;
- (ix) Foreign Representative Motion;
- (x) Franchise Motion;
- (xi) Insurance Motion;
- (xii) Joint Administration Motion;
- (xiii) Lien and Import Claims Motion;
- (xiv) Prime Clerk – Claims Agent Application;
- (xv) Second Omnibus Motion to Reject Certain Unexpired Leases;
- (xvi) Store Closing Motion;
- (xvii) Tax Motion;
- (xviii) Third Omnibus Motion to Reject Certain Unexpired Leases;
- (xix) Utilities Motion; and



- (xx) Wages Motion
- (p) The Debtors expect that the U.S. Court will enter interim and/or final orders in respect of the First Day Motions (the “**First Day Orders**”) in the near future.
- (q) For the purposes of ensuring that all interested parties cooperate in the efforts of the Debtors, the Applicant requests that the terms of certain First Day Orders to be specified be recognized by this Court pursuant to section 49 of the CCAA.

**Recognition of the Interim DIP Order is Appropriate**

- (r) The Debtors have negotiated senior secured post-petition financing on a superpriority basis, in the aggregate principal amount of US\$200,000,000 (the “**DIP Term Facility**”).
- (s) They have also negotiated senior secured postpetition obligations on a superpriority basis in respect of a prepetition senior secured superpriority credit facility in the aggregate principal amount of US\$275,000,000 plus any and all accrued and unpaid interest on all outstanding loans under that facility (the “**DIP ABL FILO Facility**” and, together with the DIP Term Facility, the “**DIP Facilities**”)
- (t) The Interim DIP Order is one of the First Day Orders and, among other things, authorizes the Chapter 11 Debtors to enter into the DIP Facilities.
- (u) The DIP Facilities are the result of collaborative and intense negotiations and represent the best available option under the circumstances.

- (v) The Debtors are required to obtain an order of this Court recognizing and giving effect to the Interim DIP Order within 3 business days of the day that the Interim DIP Order is entered by the U.S. Court.
- (w) Without immediate access to the DIP Facilities, the Debtors would be unable to operate their businesses and maintain business relationships with their vendors, suppliers, and customers, pay their employees, or otherwise finance their operations, nor to pay Chapter 11 related costs and fees, and their ability to preserve and maximize the value of their assets would be irreparably harmed.

**Recognition of the Store Closing Order is Appropriate**

- (x) The Interim Store Closing Order is one of the First Day Orders and, among other things, authorizes store closing or similar themed sales (“Sales”) at their Canadian retail stores pursuant to a consulting agreement by and between GNC Canada and the Canada Consultant.
- (y) As noted above, in the wake of extreme market conditions and faced with limited liquidity, the Debtors are seeking to wind down numerous store locations throughout the U.S. and Canada through a going-out-of-business sales process.
- (z) The Debtors selected and engaged the Canada Consultant to, among other things, manage the Sales; sell their store inventory (the “Merchandise”), owned furniture, furnishings, trade fixtures, machinery, equipment, office supplies, supplies, and other tangible personal property (the “FF&E”) under the consulting agreements;

- (aa) Given the Canada Consultant's longstanding familiarity with the Debtors' business, the efficiencies resulting from the same to the Debtors' estate, and the Canada Consultant's experience in conducting store closings on an expedited timeline, the Debtors' management, in consultation with the Debtors' advisors, selected the Canada Consultant to manage the Sales.
- (bb) The Sales in Canada will be conducted in accordance with sale guidelines (the "**Canadian Sale Guidelines**") that are substantially consistent with the store closing process that is typically used in Canada.
- (cc) The terms of the consulting agreement, the process for liquidating the Merchandise and FF&E, and the transactions contemplated under the consulting agreement and the Canadian Sale Guidelines are all fair and reasonable.

**The Administration Charge and the DIP Charges are Necessary**

- (dd) The Applicant seeks the following charges over the Debtors' property located in Canada in the following priority:
  - (i) A charge for the benefit of the proposed Information Officer and the Information Officer's counsel in the amount of CDN\$250,000 (the "**Administration Charge**");
  - (ii) Charge securing the amount actually borrowed by the Debtors under the DIP Facilities (the "**DIP Lenders' Charge**").
- (ee) The size of the Administration Charge is reasonable in the circumstances having regard to the size and complexity of these proceedings.

**The Appointment of an Information Officer is Appropriate**

- (ff) FTI Canada has consented to act as the Information Officer in the within proceeding and will assist the Court and Canadian stakeholders of the Debtors.

**General**

- (gg) The CCAA, including Part IV; and
  - (hh) Such further and other grounds as the lawyers may advise.
3. The following documentary evidence will be used at the hearing of the application:
- (a) Affidavit of Tricia Tolivar sworn June 24, 2020;
  - (b) Additional affidavit evidence of entered First Day Orders, to be affirmed;
  - (c) Consent of FTI Canada to act as the Information Officer, to be filed; and
  - (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

*(Date of issue)*

JUNE 24, 2020

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985, c. C-36, AS AMENDED Court File No.  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC. et al. CV-20-00642970-00CL  
APPLICATION OF GNC HOLDINGS, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C., 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**NOTICE OF APPLICATION**

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Lawyers for the Applicant



TAB2

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC PARENT LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC., GENERAL NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY, LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC HEADQUARTERS LLC, GUSTINE SIXTH AVENUE ASSOCIATES, LTD., GNC CANADA HOLDINGS, INC., GNC GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and GNC PUERTO RICO, LLC

APPLICATION OF GNC HOLDINGS, INC., UNDER SECTION 46 OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, c. C-36, AS AMENDED

Applicant

**AFFIDAVIT OF TRICIA TOLIVAR  
(sworn June 24, 2020)**

I, Tricia Tolivar, of the City of Pittsburgh, in the State of Pennsylvania, MAKE OATH AND SAY:

1. I am the Executive Vice President and Chief Financial Officer of GNC Holdings, Inc. (“**GNC Holdings**”), the applicant in this application.



2. As GNC's Executive Vice President and Chief Financial Officer, I am responsible for overseeing the Company's cash flow, business relationships, financial planning, real estate, IT, accounting, investor relations, and legal functions among other things. As a result of my tenure with the Debtors (as defined below), my review of public and non-public documents, and my discussions with other members of the Debtors' management team, I am generally familiar with the Debtors' businesses, financial condition, policies and procedures, day-to-day operations, and books and records, and, as such, have knowledge of the matters contained in this affidavit. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, believe the information to be true. In preparing this affidavit, I have consulted with legal, financial and other advisors to the Debtors, and other members of the senior management team of the Debtors.

3. I swear this affidavit in support of the application of the applicant for certain relief for itself and the affiliated entities listed in Schedule "A" (collectively, the "**Debtors**"), and, together with non-Debtor affiliates, "**GNC**" or the "**Company**") pursuant to section IV of the *Companies' Creditors Arrangement Act* (the "**CCAA**"). An organizational chart of the GNC group of entities is attached as Exhibit "A" hereto.

4. The applicant seeks, among other things, the following relief:

- (a) an interim order staying proceedings against the Debtors pending the determination of the relief set out below;
- (b) an order finding that the applicant is the foreign representative and recognizing the cases commenced by the Debtors in the United States (the "**Chapter 11**

**Cases**”) as foreign main proceedings under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c C-36 (the “**CCAA**”);

- (c) an order recognizing certain First Day Orders (as defined below);
- (d) an order appointing FTI Consulting Canada Inc. (“**FTI Canada**”) as Information Officer in respect of these proceedings; and
- (e) an order granting the Administration Charge, the DIP ABL FILO Lenders’ Charge and the DIP Term Lenders’ Charge (each as defined below).

## **I. OVERVIEW**

5. In light of liquidity concerns which are discussed below, GNC was recently forced to resort to creditor protection laws and obtain a stay of proceedings under Chapter 11 of the *United States Bankruptcy Code* (“**Chapter 11**”) in the Bankruptcy Court of the District of Delaware (the “**U.S. Court**”). Copies of the Chapter 11 Petitions, filed on June 23, 2020 (the “**Petition Date**”) are attached as Exhibits “B” through “R”.

6. GNC is currently reviewing all aspects of its businesses and operations such that it can address its long-term operational and financial problems. GNC’s objective is to restructure its balance sheet and business operations, including its retail store network, and emerge from bankruptcy protection as a viable and profitable company.

7. My declaration on behalf of the Debtors (“**U.S. First Day Declaration**”) in the Chapter 11 Cases is attached as Exhibit “S”. The U.S. First Day Declaration provides a comprehensive overview of the Debtors and the events leading up to the commencement of the Chapter 11 Cases. Consequently, this affidavit provides a more general overview of the Debtors and focuses

on providing this Court with information to support the finding of the centre of main interest (“COMI”) for each of the Debtors and to support the request for an interim stay, recognition of the Chapter 11 Cases as a “foreign main proceeding,” recognition of certain of the First Day Orders, and the granting of the Administration Charge, the DIP ABL FILO Lenders’ Charge, and the DIP Term Lenders’ Charge.

8. While GNC has both assets and creditors in Canada, these operations and assets are not significant in the context of the business as a whole. Because of GNC’s current financial position, discussed below, a recognition of its U.S. bankruptcy proceedings will avoid multiple main proceedings in different jurisdictions. This will give GNC the opportunity to restructure its businesses so that it can continue forward on an economically viable basis. Accordingly, in order to facilitate proceedings in Canada with GNC’s U.S. bankruptcy proceedings, the applicant is applying for recognition of GNC’s U.S. bankruptcy proceedings in Canada pursuant to the CCAA.

9. As described below, GNC operates as a consolidated business and all executive management and decision-making for the broader corporate group is centralized in the United States. GNC’s Canadian operations are not significant in the context of the business as a whole and are reliant on operations in Pittsburgh for many key functions, including accounting, finance, treasury, and legal functions.

10. GNC has negotiated DIP financing in light of the U.S. bankruptcy proceedings, and continued access to that financing is contingent on recognition of the Chapter 11 Cases in Canada.

11. I am not aware of any foreign insolvency proceedings involving the Debtors other than the Chapter 11 Cases.

12. The remainder of this affidavit provides an overview of the Debtors' businesses, organizational structure, circumstances requiring the debtor to initiate the Chapter 11 and CCAA proceedings, and an overview of the Debtors' pre-Chapter 11 indebtedness and Canadian operations.

## **II. COMPANY AND BUSINESS OVERVIEW**

13. The Company is a global health and wellness brand providing a premium assortment of health, wellness, and performance products including protein, performance supplements, weight management supplements, vitamins, herbs and greens, wellness supplements, health and beauty, food and drink, and other general merchandise.

14. As described in greater detail below, the Company develops high-quality, innovative nutritional supplement products that can be purchased only through the company-owned and franchise store locations, GNC.com, the Amazon.com marketplace and other marketplaces, and the Company's select wholesale partners. The Company's objective is to offer a broad and deep mix of products including both proprietary GNC-branded products and other nationally recognized third-party brands. This depth of brands, exclusive products, and range of merchandise, combined with the customer support and service offered by the Company, differentiates the Company from competitors and allows it to effectively compete against food, drug and mass channel players, specialty stores, independent vitamin, supplement and natural food shops, and online retailers.

**A. GNC's Business**

15. In 1935, at the height of the Great Depression, David Shakarian audaciously opened a single health food store at 418 Wood Street in downtown Pittsburgh, Pennsylvania. He called the store "Lackzoom".

16. In the 1960s, people began to embrace the concept of natural foods and better nutrition. As the popularity of natural foods and nutritional products increased in the 1960s, Mr. Shakarian met that growing demand by opening stores outside of Pennsylvania. It was during this growth period that Mr. Shakarian also changed the Lackzoom name to "General Nutrition Centers" or "GNC." As GNC grew, it began to produce its own vitamin and mineral supplements as well as foods, beverages, and cosmetics.

17. By the time that Mr. Shakarian passed away in 1984, GNC had more than 1,000 locations all around the United States. Today, the Company is a leading global brand of health, wellness, and performance products with a worldwide network of approximately 7,300 locations operating under the GNC brand name and through the Company's e-commerce channels. The Company maintains an omni-channel business model, deriving revenue from product sales through Company-owned retail stores, domestic and international franchise activities, e-commerce, and corporate partnerships, as described in further detail below. Corporate retail store operations are located in the United States, Canada, Puerto Rico, and Ireland. Franchise locations exist in the United States and in approximately 50 other countries. Additionally, the Company licenses the use of its trademarks and trade names.

18. Sales of the Company's proprietary brands at its U.S. company-owned and franchise stores, GNC.com, and wholesale partners such as Rite Aid, PetSmart, and Sam's Club

represented 52% of total system-wide retail product sales in 2019. The Company also offers products of nationally recognized third-party brand names. Sales of third-party products at its U.S. company-owned and franchise stores, GNC.com, and wholesale partners represented approximately 48% of total system-wide retail product sales in 2019. Sales of proprietary products and third-party products together yielded total U.S. system-wide sales of approximately US\$1.95 billion in 2019.

19. Products are delivered to retail stores and customers who make purchases via the Company's websites via a third-party transportation network through the Company's various distribution centers located in the United States. Each of the Company's distribution centers has a quality control department that monitors products received from vendors to manage quality standards. Internet purchases are fulfilled and shipped directly from the distribution centers or stores to consumers using a third-party transportation service, or directly by Amazon for certain marketplace orders.

**B. Corporate Structure**

20. The applicant is the ultimate parent company for the Debtors and non-Debtor affiliates.

21. A summary of the operations and purpose for each Debtor can be found in the following table:

<b>Debtor Entity</b>	<b>Purpose</b>
GNC Holdings, Inc.	Ultimate, publicly traded parent company
GNC Parent LLC	Holding company for the remainder of the corporate structure

Debtor Entity	Purpose
GNC Corporation	Holding company for the remainder of the corporate structure
General Nutrition Centers, Inc.	Main operating company which employs the Company's headquarters' employees.
General Nutrition Corporation	Operates all US retail and wholesale operations, employs store-level employees, and is the lessee on mainland US stores as well as certain stores located in Puerto Rico.
General Nutrition Investment Company	Owns all the Company's intellectual property, other than intellectual property related to operations in China
Lucky Oldco Corporation	Inactive entity with no operations, entities, or employees
GNC Funding Inc.	Inactive entity with no operations, entities, or employees
GNC International Holdings Inc.	Holding company for entities organized in jurisdictions outside of the United States
GNC China Holdco, LLC	Holding company for the Hong Kong joint venture (defined below) and the Company's mainland China operations
GNC Headquarters LLC	Partially owns Gustine Sixth Avenue Associates, Ltd. (The other owner is General Nutrition Centers, Inc.)
Gustine Sixth Avenue Associates, Ltd.	Owns the Company's corporate headquarters in Pittsburgh
GNC Canada Holdings, Inc.	Holding company for the Company's Canadian operating entity
General Nutrition Centres Company ("GNC Canada")	Operating company for the Company's corporate-owned stores and operations in Canada
GNC Government Services, LLC	Manages the Company's transportation needs

Debtor Entity	Purpose
GNC Puerto Rico Holdings, Inc.	Owns 70% of the Company's operating entity in Puerto Rico; GNC Puerto Rico, LLC; the other 30% of GNC Puerto Rico, LLC is held by non-Debtor affiliate GNC Live Well Ireland.
GNC Puerto Rico, LLC	Operates store locations in Puerto Rico and leases some of those store locations

22. As of the Petition Date, approximately 84 million shares of GNC Holdings' Class A common stock were issued and outstanding. GNC Holdings' shares are currently traded on the New York Stock Exchange under the symbol "GNC."

23. In a series of negotiated transactions culminating on February 13, 2019, Harbin Pharmaceutical Group Co., Ltd. ("**Harbin**") acquired 299,950 shares of a newly created series of convertible perpetual preferred stock of GNC Holdings, designated as "Series A Convertible Preferred Stock", for an aggregate purchase price of approximately US\$300 million (the "**Equity Issuance**"). As a result of the Equity Issuance, Harbin owns an approximately 41% voting interest in GNC Holdings, with the public shareholders owning the remaining 59% voting interest.

### **C. Chapter 11 Bankruptcy Proceedings**

24. The Debtors have filed the Chapter 11 Cases to effect both a restructuring of their funded debt obligations and operational changes necessary to ensure their future viability as a going concern. Over the past two years, the Company has entered into several transactions that it believes have contributed to the increased profitability and stability of its business; however, faced with the potential maturity of its secured debt obligations on June 23, 2020, and a decline



in sales and decreased liquidity caused by the COVID-19 pandemic, the Debtors ultimately had no option other than to commence the Chapter 11 Cases.

### III. DEBT STRUCTURE AND PRINCIPAL SECURED CREDITORS

25. The Debtors' funded debt consists of (a) an asset-based revolving credit facility, (b) an asset-based first-in, last-out secured term loan facility, (c) a secured term loan facility, and (d) unsecured convertible notes. Here is a summary of the Debtors' funded debt prior to the initiation of Chapter 11 proceedings:

Instrument	Line Size/Original Amount	Approximate Amount Outstanding as of the Petition Date (USD)	Priority of Prepetition Security Interests
ABL Revolving Credit Facility	Up to \$81 million <sup>1</sup>	\$60 million	<p>First priority lien on ABL/FILO Priority Collateral (as defined in U.S. First Day Declaration); senior in right of payment to the FILO Term Loan Facility</p> <p>Second priority lien on Term Priority Collateral (as defined in U.S. First Day Declaration)</p>
FILO Term Loan Facility	\$275 million	\$275 million	First priority lien on ABL/FILO Priority Collateral; subordinated in right of payment to the ABL Revolving Credit Facility

<sup>1</sup> In US dollars. The original amount of the commitments under the ABL Revolving Credit Facility was \$100 million. Commitments have been voluntarily reduced over time.

			Second priority lien on Term Priority Collateral
Term Loan Facility Tranche B-1	\$151.8 million	\$0	N/A
Term Loan Facility Tranche B-2	\$704.3 million <sup>2</sup>	\$410.8 million	First priority lien on Term Priority Collateral Second priority lien on ABL/FILO Priority Collateral
Notes	\$287.5 million	\$157.6 million – net of conversion feature and discounts	Unsecured
<b>Total</b>		<b>\$903.4 million</b>	

**A. ABL Revolving Credit Facility and FILO Term Loan**

26. Certain of the Debtors, including GNC Canada, are party to the ABL Credit Agreement dated as of February 28, 2018 (as amended by the First Amendment, dated as of March 18, 2018, and the Second Amendment, dated as of May 15, 2020, and the Third Amendment dated as of June 12, 2020, and as may be further amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “**ABL/FILO Credit Agreement**”) by and among the Debtors party thereto<sup>3</sup>, Barclays Bank plc, and Citizens Bank, N.A., as co-documentation agents,

<sup>2</sup> After giving effect to certain mandatory prepayments occurring on the closing date thereof.

<sup>3</sup> The obligors under the ABL Credit Agreement are: GNC Corporation, General Nutrition Centers, Inc., General Nutrition Corporation, General Nutrition Investment Company, Lucky Oldco Corporation, GNC Funding, Inc., GNC Canada Holdings, Inc., General Nutrition Centres Company, GNC Government Services, LLC, and GNC International Holdings, Inc. (collectively, the “**Debtor Obligors**”).

JPMorgan Chase Bank, N.A., as administrative agent and collateral agent, and the lenders from time to time party thereto (the “**Prepetition ABL/FILO Lenders**”).

27. Pursuant to the ABL/FILO Credit Agreement, the Prepetition ABL/FILO Lenders have provided (a) an asset-based revolving credit facility (the “**ABL Revolving Credit Facility**”) of up to US\$81 million and (b) an asset-based secured term loan incurred on a “first-in, last-out” basis (the “**FILO Term Loan Facility**”) in an initial principal amount of US\$275 million.<sup>4</sup>

28. The ABL Revolving Credit Facility and the FILO Term Loan Facility are described in greater detail in the U.S. First Day Declaration.

29. As discussed below, subject to approval of the U.S. Court and recognition of that order in Canada, the Debtors intend to repay the outstanding loans and terminate the commitments under the ABL Revolving Credit Facility simultaneously with entering into the DIP ABL FILO Facility (defined below).

30. The equity of GNC Canada is pledged under the ABL Revolving Credit Facility and the FILO Term Loan Facility.

## **B. Term Loan Facility**

31. The Debtor Obligor General Nutrition Centers, Inc., as borrower, and Debtor GNC Corporation, as parent guarantor, are party to the amended and restated term loan credit agreement (as amended by the First Amendment, dated as of May 15, 2020, and the Second Amendment, dated as of June 12, 2020, and as may be further amended, restated, amended and

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<sup>4</sup> The loans under the FILO Term Loan Facility are referred to as the “**ABL FILO Term Loans**”.

restated, supplemented, or otherwise modified from time to time, the “**Term Loan Credit Agreement**”) by and among, General Nutrition Centers, Inc., as borrower, and GNC Corporation, as parent guarantor, Barclays Bank plc and Citizens Bank, N.A., as co-documentation agents, GLAS Trust Company LLC, as collateral agent, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders from time to time party thereto (the “**Prepetition Tranche B-2 Term Loan Lenders**”). Pursuant to the Term Loan Credit Agreement, the Prepetition Tranche B-2 Term Loan Lenders have provided a secured term loan facility in the initial principal amount of approximately US\$856.1 million (the “**Term Loan Facility**”).<sup>5</sup> The Term Loan Credit Agreement represents an amendment and restatement of the Debtors’ previous credit agreement, dated as of November 26, 2013 (the “**Old Credit Agreement**”) and was entered into at the same time as the ABL/FILO Credit Agreement as part of a restructuring of the Company’s capital structure in connection with the Harbin Transaction (as described and defined in the U.S. First Day Declaration).

32. GNC Canada has guaranteed the obligations under the Term Loan Facility and has given security over its assets for such guarantee. The Term Loan Facility is described in greater detail in the U.S. First Day Declaration.

### **C. Convertible Senior Notes**

33. On August 10, 2015, GNC Holdings issued US\$287.5 million principal amount of 1.5% convertible senior notes due 2020 (the “**Notes**”) in a private offering. The Notes are governed by

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<sup>5</sup> On the initial closing date of the Term Loan Facility, the Term Loan Facility consisted of a Tranche B-1 in the initial principal amount of \$151.8 million and a Tranche B-2 in the initial principal amount of \$704.3 million. Tranche B-1 was fully repaid on March 4, 2019.

the terms of an Indenture between GNC Holdings, as issuer, the subsidiary guarantors party thereto (including GNC Canada), and BNY Mellon Trust Company, N.A., as the trustee (the “**Indenture**”). The Notes will mature on August 15, 2020, unless purchased earlier by GNC Holdings or converted by the holders. In connection with the issuance of the Notes, the Company paid down US\$164.3 million of its then outstanding Term Loan Facility.

34. Details regarding the Notes are set out in the U.S. First Day Declaration.

**D. Trade Debt**

35. In the ordinary course of their businesses, the Debtors incur trade debt with numerous vendors in connection with their operations. According to the U.S. First Day Declaration, the Debtors believe that their unsecured trade debt is approximately US\$111 million in the aggregate on account of prepetition goods and services provided to the Debtors. Canadian trade debt as of May 31, 2020 was approximately US\$2.5 million.

**E. PPSA Searches**

36. I am advised by Leora Jackson of Torys LLP and believe that lien searches were conducted on or about June 16, 2020 against the Debtors under the Personal Property Security Act (or equivalent legislation) in all the Canadian provinces (collectively, the “**PPSA Searches**”). Torys LLP has provided me with copies of the PPSA Searches, which are attached as Exhibit “T” and indicate the following:

- (a) JPMorgan Chase Bank, N.A., as agent, and GLAS Trust Company LLC, as agent, have registered a security interest against the assets of General Nutrition Centres Company in Ontario, Nova Scotia, Alberta, British Columbia, Manitoba, New

Brunswick, Newfoundland, Prince Edward Island, and Saskatchewan. These parties are providing the DIP financing described below.

- (b) ARI Financial Services Inc. has registered a security interest against the motor vehicle assets of General Nutrition Centers, Inc. in Ontario and Quebec.
- (c) PHH Vehicle Management Services Inc. has registered a security interest against the motor vehicle assets of General Nutrition Centres Company in Ontario and Quebec. In Quebec, portions of this interest were subsequently assigned to FLR LP Inc., PHH Fleet Lease Receivables L.P. (later re-named Element Fleet Lease Receivables LP), and Fleet Leasing Receivables Trust.
- (d) HOOPP Realty Inc., Shape Properties (Lougheed) Corp., and LTC Equities Inc. have registered in British Columbia security interests against all present and after-acquired personal property of General Nutrition Centres Company.

#### **IV. CANADIAN PRESENCE**

##### **A. Integration of Canadian Operations with U.S.**

37. GNC Canada Holdings, Inc. is the holding company for the Company's Canadian operating entity. It is a Nevada corporation. It is the parent of General Nutrition Centres Company ("**GNC Canada**"), an unlimited liability corporation organized pursuant to the laws of Nova Scotia. That corporation operates the Company-owned stores located in Canada.

38. GNC operates as a consolidated business and all executive management and senior management decision-making for the broader corporate group, including GNC Canada, is centralized in Pittsburgh. GNC Canada has approximately 16 employees located at a regional

office in Mississauga, Ontario; however, the function of these employees is to assist with regional oversight of the company-owned store locations in Canada.

39. GNC Canada's operations are small, in terms of both relative financial and operational scope vis-à-vis the consolidated business operations of GNC Holdings. In addition to a managing director for Canada and an office manager, GNC Canada employs two regional directors, an HR generalist, and several additional managers. GNC Canada's operations do not include personnel for many key management functions, including accounting, finance, treasury, legal, or executive-level functions, that would be required if GNC Canada were to operate on a standalone basis. As a result, GNC Canada is reliant on GNC Holdings' operations in Pittsburgh for those functions.

40. Nearly all of the senior executives of the Debtors, including those of GNC Canada, are located in the United States. None are located in Canada. The directors and officers of GNC Canada are all located in Pittsburgh. All of GNC Canada's three directors are also officers of GNC Holdings, which, as noted above, is GNC Canada's ultimate parent company. Board meetings, books and records, minute books, and key decisions for GNC Canada are held at or made in Pittsburgh.

41. Inventory management and purchasing for GNC Canada's retail stores is managed and coordinated by its U.S. operations. GNC manages purchasing primarily through its Pittsburgh headquarters. The Debtors do not lease or own any distribution centers in Canada and instead utilize a third-party logistics and warehousing provider for distribution of inventory to its Canadian retail stores (the "**Canada DC**"). A majority of inventory purchased by GNC on behalf of GNC Canada is received into GNC's U.S. distribution centers and is then shipped to

the Canada DC. Certain inventory from Canadian vendors and suppliers is delivered directly to the Canada DC; however, this inventory is still managed, ordered, and purchased by GNC's operations in the U.S.

42. GNC Canada is charged by GNC for its share of corporate overhead costs and services (the "**Intercompany Overhead Allocation**") provided based on a percentage of GNC Canada's revenue plus an additional percentage-based premium. The amount charged to GNC Canada covers all head office services that GNC provides to GNC Canada including executive management, finance and accounting, purchasing, ordering, and marketing. The regional head responsible for all GNC Canada operations is located in Pittsburgh.

43. GNC Canada is also charged a royalty payable to GNC on all retail sales for use of the GNC brand name in its Canadian sales (the "**Intercompany Royalty Payable**").

44. The amounts charged for the Intercompany Overhead Allocation and Intercompany Royalty Payable are recorded as an intercompany payable from GNC Canada to GNC, which is then reduced either fully or in part by periodic cash transfers from GNC Canada to General Nutrition Corporation as discussed further in the cash management section of this report. As at May 31, 2020, GNC Canada had a net intercompany payable balance of approximately US\$78 million.

## **B. Financial Position of GNC Canada**

45. The Debtors' finance and accounting team based in the U.S. prepares financial statements that report the financial position and results of GNC Canada, which are then consolidated to report at the GNC Holdings level. Attached as Exhibits "U" and "V" are the consolidated



financial statements of GNC Holdings (the “**GNC Financial Statements**”) and the internal financial statements for GNC Canada for the 12 months ending December 31, 2019 (the “**GNC Canada Statements**”) (unaudited).

46. For the year ended December 31, 2019, GNC Holdings reported a net loss of US\$35 million, total assets of US\$1,650 million, and total liabilities in excess of total assets of US\$1,646 million.

47. GNC Holdings’ total revenue for the year ended December 31, 2019 was approximately US\$2,068 million. GNC Canada contributed revenue of US\$74 million which represented approximately 3.6% of GNC Holdings’ total revenue.

48. The GNC Canada Statements for the 12 months ended December 31, 2019 reflect a loss of earnings before interest and taxes of US\$1.8 million. The primary current assets of GNC Canada as at the year ended December 31, 2019 were inventory of approximately US\$32 million and cash and equivalents of approximately US\$3 million.

49. The GNC Canada Statements exclude GNC Canada’s obligations as obligor of the ABL Revolving Credit Facility, the FILO Term Loan Credit Facility, and the Notes. This guarantee is secured by a priority interest on the assets of GNC Canada, reflected by the PPSA search results detailed at paragraph 36.

50. GNC Canada does not have any intellectual property. As noted above, it pays royalty fees for its use of the GNC brand.

**C. Stores**

51. GNC has 173 Company-owned stores in Canada compared to the 2,902 Company-owned stores total in the U.S., Canada, and Puerto Rico. 13 of the Canadian stores have been permanently closed and a number of the remainder are currently temporarily closed in light of the COVID-19 pandemic. Its stores are distributed among the provinces as follows:

AB	BC	MB	NB	NL	NS	ON	PEI	SK	QC
25	30	5	2	3	4	86	0	5	13

52. All of GNC's Canadian stores are leased from third-party landlords whose subsidiaries own malls and shopping centres across Canada. GNC Canada does not own any real property in Canada.

53. In the last two weeks, GNC has received notices of termination from 2 landlords in Canada.

**D. Employees**

54. GNC and its direct and indirect subsidiaries employ approximately 11,000 people on a consolidated basis worldwide, including approximately 4,000 full-time and approximately 7,000 part-time employees. GNC has approximately 730 employees in Canada, about 200 of whom are employed on a full-time basis.

55. None of the Canadian employees are unionized. There is no company pension plan in which they participate.

56. Each Canadian store is generally staffed by part-time or limited-hours sales associates and sales leaders and a full-time store manager. In some cases, there is also a full-time assistant store manager.

57. Part-time Canadian employees are paid wages at an hourly wage rate, while full-time employees are generally salaried. Payroll is made on a bi-weekly basis two weeks in arrears with the assistance of a payroll processing service. The payroll function for Canadian employees is located in the United States.

58. The Debtors maintain a number of compensation and benefits programs. In the Wages Motion (as defined below) filed with the U.S. Court, the Debtors are seeking authorization to continue their employee compensation and benefits programs in the ordinary course, including honouring prepetition obligations. The compensation and benefits programs are described in detail in the Wages Motion. This section of the affidavit includes an overview of the programs provided to employees in Canada.

59. Full-time Canadian employees are eligible for GNC Canada's employee benefits plan which includes medical care, prescription drug, vision and dental coverage, basic life insurance and related benefits, all provided through Canada Life. Sixty-seven percent of premium costs are covered for benefits-eligible employees with the balance of premium costs made via payroll deduction.

60. In addition, GNC Canada's Store Managers and District Managers are eligible for participation in a Store Manager Incentive and District Manager Incentive Program, respectively. The Store Manager Incentive is awarded based on store performance metrics, and it is accrued

monthly and paid quarterly. The District Manager Incentive is based on district and regional performance, and it is accrued quarterly and paid annually.

61. Finally, Regional Directors are eligible for participation in GNC's corporate Short-Term Incentive plan, which is awarded based on Canadian adjusted EBITDA, Canadian sales, and International EBITDA. This incentive is paid out annually in the first quarter of a calendar year based on a calculation of the prior year's results and eligible earnings.

62. Full-time employees in Canada (and part-time employees with three months of service in Quebec) are also eligible to enroll in a registered retirement savings plan (the "RRSP") administered by Canada Life. Eligible employees may contribute a portion of eligible earnings each year to the RRSP and the employer matches 100% of the first 3% of contributions.

#### **E. Canadian Cash Management System**

63. GNC Canada holds 14 primary bank accounts (collectively, the "**Canada Operations Accounts**"). All of the Canada Operations Accounts are held at major Canadian banks including Toronto Dominion Bank, Banque Laurentienne, Bank of Nova Scotia, Royal Bank of Canada, CIBC Bank, or Bank of Montreal (collectively, the "**Canadian Banks**"). The Canada Operations Accounts operate in support of the Canada retail stores and are managed as part of the Debtors' consolidated cash management system (the "**Cash Management System**"). Attached as Exhibit "W" is a diagram depicting the Canada Operations Accounts and their interrelatedness, which is also described in further detail below.

64. The Canada Operations Accounts can be segregated into the following groupings:

- (a) *Canada store depository accounts:* GNC Canada maintains five store depository accounts and related sub-accounts for the collection and consolidation of cash sales receipts (collectively, the “**Store Depository Accounts**”). The Store Depository Accounts are Canadian-dollar accounts which are swept by GNC Canada into the Concentration Account (defined below).
  
- (b) *Canada receipt accounts:* GNC Canada maintains three accounts that receive cash receipts from Visa, American Express, and debit cards, respectively, as well as one account (the “**MobilePay Proceeds Account**”) used to collect sales from alternative payment methods (collectively, the “**Card Receipts Accounts**”), which are net of fees, chargebacks, and returns. The Card Receipts Accounts are zero-balance accounts denominated in Canadian dollars that are automatically swept daily into the Concentration Account (defined below). GNC Canada also maintains one zero-balance account denominated in Canadian dollars for the collection of any wholesale cash receipts (the “**Wholesale Receipts Account**”) that is also automatically swept into the Concentration Account.
  
- (c) *Canada concentration account:* GNC Canada maintains one concentration account denominated in Canadian dollars (the “**Concentration Account**”) that receives funds from the Store Depository Accounts, Card Receipts Accounts, and Wholesale Receipts Account, and also transfers funds to the various disbursement accounts for payment of ordinary course disbursements such as payroll funding, store rental payments, and accounts payable. Cash transfers between GNC Canada and General Nutrition Corporation as the entry point to the U.S.-domiciled Cash Management System are also manually processed through this

account on a periodic basis. The Concentration Account is subject to an account control agreement.

- (d) *Canada disbursement accounts:* GNC Canada maintains three disbursement accounts, which include one payroll disbursement account (the “**Payroll Account**”), one general accounts payable account (the “**AP Account**”), and one account through which cheques are cleared for cheque fraud protection purposes (the “**Cheque Disbursement Account**”, and collectively, with the Payroll Account and AP Account, the “**Disbursement Accounts**”). The Concentration Account disburses funds to the Disbursement Accounts as required to fund the payment of disbursements in the ordinary course.

65. Any excess funds in the Concentration Account after taking into account an estimate for upcoming payments and the general working capital needs of GNC Canada are transferred to an account owned by General Nutrition Corporation that was established by General Nutrition Corporation to collect incoming wires and other miscellaneous deposits. Amounts transferred from GNC Canada to General Nutrition Corporation are applied in partial satisfaction of intercompany amounts owing among the various Debtors and are tracked by the finance, treasury, and accounting personnel of the Debtors located in the United States.

66. The Cash Management System of GNC Canada and the other Debtors is managed centrally from the U.S. This includes all treasury functions, accounts receivable and payable functions, all data processing and payroll functions, and all tracking and reconciliation of intercompany transactions, which are managed for all of the Debtors by the finance and accounting personnel located in the United States. As noted above, GNC Canada does not

employ any employees who provide finance and accounting support on behalf of the Canadian business.

67. The Debtor's Cash Management System, including the Canadian components, reflect the Debtors' integrated business and operations in North America, is vital to the Debtors' ability to cohesively conduct and manage their business across North America, and is tailored in its current structure to meet their operating needs. Any disruption of the Cash Management System would critically impair the Debtors' ability to operate, as the Debtors require (i) prompt collection and consolidation of retail sale receipts, (ii) the seamless ability to transfer cash as required to the Disbursement Accounts to settle debts owing, and (iii) ensure that all transactions are adequately documented and readily ascertainable.

68. A Cash Management Motion (defined below) in the Chapter 11 Cases has been brought to authorize the Debtors to continue to maintain and use their existing Cash Management System, including maintenance of existing bank accounts, use of existing deposit practices, and continuance of certain ordinary course intercompany transactions.

69. The transfer of excess funds from Canada to the United States will continue post-filing. It will be subject to there at all times being sufficient funding available to settle post-filing debts, priority payables, sales taxes, professional fees, and other similar items. GNCC will keep the Information Officer apprised of the cash situation in Canada and consult with the Information Officer before transferring excess funds from Canada to the United States. I understand that a projected cash flow statement for GNC Canada for the 13-week period from the week ending June 27, 2020 to the week ending September 19, 2020 (the "Cash Flow Statement") will be filed with this Court by the proposed Information Officer. The Cash Flow

Statement forecasts that, subject to the assumptions set out therein, GNC Canada is projected to have sufficient liquidity to fund their obligations during the period covered by the Cash Flow Statement.

**F. Miscellaneous**

70. GNC Canada is not a party to any litigation. General Nutrition Centers, Inc. is a defendant to one personal injury action in the Superior Court of Justice. The claim was issued in 2017. The litigation has been inactive for over a year.

71. Certain of GNC Canada's operations are regulated by Health Canada and interactions with Health Canada are managed by an employee in GNC Canada's Mississauga office.

**V. THE NEED FOR CHAPTER 11 AND CCAA RELIEF AND RELIEF SOUGHT**

72. The Debtors have filed Chapter 11 Cases to effect both (1) a restructuring of their funded debt obligations and (2) operational changes necessary to ensure their continued viability as a going concern.

73. Over the past several years, retail companies have faced a challenging commercial environment brought on by increased competition and a shift away from shopping at brick-and-mortar stores. While GNC is no exception, it has taken various steps to significantly reduce its funded debt obligations and position the business for long-term success going forward.

74. Since the World Health Organization declared a pandemic in March 2020, GNC has been forced to temporarily close many of its retail locations, including approximately 1,200 U.S. retail locations, 118 franchise locations, and 106 Canadian locations. Indeed, more than 40% of the Debtors' stores were forced to close for a period of seven (7) or more weeks due to state and



local mandates or significant declines in customer traffic. While some locations have relaxed those mandates, the Company, like other retailers, nonetheless faces the practical and logistical challenges of opening its stores to the public while taking appropriate precautions to protect the health of both its customers and its employees. The pandemic has undermined GNC's efforts to transform and improve customers' in-store experience.

75. Despite the pandemic, the Debtors and their advisors have continued to explore options for amending or entering into long term maturity extensions under the ABL/FILO Credit Agreement and Term Loan Credit Agreement, but negotiations with the lenders under those agreements did not result in an out of court restructuring. As described in the U.S. First Day Declaration, the Debtors were able to enter into amendments to the ABL/FILO Credit Agreement and Term Loan Credit Agreement to extend the springing maturities under those agreements in the short term, which provided needed time to negotiate a consensual in-court restructuring and prepare the Debtors to file Chapter 11 Cases.

76. Any plan put forward that affects Canadian creditors of GNC will be subject to all the procedural and substantive safeguards of Chapter 11, such as creditor approval including Canadian creditors, court approval, and the oversight of a creditors' committee.

77. GNC, with the help of its advisors, will be reviewing its operations and financial position with a view to implementing long-term solutions to address its current difficulties, and to restore its long-term viability.

78. Following several weeks of extensive, arm's-length negotiations, the Debtors were able to negotiate debtor-in-possession financing and a pre-arranged standalone plan of reorganization

with certain of their secured lenders (the “**Standalone Plan Transaction**”), the details of which are memorialized in a signed restructuring support agreement (the “**Restructuring Support Agreement**”), that is executed by more than 92% of the Prepetition Tranche B-2 Term Loan Lenders (as defined below) and 87% of the Prepetition ABL/FILO Lenders (as defined below) (together, collectively, the “**Supporting Secured Lenders**”). Importantly, the overwhelming support of the Debtors’ creditors will enable the Debtors to emerge from this process expeditiously.

79. The Restructuring Support Agreement is premised on USD\$100 million in “new money” loans provided by certain Prepetition Tranche B-2 Term Loan Lenders (defined below) together with a “roll-up” on a dollar-for-dollar basis of \$US100 million of Prepetition Tranche B-2 Term Loans, under the DIP Facilities (defined below) being provided by certain Prepetition ABL/FILO Lenders, as well as a “roll-up” on a dollar-for-dollar basis of all of the outstanding principal of and accrued and unpaid interest on prepetition ABL/FILO Term Loans into a postpetition ABL/FILO facility (described below) on terms that will generate an additional US\$30 million of liquidity.

80. Additionally, the Debtors, a significant majority of the Supporting Secured Lenders, and Harbin Pharmaceutical Group Holding Co., Ltd., an affiliate of GNC’s largest shareholder (the “Proposed Buyer”) have reached an agreement in principle for the sale of the Debtors’ business (the “**Sale Transaction**”). The Sale Transaction contemplates a US\$760 million purchase price for a going-concern sale of the Debtors’ business, which would be executed through a section 363 auction process, at which higher and better bids may be presented. The Sale Transaction remains subject to definitive documentation acceptable to the Debtors, the Supporting Secured

Lenders and the Proposed Buyer. If the Sale Transaction is timely consummated as set forth in the Restructuring Support Agreement, it would be implemented instead of the Standalone Plan Transaction. The Debtors' largest vendor and a joint venture partner, International Vitamin Corporation, is working with the Debtors to ensure a continued supply of products to the Debtors and to advance the proposed sale of the Debtors' business.

**A. Interim Order**

81. The applicant is seeking an interim order to impose a stay of proceedings until the hearing date for seeking the remaining relief set out above (the "**Initial Order**" and the "**Supplemental Order**"), which will be sought once the U.S. First Day Orders described below have been issued. The purpose of this interim stay of proceedings is to account for the gap in time between the imposition of an automatic stay in the Chapter 11 Cases and the time when the applicant, having been appointed by the U.S. Court as foreign representative, is able to return to this Court to seek the Initial Order and Supplemental Order.

82. The Restructuring Support Agreement requires that an interim stay order be obtained within 2 Business Days (as defined in that agreement) from the commencement of the Chapter 11 Cases.

**B. Recognition of Foreign Main Proceedings**

83. The applicant believes that a recognition order, including a stay of proceedings affecting all Canadian creditors of GNC, will support the Debtors' goals in the Chapter 11 Cases and assist the Debtors in developing and implementing a restructuring plan within an orderly process while making satisfactory arrangements with its creditors. This process will benefit not only the Debtors' creditors but also its customers, suppliers, and employees. I believe that the position of

GNC Canada's creditors will neither be materially impaired by the recognition of the U.S. bankruptcy proceeding, nor by the imposition of the stay of proceedings, nor by permitting GNC to continue operations pending implementation of the proposed plan.

### **C. DIP Financing**

84. Pursuant to the DIP Motion (defined below), the Debtors seek approval in the U.S. Court of up to US\$475 million in postpetition financing. The proposed financing (collectively, the “**DIP Facilities**”), among other things, provides for (i) \$100 million in “new money” loans provided by a group of prepetition Tranche B-2 Term Loan Lenders, a “roll-up” on a dollar-for-dollar basis of US\$100 million of prepetition Tranche B-2 Term Loans, and (iii) in exchange for the release of certain restricted cash after giving effect to amendments to the borrowing base formula under the prepetition ABL/FILO Credit Agreement, (A) a “roll-up” on a dollar-for-dollar basis of US\$275 million in principal, and all accrued and outstanding interest thereon, of prepetition ABL FILO Term Loans, and (B) the cash collateralization of approximately US\$5.1 million in Letters of Credit issued under the prepetition ABL/FILO Credit Agreement.

85. The Debtors' liquidity has been severely constrained and is subject to significant volatility because it is subject to a borrowing base formula and reserve restrictions pursuant to the Debtors' prepetition ABL/FILO Credit Agreement. Through various amendments to the prepetition ABL/FILO Credit Agreement negotiated by the Debtors and their advisors, approximately US\$30 million in otherwise restricted cash will be made available for the Debtors' use during the Chapter 11 Cases. Additionally, in connection with the agreed-upon amendments to the borrowing base formula and reserve restrictions, upon approval of the Interim DIP Order, the Debtors will repay the prepetition ABL Revolving Credit Facility (approximately

US\$60 million in principal outstanding as of the Petition Date) in full in cash with cash that is currently pledged under the prepetition borrowing base construct.

86. After searching for financing sources from both within and outside of the Debtors' existing capital structure, the Debtors obtained a commitment from an ad hoc group of Prepetition Tranche B-2 Term Loan Lenders and Prepetition ABL/FILO Lenders (the "**Ad Hoc Group of Crossover Lenders**") and an ad hoc group of Prepetition ABL/FILO Lenders (the "**Ad Hoc FILO Term Lender Group**") to fund the Chapter 11 Cases, subject to the U.S. Court's approval. I personally participated in the negotiation and analysis of various economic aspects of the DIP Facilities, which lasted for weeks and was hard-fought and at arms'-length.

87. Additional details regarding the DIP Facilities are set out in my U.S. First Day Declaration.

88. The DIP Facilities provide the Debtors with the necessary cash to meet immediate operational needs, address significant landlord and vendor pressures, and provide the liquidity for a smooth transition into chapter 11.

89. In the Chapter 11 Cases, the Debtors are seeking orders in relation to the DIP Facilities, authorizing them, among other things, to:

- (a) obtain senior secured postpetition financing on a superpriority basis in the aggregate principal amount of US\$200,000,000 (the "**DIP Term Facility**," and all amounts extended under the DIP Term Facility, the "**DIP Term Loans**"), consisting of (a) a US\$100,000,000 new money delayed-draw term loan facility ("**New Money DIP Term Loans**") and (b) subject to the Final Order,

US\$100,000,000 (the “**Term Roll-Up Amount**”) of term loans resulting from a dollar-for-dollar “roll-up” of term loans (the “**Term Roll-Up**”) outstanding under the prepetition Term Credit Agreement, pursuant to the terms and conditions of that certain Debtor-in-Possession Credit Agreement (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “**DIP Term Credit Agreement**”), by and among General Nutrition Centers, Inc., as borrower (in such capacity, the “**DIP Term Borrower**”), each of the entities listed on Exhibit A to the Interim Order as guarantors<sup>6</sup> (the “**Guarantors**” and, together with the DIP Term Borrower, the “**Loan Parties**”), and GLAS Trust Company LLC as administrative agent and as collateral agent (in such capacities, the “**DIP Term Agent**”) for and on behalf of itself and the other lenders party thereto (collectively, including the DIP Term Agent, the “**DIP Term Lenders**”); and

- (b) incur senior secured postpetition obligations on a superpriority basis in respect of a prepetition senior secured superpriority credit facility in the aggregate principal amount of US\$275,000,000 plus any and all accrued and unpaid interest on all outstanding FILO Term Loans (as defined in the prepetition ABL FILO Credit Agreement) (the “**DIP ABL FILO Facility**” and, together with the DIP Term Facility, the “**DIP Facilities**”), consisting solely of FILO term loans (the “**DIP**

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<sup>6</sup> These are GNC Holdings, Inc., GNC Parent LLC, GNC Corporation, General Nutrition Centers, Inc. General Nutrition Corporation, General Nutrition Investment Company, Lucky Oldco Corporation, GNC Funding, Inc., GNC International Holdings, Inc., GNC China Holdco LLC, GNC Headquarters LLC, Gustine Sixth Avenue Associates, Ltd., GNC Canada Holdings, Inc. GNC Government Services, LLC, GNC Puerto Rico Holdings, Inc., GNC Puerto Rico, LLC and GNC Canada.

**ABL FILO Loans**”) resulting from the “roll-up” (the “**ABL FILO Roll-Up**” and together with the Term Roll- Up, collectively, the “**Roll-Ups**”) of all outstanding FILO Term Loans in the aggregate principal amount of US\$275,000,000, together with all accrued and unpaid interest thereon (the “**ABL FILO Roll-Up Amount**”), pursuant to the terms and conditions of that certain Debtor-in-Possession Amended and Restated ABL Credit Agreement (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “**DIP ABL FILO Credit Agreement**” and, together with the DIP Term Credit Agreement, the “**DIP Agreements**”), by and among General Nutrition Centers, Inc. and the other Loan Parties as borrowers or guarantors, and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (in such capacities, the “**DIP ABL FILO Agent**” and, together with the DIP Term Agent, the “**DIP Agents**”) for and on behalf of themselves and the other lenders party thereto (collectively, including the DIP ABL FILO Agent, the “**DIP ABL FILO Lenders**” and, together with the DIP Term Lenders, the “**DIP Lenders**”).

90. Immediate access to incremental liquidity pursuant to the DIP Facilities is critical to preserving the Debtors’ ability to operate. The Debtors do not have sufficient liquidity to operate their businesses in the ordinary course without the financing provided by the DIP Facilities. As described in the U.S. First Day Declaration, the amount of the DIP Facilities is commensurate with the size of GNC’s organization and its operational needs.

91. Among other things, the Debtors need such liquidity to pay vendors and other participants in the Debtors' supply chain, to execute on certain initiatives, and to pay costs related to their restructurings.

92. The Debtors have determined, in the exercise of their business judgment, that the terms of the DIP Facilities are reasonable and appropriate in the circumstances.

93. The amount actually borrowed by the Debtors under the DIP Facilities is proposed to be secured by, among other things, Court-ordered charges on the Debtors' property in Canada in respect of the obligations under the DIP Facilities (the "**DIP Lenders' Charge**"). The applicant will be seeking an order granting the DIP Lenders' Charge and recognizing the Interim DIP Order once it has been entered by the U.S. Court. Such recognition and related relief are requirements of the DIP Facilities. The DIP Lenders' Charges will not have priority over valid Purchase Money Security Interests.

94. Further information about the DIP Facilities are set out in the Declarations of Pranav Goel and Robert A. Del Genio filed in the Chapter 11 Cases, attached as Exhibits "X" and "Y".

**D. Appointment of an Information Officer and Notice**

95. As part of the restructuring process, GNC will, among other things, review all aspects of its businesses and pursue all options for a successful restructuring. FTI Canada, as proposed information officer (the "**Information Officer**"), will report to the Court from time to time on the status of the Chapter 11 Cases and these proceedings.

96. FTI Canada is a licensed insolvency trustee and has consented to act as Information Officer in this proceeding.



97. The Debtors propose to grant the proposed Information Officer and its legal counsel an administration charge with respect to their fees and disbursements in the maximum amount of CDN\$250,000 (the “**Administration Charge**”) on the Debtors’ property in Canada, as well as a retainer to the proposed Information Officer and its legal counsel in the amount of CDN\$350,000 for the Information Officer and CDN\$100,000 for its legal counsel. I believe the amount of the charge to be reasonable in the circumstances, having regard to the size and complexity of these proceedings and the roles that will be required of the proposed Information Officer and its legal counsel.

98. This application has been brought on notice to the proposed Information Officer, the Canadian Revenue Agency (through the Department of Justice), the Consultant (defined below), the Ad Hoc Group of Crossover Lenders, the proposed DIP Lenders and the other PPSA creditors listed at paragraph 36.

99. It is proposed that a notice be placed in English in *The Globe and Mail* (National Edition) and in French in *La Presse* notifying any interested parties located in Canada of these proceedings and directing them to the Information Officer to obtain information with respect thereto. All Canadian court materials in these proceedings will be available on the Information Officer’s website.

#### **E. Recognition of First Day Orders**

100. By operation of the *United States Bankruptcy Code*, the Debtors obtained the benefit of a stay of proceedings upon filing the voluntary Petitions with the U.S. Court. A stay of proceedings in Canada is essential to protect the efforts of the Debtors to proceed with the

Chapter 11 Cases, pursue a restructuring transaction, and wind-down certain of its Canadian operations.

101. The Debtors have filed certain First Day Motions with the U.S. Court. The following are those motions whose ensuing orders the applicant will seek to have recognized in Canada once issued by the U.S. Court:

- (a) Motion of Debtors for an order (a) enforcing the protections of 11 U.S.C. §§ 362, 365, 525, and 541(c) and (b) approving notice to customers, suppliers, and other stakeholders of Debtors' non-Debtor global affiliates ("**Automatic Stay Comfort Motion for Foreign Entities**");
- (b) Motion of Debtors for orders (a) authorizing continued use of existing cash management system, including maintenance of existing bank accounts, checks, and business forms, (b) authorizing continuation of existing deposit practices, (c) authorizing continuation of intercompany transactions, and (d) granting administrative claim status to postpetition intercompany claims ("**Cash Management Motion**");
- (c) Motion of Debtors for entry of an order (i) authorizing the Debtors to (a) file a consolidated creditor matrix, (b) file a consolidated top 30 creditors list, (c) modify requirements to file a list of, and provide notice to, all equity holders, and (d) redact portions of their consolidated creditor matrix and list of equity interest holders containing personal identification information, and (ii) approving notice procedures for certain customers ("**Consolidated Creditor Matrix Motion**");

- (d) Motion of Debtors for orders authorizing payment of certain prepetition critical vendor claims (“**Critical Vendors Motion**”);
- (e) Motion of Debtors for orders authorizing the Debtors to (i) maintain and administer prepetition customer programs and (ii) pay prepetition obligations related thereto (“**Customer Programs Motion**”);
- (f) Motion of Debtors for orders (i) authorizing the Debtors to (a) obtain senior secured postpetition financing, (b) grant liens and superpriority administrative expense status, (c) use cash collateral of prepetition secured parties, and (d) grant adequate protection to prepetition secured parties; (ii) schedule a final hearing pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (iii) granting related relief (the “**DIP Motion**”, described above);
- (g) Motion of Debtors for an order establishing certain notice and hearing procedures for transfers of, or worthlessness deductions with respect to, common stock and convertible preferred stock of GNC Holdings (“**Equity Trading NOL Motion**”);
- (h) Debtors’ first (1<sup>st</sup>) omnibus motion for entry of an order (a) authorizing rejection of certain unexpired leases effective as of the petition date and (b) granting related relief (“**First Omnibus Motion to Reject Certain Unexpired Leases**”);
- (i) Motion to authorize GNC Holdings to act as foreign representative of the Debtors (“**Foreign Representative Motion**”);
- (j) Motion of Debtors for orders authorizing the Debtors to (a) pay prepetition insurance obligations and prepetition bonding obligations and (b) maintain their postpetition insurance coverage and bonding program (“**Insurance Motion**”);

- (k) Motion of Debtors for order authorizing joint administration of Chapter 11 Cases (**“Joint Administration Motion”**);
- (l) Motion of Debtors for orders (a) authorizing payment of prepetition lien claims and import claims and (b) confirming administrative expense priority of outstanding orders (**“Lien and Import Claims Motion”**);
- (m) Debtors’ application for appointment of Prime Clerk LLC as claims and noticing agent (**“Prime Clerk – Claims Agent Application”**);
- (n) Debtors’ second (2<sup>nd</sup>) omnibus motion for entry of an order (a) authorizing rejection of certain unexpired leases effective as of the petition date and (b) granting related relief (**“Second Omnibus Motion to Reject Certain Unexpired Leases”**);
- (o) Motion of Debtors for orders (a) approving procedures for store closing sales, (b) authorizing customary bonuses to managers of closing stores, (c) authorizing assumption of the consulting agreements, and (d) granting related relief (**“Store Closing Motion”**). The Store Closing Motion is described below;
- (p) Motion of Debtors for orders authorizing payment of prepetition taxes and fees (**“Tax Motion”**);
- (q) Debtors’ third (3<sup>rd</sup>) omnibus motion for entry of an order (a) authorizing rejection of certain unexpired leases effective as of the petition date and (b) granting related relief (**“Third Omnibus Motion to Reject Certain Unexpired Leases”**);

- (r) Motion of Debtors for orders (a) prohibiting utility companies from altering or discontinuing service on account of prepetition invoices, (b) approving deposit as adequate assurance of payment, (c) establishing procedures for resolving requests by utility companies for additional assurance of payment, and (d) authorizing payment of any prepetition service fees (“**Utilities Motion**”); and
- (s) Motion of Debtors for orders (a) authorizing payment of certain prepetition workforce obligations, (b) authorizing continuance of workforce programs, (c) authorizing payment of withholding and payroll-related taxes, and (d) authorizing payment of prepetition claims owing to workforce program administrators (“**Wages Motion**”).

102. The above First Day Motions are attached as Exhibits “Z” through “R” of this affidavit.

103. The Debtors are also seeking orders in the U.S. Court authorizing (a) payment of certain prepetition franchise claims and (b) continued performance under franchise agreements in the ordinary course of business (“**Franchise Motion**”). The Debtors have no Canadian franchises and will not be seeking recognition of this order in Canada.

104. A hearing has been scheduled with the U.S. Court to hear the First Day Motions. A further court date has been scheduled with the U.S. Court to consider final approval of any order that was entered on an interim basis and to consider any additional motions that may be filed by the Debtors.

105. The Debtors intend to seek one or more orders under the CCAA recognizing and giving effect to certain of the interim and/or final orders of the U.S. Court in respect of the First Day Motions (the “**First Day Orders**”) as they are entered by the U.S. Court.

106. The First Day Motions are described in detail in my U.S. First Day Declaration; however, the Store Closing Motion is also addressed below.

**F. Store Closing Motion**

107. The Store Closing Motion seeks interim and final orders that, among other things,

- (a) authorize on an interim and final basis store closing or similar themed sales (“**Sales**”) in accordance with the terms of the U.S. and Canadian store closing sale procedures (the “**U.S. Store Closing Procedures**” and the “**Canadian Store Closing Procedures**”, respectively, and, together, the “**Store Closing Procedures**”);
- (b) authorize the Debtors to pay customary bonuses to employees of certain stores (the “**Closing Stores**”); and
- (c) upon entry of the final order,
  - (i) authorize the Debtors to assume that certain consulting agreement, dated as of June 10, 2020 (the “**U.S. Consulting Agreement**”), by and between GNC Holdings and a joint venture comprised of Tiger Capital Group, LLC and Great American Group, LLC (the “**U.S. Consultant**”) and
  - (ii) authorize the Debtors to assume that certain consulting agreement, dated as of June 18, 2020 (the “**Canada Consulting Agreement**” and, together

with the U.S. Consulting Agreement, the “**Consulting Agreements**”), by and between GNC Canada and a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (the “**Canada Consultant**” and, together with the U.S. Consultant, the “**Consultant**”).

### **1. Store Closing Sales**

108. As described more fully in the U.S. First Day Declaration, in the wake of extreme market conditions and faced with limited liquidity, the Debtors are seeking to wind down several hundred store locations throughout the U.S. and Canada through a going-out-of-business sales process. Given continuously declining profitability and operational challenges, and despite the best efforts of the Debtors and their advisors to secure the capital necessary to preserve the entire business as a going concern, the Debtors are simply unable to meet their financial obligations. The Debtors have worked in concert with their secured lenders to develop a budget for the use of cash collateral to facilitate an expedited sale and orderly wind-down process for certain stores that will maximize value and recoveries for stakeholders in these cases.

109. In both the U.S. and Canada, the Debtors have begun lease modification negotiations with many of their landlords in the U.S. and Canada, respectively, for certain rent concessions and early termination rights (the “**Lease Negotiations**”), with the goal of improving the financial performance of the Debtors’ remaining store base. These Lease Negotiations are ongoing and the Debtors’ ability to negotiate more favorable lease terms and rent reductions will drive the determination of whether or not to close additional stores. Where the Debtors are unable to obtain sufficient relief in the Lease Negotiations concerning stores that are on the cusp of failing to meet certain performance standards, such stores will close as part of the Sales.

110. In Canada, GNC Canada will provide at least 30 days' notice to its landlords in Canada prior to the effective date of a lease rejection and continue to pay rent during that time period, with the exception of the 29 leases in Canada referred to in the First and Third Omnibus Motions to Reject Certain Unexpired Leases. In these cases, as described at paragraph 79 of my First Day Declaration, the leases were terminated pre-filing and GNC Canada does not intend to provide additional notice or rent.

## 2. The Consultant

111. The Debtors selected and engaged the Consultant to, among other things,

- (a) manage the Sales;
- (b) sell their store inventory (the "**Merchandise**"), owned furniture, furnishings, trade fixtures, machinery, equipment, office supplies, supplies, and other tangible personal property (the "**FF&E**") under the Consulting Agreements; and
- (c) otherwise prepare the stores for turnover to the applicable landlords on the terms set forth in the Consulting Agreements, including the terms of the sale guidelines attached to the Canada Consulting Agreement (the "**Canadian Sale Guidelines**") in the case of Sales in Canada.

112. The Debtors have a historical relationship with the Consultant, who has helped the Debtors with annual appraisals of inventory and accounts receivable, making the Consultant familiar with the Debtors' businesses.

113. In early 2020, the Debtors retained the Consultant for a test, at which time the Consultant was subject to an evaluation process that included, among other things, review of proposals from



other service providers, providing candidates with equal access to all information (such as store level volume, margins, and inventory) provided by the Debtors, seeking references, providing standard requirements for the submission or recovery assumptions, conducting forecasts and analysis, and phone and in-person meetings with the Debtors' management. Given the Consultant's longstanding familiarity with the Debtors' business, the efficiencies resulting from the same to the Debtors' estate, and the Consultant's experience in conducting store closings on an expedited timeline, the Debtors' management, in consultation with the Debtors' advisors, selected the Consultant to manage the Sales.

### 3. Store Closing Procedures

114. The Canadian Store Closing Procedures govern Sales in Canada and incorporate the Canadian Sale Guidelines. I am advised by Leora Jackson at Torys and believe that these guidelines are substantially consistent with the store closing process that is typically used in Canada.

115. The Canadian Sale Guidelines provide, among other things:

- (a) The Sale shall be conducted in accordance with the terms of the applicable lease, except as otherwise set out in any order by the U.S. Court or the Canadian CCAA Court (an "**Order**"), or in any subsequent written agreement between the Debtors and the applicable landlord, and approved by the Consultant.
- (b) The Sale shall be conducted so that each of the Stores (as defined in the Canada Consulting Agreement) remains open during its normal hours of operation provided for in its respective lease until the respective Sale Termination Date for

such Store. The Sale at the Stores shall end by no later than September 30, 2020 (the “**Sale Termination Date**”). Rent payable under the respective leases shall be paid in accordance with the terms of the Orders, as applicable.

- (c) The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or otherwise ordered by the Court.
- (d) All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. No signs shall advertise the Sale as a “bankruptcy”, a “going out of business” or a “liquidation” sale; however, notwithstanding anything in the applicable leases, the Consultant may advertise the Sale at the Stores as an “everything on sale,” an “everything must go,” a “store closing,” or similar theme sale. If a landlord is concerned with “store closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the landlord will discuss the landlord’s concerns and work to resolve the dispute.
- (e) The Consultant shall be permitted to utilize sign walkers and street signage, provided that such sign walkers and street signage shall not be located on the shopping centre or mall premises.
- (f) Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are “final.”

- (g) The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any landlord's property, unless permitted by the applicable lease or if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights, or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable lease or agreed to by the landlord, and no advertising trucks shall be used on a landlord property or mall ring roads, except as explicitly permitted under the applicable lease or agreed to by the landlord.
- (h) At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in "broom-swept" and clean condition and shall arrange that the Stores are materially in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by GNC Canada, defined in the Canada Consulting Agreement as the "**Merchant**") may be removed without the applicable landlord's written consent unless otherwise provided by the applicable lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable landlord having the right to dispose of the same as the landlord chooses, without any liability whatsoever on the part of the landlord.

- (i) The Merchant and the Consultant shall not conduct any auctions of Merchandise or offered FF&E at any of the Stores.

116. The Canadian Store Closing Procedures incorporate the U.S. Store Closing Procedures and Canadian Sale Guidelines. They provide, among other things, that Canadian store closings will be conducted pursuant to the U.S. Store Closing Procedures and the Canadian Sale Guidelines; however, in the event of a conflict between the terms of the U.S. Store Closing Procedures and the terms of the Canadian Sale Guidelines, the terms of the Canadian Sale Guidelines shall control.

#### **4. Store Closing Bonus Plan**

117. The Store Closing Motion seeks to authorize the Debtors to pay a store closing bonus to non-insider store managers at the Closing Stores in the U.S. and Canada who remain in the employ of the Debtors during the Store Closings. Providing such non-insider bonus benefits is critical to ensuring that key employees that will be affected by the reduction in the Debtors' work force due to the Store Closings will continue to provide critical services to the Debtors during the ongoing Store Closing process.

118. The total aggregate cost of the Store Closing Bonus Plan will vary depending on how many Closing Stores are ultimately closed. The Debtors believe that the Store Closing Bonus Plan will motivate employees during the Store Closings and will enable the Debtors to retain those employees necessary to successfully complete the Store Closings.

**SWORN BEFORE ME** *by video conference*  
From the City of Toronto, in the Province of  
Ontario,  
To the City of Pittsburgh in the State of  
Pennsylvania  
On June 24, 2020.

}



\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)



\_\_\_\_\_  
Tricia Tolivar

**LEORA JACKSON**

**Schedule A – List of Debtors**

1. GNC Holdings, Inc.;
2. General Nutrition Centres Company;
3. GNC Parent LLC;
4. GNC Corporation;
5. General Nutrition Centers, Inc.;
6. General Nutrition Corporation;
7. General Nutrition Investment Company;
8. Lucky Oldco Corporation;
9. GNC Funding Inc.;
10. GNC International Holdings Inc.;
11. GNC China Holdco, LLC;
12. GNC Headquarters LLC;
13. Gustine Sixth Avenue Associates, Ltd.;
14. GNC Canada Holdings, Inc.;
15. GNC Government Services, LLC;
16. GNC Puerto Rico Holdings, Inc; and
17. GNC Puerto Rico, LLC



TABA

THIS IS **EXHIBIT “A”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

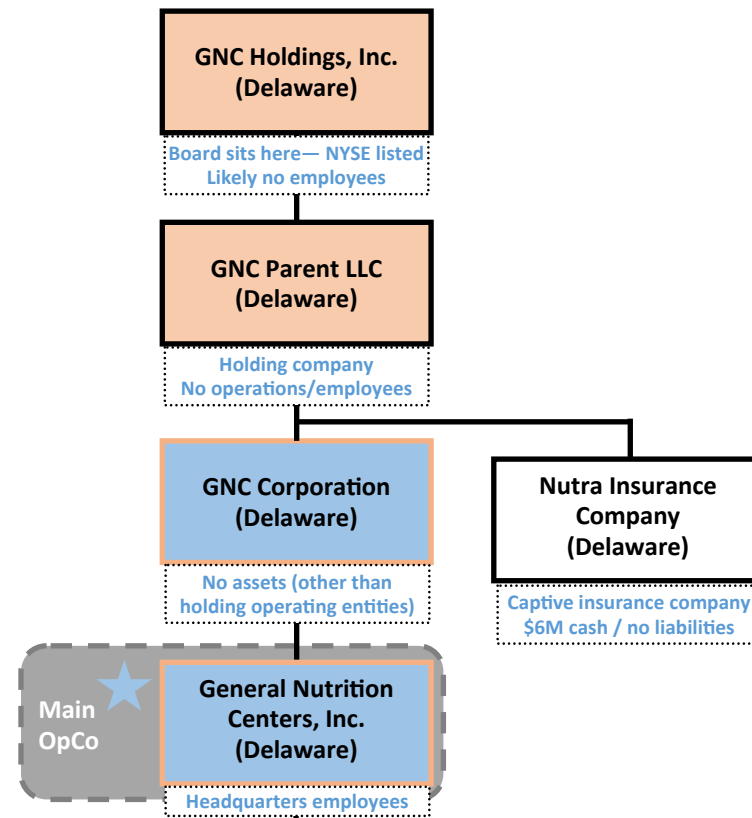
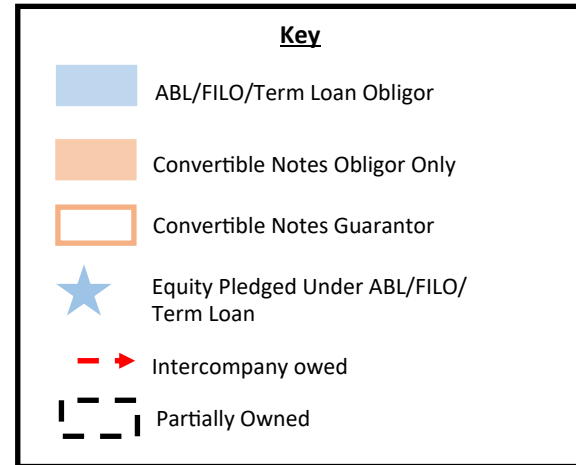


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Leora Jackson

Commissioner for Taking Affidavits

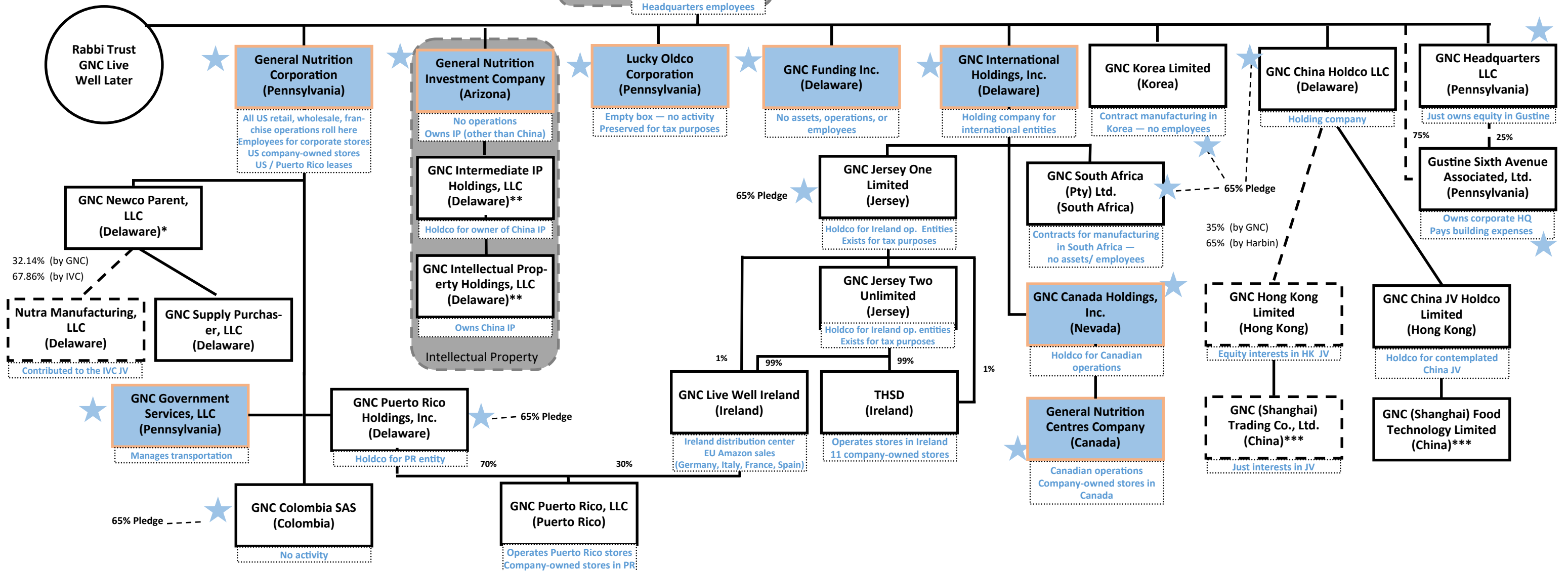




\* GNC Newco Parent, LLC is wholly-owned by General Nutrition Corporation, IVL Holdings, LLC owns a class B interest with certain consent rights, but no economic rights

\*\* GNC Intermediate IP Holdings, LLC is wholly-owned by General Nutrition Investment Company, but the China JV owns a class B interest with certain consent rights, but no economic rights. GNC Intellectual Property Holdings, LLC is wholly-owned by GNC Intermediate IP Holdings, LLC, but the China JV owns a class B interest with certain consent rights, but no economic rights

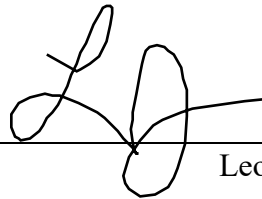
\*\*\* When JV transaction is consummated, GNC (Shanghai) Trading Co., Ltd. will transfer assets related to its China business to GNC (Shanghai) Food Technology Limited, which will operate as the China JV and will be 35% owned by GNC China JV Holdco Limited and 65% owned by Harbin





TABB

THIS IS **EXHIBIT “B”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, consisting of several loops and a horizontal line extending to the right, positioned above a horizontal line.

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Leora Jackson  
Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:  
District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name GNC Holdings, Inc.

2. All other names debtor used in the last 8 years \_\_\_\_\_

Include any assumed names, trade names, and *doing business* as names \_\_\_\_\_

3. Debtor's federal Employer Identification Number (EIN) 20 - 8536244

4. Debtor's address **Principal place of business** **Mailing address, if different from principal place of business**

300 Sixth Ave.  
Number Street

\_\_\_\_\_  
Number Street

Pittsburgh PA 15222  
City State ZIP Code

\_\_\_\_\_  
P.O. Box

\_\_\_\_\_  
City State ZIP Code

Allegheny County  
County

**Location of principal assets, if different from principal place of business**

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor  
 Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))  
 Partnership (excluding LLP)  
 Other. Specify: \_\_\_\_\_

**7. Describe debtor's business**

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461

**8. Under which chapter of the Bankruptcy Code is the debtor filing?**

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. *Check all that apply:*

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

**9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?**

- No
- Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

- No
- Yes. Debtor See Rider 1 Relationship Affiliate  
 District \_\_\_\_\_ When \_\_\_\_\_  
 Case number, if known \_\_\_\_\_

List all cases. If more than 1, attach a separate list.

**11. Why is the case filed in this district?**

- Check all that apply:*
- Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

- No
- Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

- It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety. What is the hazard? \_\_\_\_\_
- It needs to be physically secured or protected from the weather.
- It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).
- Other \_\_\_\_\_

**Where is the property?**

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**Is the property insured?**

- No
- Yes. Insurance agency \_\_\_\_\_
- Contact name \_\_\_\_\_
- Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

- Check one:*
- Funds will be available for distribution to unsecured creditors.
- After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

- 1-49                       1,000-5,000                       25,001-50,000
- 50-99                       5,001-10,000                       50,001-100,000
- 100-199                       10,001-25,000                       More than 100,000
- 200-999

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**x** /s/ Kara Hammond Coyle  
Signature of attorney for debtor

Date 06/23/2020  
MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE  
City State ZIP Code

(302) 571-6600 kcoye@ycst.com  
Contact phone Email address

No. 4410 DE  
Bar number State

## **RIDER 1**

### **PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES**

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (____)
	)	(Joint Administration Requested)
	)	
	)	

**Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy Under Chapter 11**

1. If any of the debtor’s securities are registered under Section 12 of the Securities Exchange Act of 1934, the SEC file number is 001-35113
2. The following financial data refers to the condition of the Debtors and its affiliates on a consolidated basis as of the dates noted in the footnotes below:

a. Total assets	<u>\$1,415,957,000<sup>2</sup></u>
b. Total debts (including debts listed in 2.c below)	<u>\$895,022,000<sup>3</sup></u>
c. Debt securities held by more than 500 holders	<u>1<sup>4</sup></u>

Approximate number of holders:

secured <input type="checkbox"/>	unsecured <input checked="" type="checkbox"/>	subordinated <input type="checkbox"/>	<u>\$159.1 million</u>	<u>See Footnote 4 below</u>
secured <input type="checkbox"/>	unsecured <input type="checkbox"/>	subordinated <input type="checkbox"/>	\$_____	_____

---

- 1 The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.
- 2 This figure reflects Total Assets of GNC Holdings, Inc. as presented in the March 31, 2020 Form 10-Q and is on a consolidated basis for the Debtors and non-Debtor affiliates.
- 3 This figure reflects Total Debt of GNC Holdings, Inc. as presented in the March 31, 2020 Form 10-Q and is on a consolidated basis for the Debtors and non-Debtor affiliates.
- 4 GNC Holdings, Inc. does not and cannot know the precise number of beneficial holders of any of the debt securities it has issued. Therefore, the above stated number is only an estimate and should be regarded as such.

secured     unsecured     subordinated     \$ \_\_\_\_\_

secured     unsecured     subordinated     \$ \_\_\_\_\_

secured     unsecured     subordinated     \$ \_\_\_\_\_

d. Number of shares of preferred stock                      299,950

e. Number of shares of common stock                      84.61 million outstanding as of  
05/06/2020

Comments, if any: \_\_\_\_\_

3. Brief description of debtor's business: GNC is a global health and wellness brand with a diversified omni-channel business. In its stores and online, GNC sells an assortment of performance and nutritional supplements, vitamins, herbs and greens, health and beauty, food and drink, and other general merchandise, featuring innovative private-label products as well as nationally recognized third-party brands, many of which are exclusive to GNC.

List of the names of any person who directly or indirectly owns, controls, or holds, with power to vote, 5% or more of the voting securities of debtor: Harbin Pharmaceutical Group Co., Ltd. owns 299,950 shares of Series A Convertible Preferred Stock, which gives Harbin approximate 41% voting interest in GNC Holdings, Inc. Other holders of more than 5% of GNC Holdings, Inc.'s common stock are: Charles Schwab Investment Management, Inc. (6.8%), Blackrock, Inc. (7.1%), and John Y. Tang (5.85%)

\_\_\_\_\_

**GNC Holdings, Inc.**

**June 23, 2020**

I, Susan M. Canning, Corporate Secretary of GNC Holdings, Inc., a Delaware corporation (the "Corporation"), do hereby certify the following:

1. I am the duly qualified and appointed Corporate Secretary of the Corporation.
2. Attached hereto as **Exhibit A** is a true, correct and complete copy of the resolutions (the "Resolutions") duly adopted by the board of directors of the Corporation acting pursuant to the Corporation's bylaws (as amended, restated, modified, supplemented or replaced from time to time, the "Bylaws").
3. The Resolutions are not inconsistent with the Bylaws.
4. The Resolutions have not been amended, modified, repealed or rescinded since adopted, and are in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first above written.

By: Susan M. Canning  
Name: Susan M. Canning  
Title: Corporate Secretary

**EXHIBIT A**

**Resolutions of the Board of Directors of GNC Holdings, Inc.**

[See attached]

**RESOLUTIONS**  
**OF THE BOARD OF DIRECTORS OF**  
**GNC HOLDINGS, INC.**

**June 23, 2020**

**WHEREAS**, GNC Holdings, Inc., a Delaware corporation (the “**Corporation**”), is the sole and managing member of GNC Parent LLC, a Delaware limited liability company (“**GNC Parent**”), and together with the Corporation, the “**Companies**”);

**WHEREAS**, the board of directors of the Corporation (the “**Board**”) previously established a special committee of the Board (the “**Special Committee**”) to evaluate possible refinancing transactions involving some or all of the Corporation’s existing indebtedness;

**WHEREAS**, the Special Committee of the Board has reviewed and considered the materials presented by the management and financial and legal advisors of the Corporation regarding the potential present and future liabilities of the Corporation, the strategic alternatives available to it, the historical performance of the Corporation, the assets of the Corporation, the market for the Corporation’s products and services, and the impact of the foregoing on the Corporation’s business;

**WHEREAS**, the Special Committee has received, reviewed and considered the recommendations of the senior management of the Corporation and the Corporation’s legal, financial and other advisors as to the relative risks and benefits of pursuing a bankruptcy proceeding under the provisions of Chapter 11 of the United States bankruptcy code;

**WHEREAS**, the Special Committee has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as **Exhibit A**, the “**RSA**”), by and among the Corporation and certain of its subsidiaries and certain of their creditors, and the transactions contemplated thereby;

**WHEREAS**, the Special Committee has unanimously determined that it is in the best interests of the Corporation, its creditors, interest holders, and other interested parties to enter into the RSA and commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and that the Corporation make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and has recommended to the Board the approval of actions necessary to cause the Corporation to seek relief under the provisions of Chapter 11 of the Bankruptcy Code and the CCAA, including entry into the RSA and consummation of the transactions contemplated thereby;

**WHEREAS**, the Board has reviewed and considered the materials presented by the management and financial and legal advisors of the Companies regarding the potential present and future liabilities of the Companies, the strategic alternatives available to them, and the impact of the foregoing on the Companies’ business;

**WHEREAS**, the Board has reviewed and evaluated the proposed RSA and the transactions contemplated thereby; and

**WHEREAS**, the Board, on behalf of the Corporation and on behalf of the Corporation in its capacity as the sole and managing member of GNC Parent, has determined that it is in the best interests of the Companies, their creditors, interest holders, and other interested parties to enter into the RSA and commence the Chapter 11 Case under the Bankruptcy Code.

***Approval of Bankruptcy Filing***

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Board, on behalf of the Corporation and on behalf of the Corporation in its capacity as the sole and managing member of GNC Parent, it is desirable and in the best interests of the Companies, their creditors, interest holders, and other interested parties, that the Companies seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Companies to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Companies under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Companies’ application under the CCAA and the CCAA proceedings (the “**CCAA Case**”), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other professionals which they may deem necessary or proper to enable a successful restructuring of the Companies; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Companies, to take all actions necessary or appropriate for the Companies to obtain post-petition financing according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Companies, their creditors, interest holders, and other interested parties, and the Board hereby authorizes and approves the execution and delivery of the RSA by the Companies; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the “**Ancillary Documents**”) to be executed or delivered by the Companies is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Companies, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Companies and their stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Companies be, and they hereby are, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Companies; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Companies, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate, each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Companies, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Companies in connection with the Chapter 11 Case and to employ the law firm of Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Companies, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Companies in carrying out their responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

### ***General***

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Companies, to take or cause to be taken any and all such further action and to execute and deliver or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents,

certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any officer of the Companies or any of the Professionals in connection with each of the Chapter 11 Case and the CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the applicable Company; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and include those individuals with the following titles: (1) President, Chief Executive Officer, (2) Executive Vice President, Chief Financial Officer and (3) Senior Vice President, General Counsel and Corporate Secretary.

\* \* \*



**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (___)
	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED CORPORATE OWNERSHIP STATEMENT  
PURSUANT TO BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.



- a) General Nutrition Corporation;
  - b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name GNC Holdings, Inc.

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration Consolidated Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1) and 7007.1

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar  
Signature of individual signing on behalf of debtor

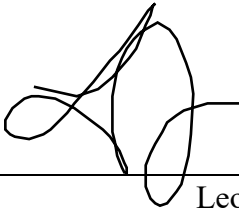
Tricia Tolivar  
Printed name

Authorized Signatory  
Position or relationship to debtor



TABC

THIS IS **EXHIBIT “C”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', written over a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

**Official Form 201**

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name General Nutrition Centres Company

2. All other names debtor used in the last 8 years \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Include any assumed names, trade names, and *doing business* as names \_\_\_\_\_  
\_\_\_\_\_

3. Debtor's federal Employer Identification Number (EIN) Bus No: 898190939

4. Debtor's address

	<b>Principal place of business</b>	<b>Mailing address, if different from principal place of business</b>
	<u>300 Sixth Ave.</u> Number Street	_____ Number Street
	_____ Pittsburgh PA 15222 City State ZIP Code	_____ P.O. Box
		_____ City State ZIP Code
	<b>Location of principal assets, if different from principal place of business</b>	
	<u>Allegheny County</u> County	_____ Number Street
		_____ City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor  Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))  
 Partnership (excluding LLP)  
 Other. Specify: \_\_\_\_\_

7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
— — — —

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

No

Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

- No
- Yes. Debtor See Rider 1 Relationship Affiliate
- District \_\_\_\_\_ When \_\_\_\_\_
- MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

Case number, if known \_\_\_\_\_

**11. Why is the case filed in this district?**

Check all that apply:

- Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

- No
- Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

- It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
What is the hazard? \_\_\_\_\_
- It needs to be physically secured or protected from the weather.
- It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).
- Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**Is the property insured?**

- No
- Yes. Insurance agency \_\_\_\_\_
- Contact name \_\_\_\_\_
- Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

- Funds will be available for distribution to unsecured creditors.
- After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

- 1-49                       1,000-5,000                       25,001-50,000
- 50-99                       5,001-10,000                       50,001-100,000
- 100-199                       10,001-25,000                       More than 100,000
- 200-999

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar  
Signature of authorized representative of debtor  
  
Title Authorized Signatory

Tricia Tolivar  
Printed name

**18. Signature of attorney**

**x** /s/ Kara Hammond Coyle  
Signature of attorney for debtor

Date 06/23/2020  
MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600 kcoye@ycst.com  
Contact phone Email address

No. 4410 DE  
Bar number State



## RIDER 1

### PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**RESOLUTIONS OF THE DIRECTORS**

**OF**

**GENERAL NUTRITION CENTRES COMPANY**

(the "**Company**")

WHEREAS, in the judgment of the directors of the Company, it is desirable and in the best interests of the Company, its creditors, shareholders, employees, and other interested parties that a petition be filed by the Company, seeking relief under the provisions of Chapter 11, Title 11, of the United States Code ("**Bankruptcy Code**"), and that the Company make an application under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**");

WHEREAS, the Directors have reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the "**RSA**") and the transactions contemplated thereby and has determined that it is in the best interests of the Company, its creditors, shareholders, employees and other interested parties to enter into the RSA;

NOW, THEREFORE, it is hereby:

RESOLVED, that the Company is authorized to file a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on or about June 23, 2020; and

IT IS FURTHER RESOLVED, that the Company is authorized to make an application, to the court having jurisdiction, under Part IV of the CCAA on or about June 23, 2020; and

IT IS FURTHER RESOLVED, that any and all officers of the Company, and such employees that shall be designated from time to time, be, and each hereby is, authorized to execute and file any and all petitions, schedules, lists, statements, applications, pleadings, and other papers, to take any and all actions which they may deem necessary or proper in connection with the Chapter 11 case of the Company, and to retain and employ lawyers, investment bankers, accountants, financial advisors and any other professionals which they may deem necessary or proper to enable successful prosecution of the Chapter 11 case; and

IT IS FURTHER RESOLVED, that any and all officers of the Company, and such employees that shall be designated from time to time, be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Company's application under the CCAA and the CCAA proceedings, and to retain and employ lawyers, information officers, monitors, investment bankers, accountants, financial advisors and any other professionals which they may deem necessary or proper to enable a successful restructuring of the Company; and

IT IS FURTHER RESOLVED, that any and all acts lawfully done or actions lawfully taken by any and all officers of the Company to seek relief under Chapter 11 of the Bankruptcy Code, the CCAA or in connection with the Chapter 11 case or the CCAA proceedings, or any matter related

thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Company; and

IT IS FURTHER RESOLVED, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Company, its creditors, interest holders, and other interested parties, and the Board hereby authorizes and approves the execution and delivery of the RSA by the Company; and

IT IS FURTHER RESOLVED, that each other agreement, document and instrument contemplated by the RSA to be executed or delivered by the Company is hereby authorized and approved; and

IT IS FURTHER RESOLVED, that the officers of the Company shall be, and each of them hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such officers may consider necessary, proper, or desirable, and in the best interests of the Company and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such officers to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such officer determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and

IT IS FURTHER RESOLVED, that in addition to the specific authorizations heretofore conferred upon the officers of the Company, any and all officers of the Company be, and each hereby is, authorized and directed to take or cause to be taken all such further actions, to execute and deliver or cause to be executed and delivered all such further certificates, agreements, instruments and documents in the name and on behalf of the Company, as a debtor and debtor-in possession, and to incur all such fees and expenses as in their judgment shall be necessary or advisable in order to carry out fully the intent and purposes of the foregoing resolutions; and

IT IS FURTHER RESOLVED, that any and all officers of the Company be, and each hereby is, authorized and directed to employ the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP as general bankruptcy counsel to the Company to represent and assist the Company in carrying out its duties under the Bankruptcy Code and the CCAA, and to take any and all actions to advance the Company's rights, including filing any pleading, and in connection therewith, the officers of the Company are hereby authorized and directed to execute appropriate retention agreements, to pay appropriate retainers prior to and immediately upon the filing of the Chapter 11 case and upon the application under the CCAA, and to cause to be filed an appropriate application for authority to retain the services of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP; and

IT IS FURTHER RESOLVED, that any and all officers of the Company be, and each hereby is, authorized and directed to employ the law firm of Torys LLP as Canadian bankruptcy counsel to the Company to represent and assist the Company in carrying out its duties under the Bankruptcy Code and the CCAA, and to take any and all actions to advance the Company's

rights, including filing any pleading, and in connection therewith, the officers of the Company are hereby authorized and directed to execute appropriate retention agreements, to pay appropriate retainers prior to and immediately upon the filing of the Chapter 11 case and upon the application under the CCAA, and to cause to be filed an appropriate application for authority to retain the services of Torys LLP; and

IT IS FURTHER RESOLVED, that any and all officers of the Company be, and each hereby is, authorized and directed to employ the firms of Evercore Group, L.L.C. and FTI Consulting, Inc. as financial advisors to the Company to represent and assist the Company in carrying out its duties under the Bankruptcy Code and the CCAA; and in connection therewith, the officers of the Company are hereby authorized and directed to execute appropriate retention agreements, to pay appropriate retainers prior to and immediately upon the filing of the Chapter 11 case and upon the application under the CCAA, and to cause to be filed an appropriate application for authority to retain the services of Evercore Group, L.L.C. and FTI Consulting, Inc.; and

IT IS FURTHER RESOLVED, that any and all officers of the Company be, and each hereby is, authorized and directed to employ a firm to act as information officer or monitor to the Company to represent and assist the Company in carrying out its duties under the CCAA; and in connection therewith, the officers are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers prior to and immediately upon the application under the CCAA.

WHEREAS, certain of the affiliates of the Company desire to obtain post-petition financing according to the terms negotiated by the authorized officers of such affiliates of the Company, and to effectuate the foregoing, the Company desires to enter into such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) by and among the Company and/or certain of the Company’s affiliates as borrowers (the “**Borrowers**”) and/or guarantors, and certain third party lenders (each individually a “**Lender**”, collectively, the “**Lenders**”), in connection with the Chapter 11 case of the Company and its application under the CCAA; and

WHEREAS, the Company deems it to be to its direct benefit and in its best interests to enter into the Credit Documents, to absolutely and unconditionally guarantee all existing and hereafter arising obligations, liabilities and indebtedness of the Borrowers to the Lenders under the Credit Documents and to grant such Lenders a security interest in and general lien upon such assets and properties, real and personal, now owned or hereafter acquired by the Company, as may now or from time to time be required by the Lenders as security for all obligations, liabilities and indebtedness of the Company to such Lenders, now existing or hereafter arising under the Credit Documents, as an inducement to such Lenders to enter into the financing arrangements with the Company;

NOW, THEREFORE, it is hereby:

RESOLVED, that the officers of the Company, and each of them, are hereby authorized, directed and empowered, either jointly or severally, for and on behalf of and in the name of the

Company: (a) to enter into the Credit Documents; and (b) to absolutely and unconditionally guarantee all existing and hereafter arising obligations of the Borrowers to the Lenders; and

IT IS FURTHER RESOLVED, that the officers of the Company, and each of them, are hereby authorized, directed, and empowered, either jointly or severally, for and on behalf of and in the name of the Company, pursuant to the Credit Documents to sell, transfer, lease, assign, hypothecate, set over, grant security interests in, mortgage or pledge any or all of the assets and properties of the Company, real, personal, or mixed, tangible or intangible, now owned or hereafter acquired as security or otherwise; and

IT IS FURTHER RESOLVED, that, the officers of the Company, and each of them, are hereby authorized, directed and empowered either jointly or severally, for and on behalf of and in the name of the Company to make, execute and deliver the Credit Documents, and any and all other agreements, documents and instruments with or in favor of any Lender, together with any related Uniform Commercial Code financing statements, *Personal Property Security Act* statements and any and all amendments, supplements, modifications, extensions, restatements, renewals, replacements and any additional agreements, documents and instruments relating to the foregoing or reasonably requested by any Lender and all such agreements, documents and instruments shall contain such terms, conditions and waivers as such authorized officer deems necessary or desirable in the interest of the Company, and the execution of any such agreement, document or instrument by any such authorized officer shall be conclusive proof of the approval of all of the terms and conditions thereof for and on behalf of the Company; and

IT IS FURTHER RESOLVED, that all action heretofore taken and all documentation heretofore delivered by any of said officers, or by any individual who currently holds or has held any of said offices, in furtherance of the foregoing is hereby ratified, adopted, approved and confirmed and declared to be binding and enforceable obligations of the Company, and its subsidiary entities, in accordance with the respective terms and provisions thereof; and

IT IS FURTHER RESOLVED, that Lenders are authorized to rely upon the foregoing resolutions and that the authorization herein set forth shall remain in full force and effect until written notice of their modification or discontinuance shall be given to and actually received by the Lenders, but no such modification or discontinuance shall affect the validity of the acts of any person authorized to so act by these resolutions performed prior to the receipt of such notice by the Lenders; and

IT IS FURTHER RESOLVED, that any officers, and each of them, are hereby authorized, directed, and empowered to take any and all further acts, make any and all further filings, and make any and all payments to give effect to the foregoing resolutions; and

IT IS FURTHER RESOLVED, that these resolutions may be executed in one or more counterparts and transmitted via facsimile or other electronic means, and each such counterpart shall be deemed an original, and all such counterparts, taken together, shall constitute one document.

[signatures follow]

The foregoing resolutions are hereby signed by the all the Directors of the Company pursuant to the *Companies Act* (Nova Scotia), this 23rd day of June, 2020.

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Cameron Lawrence

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Susan M. Canning



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Tricia Tolivar

The foregoing resolutions are hereby signed by the all the Directors of the Company pursuant to the *Companies Act* (Nova Scotia), this 23rd day of June, 2020.

---

Cameron Lawrence

  
Susan M. Canning

---

Tricia Tolivar

The foregoing resolutions are hereby signed by the all the Directors of the Company pursuant to the *Companies Act* (Nova Scotia), this 23rd day of June, 2020.



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Cameron Lawrence

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Susan M. Canning

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Tricia Tolivar



**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (___)
	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:

---

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.



- a) General Nutrition Corporation;
  - b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name General Nutrition Centres Company

United States Bankruptcy Court for the: DISTRICT OF DELAWARE

Case number (if known) \_\_\_\_\_

Check if this is an amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors** 12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration **Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

**X** /s/ Tricia Tolivar  
Signature of individual signing on behalf of debtor

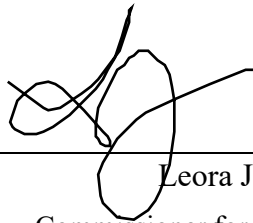
**Tricia Tolivar**  
Printed name

**Authorized Signatory**  
Position or relationship to debtor



TABD

THIS IS **EXHIBIT “D”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

---

Leora Jackson  
Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name GNC Parent LLC

2. All other names debtor used in the last 8 years

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 20 - 5877572

4. Debtor's address

Principal place of business

Mailing address, if different from principal place of business

300 Sixth Ave.  
Number Street

Number Street

Pittsburgh PA 15222  
City State ZIP Code

P.O. Box

City State ZIP Code

Allegheny County  
County

Location of principal assets, if different from principal place of business

Number Street

City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor

Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

Partnership (excluding LLP)

Other. Specify: \_\_\_\_\_

7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
\_\_\_\_

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

- No
- Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

No

Yes. Debtor See Rider 1 Relationship Affiliate  
District \_\_\_\_\_ When \_\_\_\_\_  
Case number, if known \_\_\_\_\_  
MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

**11. Why is the case filed in this district?**

Check all that apply:

Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

No

Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
What is the hazard? \_\_\_\_\_

It needs to be physically secured or protected from the weather.

It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number Street

City

State

ZIP Code

**Is the property insured?**

No

Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

Funds will be available for distribution to unsecured creditors.

After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

1-49

50-99

100-199

200-999

1,000-5,000

5,001-10,000

10,001-25,000

25,001-50,000

50,001-100,000

More than 100,000

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**x** /s/ Kara Hammond Coyle

Date 06/23/2020

Signature of attorney for debtor

MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600  
Contact phone

kcoyle@ycst.com  
Email address

No. 4410 DE  
Bar number State



## **RIDER 1**

### **PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES**

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**WRITTEN CONSENT OF THE SOLE MEMBER**

**OF**

**GNC PARENT LLC**

**June 23, 2020**

The undersigned, being the sole member (the “**Member**”) of GNC Parent LLC, a Delaware limited liability company (the “**Company**”), hereby takes the following actions and adopts the following resolutions by written consent in lieu of a meeting pursuant to Section 18-302 of the Delaware Limited Liability Company Act, 6 Del. C. § 18-101 *et seq.*:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Member has reviewed and considered the materials presented by the management and financial and legal advisors of the Company regarding the potential present and future liabilities of the Company, the strategic alternatives available to it, and the impact of the foregoing on the Company’s business;

**WHEREAS**, the Member has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Member has determined that it is in the best interests of the Company, its creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Member, it is desirable and in the best interests of the Company, its creditors, interest holders, and other interested parties, that the Company seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Company to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Company under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Company’s application under the CCAA and the CCAA proceedings (the “**CCAA Case**”), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other

professionals which they may deem necessary or proper to enable a successful restructuring of the Company; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to take all actions necessary or appropriate for the Company to obtain post-petition financing according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Company, its creditors, interest holders, and other interested parties, and the Member hereby authorizes and approves the execution and delivery of the RSA by the Company; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the “**Ancillary Documents**”) to be executed or delivered by the Company is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Company and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Company be, and it hereby is, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Company; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Company, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate, each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Company in connection with the Chapter 11 Case and to employ the law firm Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Company in carrying out its responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization; and it is further

### *General*

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Company, to take or cause to be taken any and all such further action and to execute and deliver or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions.

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any officer of the Company or any of the Professionals in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Company; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and those individuals with the following titles: (1) President, Chief Executive Officer, (2) Senior Vice President, Chief Financial Officer and (3) Vice President, Secretary.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the undersigned has executed this written consent to be effective as of the date first written above.

**MEMBER:**

**GNC HOLDINGS, INC.**

By: Tricia Tolivar  
Name: Tricia Tolivar  
Title: Executive Vice President, Chief  
Financial Officer

**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67



Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (___)
	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:

---

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

- a) General Nutrition Corporation;
  - b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

Fill in this information to identify the case:

Debtor name GNC Parent LLC

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule \_\_\_\_\_
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration **Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar

Signature of individual signing on behalf of debtor

Tricia Tolivar

Printed name

Authorized Signatory


Position or relationship to debtor



**TABE**



THIS IS **EXHIBIT “E”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'LJ', is positioned above a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name GNC Corporation

2. All other names debtor used in the last 8 years

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 72 - 1575170

4. Debtor's address

Principal place of business

Mailing address, if different from principal place of business

300 Sixth Ave.  
Number Street

\_\_\_\_\_  
Number Street

Pittsburgh PA 15222  
City State ZIP Code

\_\_\_\_\_  
P.O. Box

\_\_\_\_\_  
City State ZIP Code

Allegheny County  
County

Location of principal assets, if different from principal place of business

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor

Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

Partnership (excluding LLP)

Other. Specify: \_\_\_\_\_

7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
— — — —

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

- No
- Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

No

Yes. Debtor See Rider 1 Relationship Affiliate

District \_\_\_\_\_ When \_\_\_\_\_

MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

Case number, if known \_\_\_\_\_

**11. Why is the case filed in this district?**

Check all that apply:

Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

No

Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? \_\_\_\_\_

It needs to be physically secured or protected from the weather.

It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

Other \_\_\_\_\_

**Where is the property?**

Number Street

City

State

ZIP Code

**Is the property insured?**

No

Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

Funds will be available for distribution to unsecured creditors.

After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

1-49

1,000-5,000

25,001-50,000

50-99

5,001-10,000

50,001-100,000

100-199

10,001-25,000

More than 100,000

200-999

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**X** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**X** /s/ Kara Hammond Coyle

Date 06/23/2020

Signature of attorney for debtor

MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600  
Contact phone

kcoyle@ycst.com  
Email address

No. 4410 DE  
Bar number State

## RIDER 1

### PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**UNANIMOUS WRITTEN CONSENT  
OF THE BOARD OF DIRECTORS OF  
GNC CORPORATION**

**June 23, 2020**

The undersigned, being all of the members of the board of directors (the “**Board**”) of GNC Corporation, a Delaware corporation (the “**Corporation**”), hereby take the following actions and adopt the following resolutions by unanimous written consent in lieu of a meeting pursuant to Section 141(f) of the Delaware General Corporation Law:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Board has reviewed and considered the materials presented by the management and financial and legal advisors of the Corporation regarding the potential present and future liabilities of the Corporation, the strategic alternatives available to it, and the impact of the foregoing on the Corporation’s business;

**WHEREAS**, the Board has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Board has determined that it is in the best interests of the Corporation, its creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Board, it is desirable and in the best interests of the Corporation, its creditors, interest holders, and other interested parties, that the Corporation seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Corporation to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Corporation under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Corporation’s application under the CCAA and the CCAA proceedings (the “**CCAA Case**”), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other

professionals which they may deem necessary or proper to enable a successful restructuring of the Corporation; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to take all actions necessary or appropriate for the Corporation to obtain post-petition financing according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Corporation, its creditors, interest holders, and other interested parties, and the Board hereby authorizes and approves the execution and delivery of the RSA by the Corporation; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the “**Ancillary Documents**”) to be executed or delivered by the Corporation is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Corporation and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Corporation be, and it hereby is, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Corporation; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Corporation, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate, each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further



**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Corporation in connection with the Chapter 11 Case and to employ the law firm Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Corporation in carrying out its responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

### *General*

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Corporation, to take or cause to be taken any and all such further action and to execute and deliver or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any officer of the Corporation or any of the Professionals in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and include those individuals with the following titles: (1) President, Chief Executive Officer, (2) Senior Vice President, Chief Financial Officer and (3) Vice President, Secretary.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**



---

Tricia Tolivar

---

Cameron Lawrence

---

Susan M. Canning

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

---

Tricia Tolivar



---

Cameron Lawrence

---

Susan M. Canning

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

---

Tricia Tolivar

---

Cameron Lawrence

  
Susan M. Canning

**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60



Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (___)
	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

- a) General Nutrition Corporation;
  - b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name GNC Corporation

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule \_\_\_\_\_
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration **Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar  
Signature of individual signing on behalf of debtor

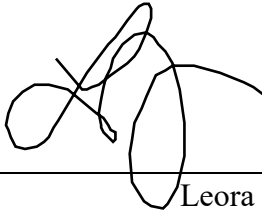
Tricia Tolivar  
Printed name

Authorized Signatory  
Position or relationship to debtor



TABF

THIS IS **EXHIBIT “F”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', written over a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits



**Fill in this information to identify the case:**

United States Bankruptcy Court for the:  
District of Delaware  
Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name General Nutrition Centers, Inc.

2. All other names debtor used in the last 8 years General Nutrition Companies, Inc.

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 72 - 1575168

4. Debtor's address **Principal place of business** **Mailing address, if different from principal place of business**

300 Sixth Ave.  
Number Street

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
P.O. Box

Pittsburgh PA 15222  
City State ZIP Code

\_\_\_\_\_  
City State ZIP Code

**Location of principal assets, if different from principal place of business**

Allegheny County  
County

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor  Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))  
 Partnership (excluding LLP)  
 Other. Specify: \_\_\_\_\_

7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
— — — —

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

- No
- Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

- No
- Yes. Debtor See Rider 1 Relationship Affiliate  
District \_\_\_\_\_ When \_\_\_\_\_  
MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

Case number, if known \_\_\_\_\_

**11. Why is the case filed in this district?**

Check all that apply:

- Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

- No
- Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

- It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
What is the hazard? \_\_\_\_\_
- It needs to be physically secured or protected from the weather.
- It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).
- Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**Is the property insured?**

- No
- Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

- Funds will be available for distribution to unsecured creditors.
- After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

- |                                  |  |   |
|----------------------------------|--|---|
| <input type="checkbox"/> 1-49    | <input type="checkbox"/> 1,000-5,000   | <input type="checkbox"/> 25,001-50,000                |
| <input type="checkbox"/> 50-99   | <input type="checkbox"/> 5,001-10,000  | <input type="checkbox"/> 50,001-100,000               |
| <input type="checkbox"/> 100-199 | <input type="checkbox"/> 10,001-25,000 | <input checked="" type="checkbox"/> More than 100,000 |
| <input type="checkbox"/> 200-999 |  |   |

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**x** /s/ Kara Hammond Coyle  
Signature of attorney for debtor

Date 06/23/2020  
MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600 kcoyle@ycst.com  
Contact phone Email address

No. 4410 DE  
Bar number State

## RIDER 1

### PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**UNANIMOUS WRITTEN CONSENT  
OF THE BOARD OF DIRECTORS OF  
GENERAL NUTRITION CENTERS, INC.**

**June 23, 2020**

The undersigned, being all of the members of the board of directors (the “**Board**”) of General Nutrition Centers, Inc., a Delaware corporation (the “**Corporation**”), hereby take the following actions and adopt the following resolutions by unanimous written consent in lieu of a meeting pursuant to Section 141(f) of the Delaware General Corporation Law:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Board has reviewed and considered the materials presented by the management and financial and legal advisors of the Corporation regarding the potential present and future liabilities of the Corporation, the strategic alternatives available to it, and the impact of the foregoing on the Corporation’s business;

**WHEREAS**, the Board has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Board has determined that it is in the best interests of the Corporation, its creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Board, it is desirable and in the best interests of the Corporation, its creditors, interest holders, and other interested parties, that the Corporation seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Corporation to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Corporation under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Corporation’s application under the CCAA and the CCAA proceedings (the “**CCAA Case**”), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other

professionals which they may deem necessary or proper to enable a successful restructuring of the Corporation; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to take all actions necessary or appropriate for the Corporation to obtain post-petition financing according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Corporation, its creditors, interest holders, and other interested parties, and the Board hereby authorizes and approves the execution and delivery of the RSA by the Corporation; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the “**Ancillary Documents**”) to be executed or delivered by the Corporation is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Corporation and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Corporation be, and it hereby is, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Corporation; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Corporation, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate, each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Corporation in connection with the Chapter 11 Case and to employ the law firm Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Corporation in carrying out its responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

### *General*

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Corporation, to take or cause to be taken any and all such further action and to execute and deliver or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any officer of the Corporation or any of the Professionals in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and include those individuals with the following titles: (1) President, Chief Executive Officer, (2) Senior Vice President, Chief Financial Officer and (3) Vice President, Secretary.

*[Signature page follows]*



**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

*Tricia Tolivar*

---

Tricia Tolivar

---

Cameron Lawrence

---

Susan M. Canning

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

\_\_\_\_\_  
Tricia Tolivar

  
\_\_\_\_\_  
Cameron Lawrence

\_\_\_\_\_  
Susan M. Canning

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

---

Tricia Tolivar

---

Cameron Lawrence

*Susan M. Canning*  

---

Susan M. Canning

**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37



Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (___)
	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:

---

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

- a) General Nutrition Corporation;
  - b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name General Nutrition Centers, Inc.

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors** 12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration **Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar  
Signature of individual signing on behalf of debtor

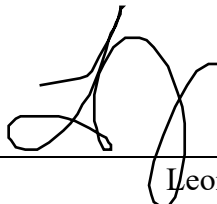
Tricia Tolivar  
Printed name

Authorized Signatory  
Position or relationship to debtor



TABG

THIS IS **EXHIBIT “G”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', is written over a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name General Nutrition Corporation

2. All other names debtor used in the last 8 years GNC Live Well Inc, General Nutrition Center

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 25 - 1124574

4. Debtor's address Principal place of business Mailing address, if different from principal place of business

300 Sixth Ave.  
Number Street

Number Street

P.O. Box

Pittsburgh PA 15222  
City State ZIP Code

City State ZIP Code

Location of principal assets, if different from principal place of business

Allegheny County  
County

Number Street

City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor  Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))  
 Partnership (excluding LLP)  
 Other. Specify: \_\_\_\_\_



7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
— — — —

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

No

Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

No

Yes. Debtor See Rider 1 Relationship Affiliate

District \_\_\_\_\_ When \_\_\_\_\_

MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

Case number, if known \_\_\_\_\_

**11. Why is the case filed in this district?**

Check all that apply:

Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

No

Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? \_\_\_\_\_

It needs to be physically secured or protected from the weather.

It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number Street

City

State

ZIP Code

**Is the property insured?**

No

Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

Funds will be available for distribution to unsecured creditors.

After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

1-49

1,000-5,000

25,001-50,000

50-99

5,001-10,000

50,001-100,000

100-199

10,001-25,000

More than 100,000

200-999

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**x** /s/ Kara Hammond Coyle  
Signature of attorney for debtor

Date 06/23/2020  
MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600 kcoyle@ycst.com  
Contact phone Email address

No. 4410 DE  
Bar number State

## **RIDER 1**

### **PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES**

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**UNANIMOUS WRITTEN CONSENT  
OF THE BOARD OF DIRECTORS OF  
GENERAL NUTRITION CORPORATION**

**June 23, 2020**

The undersigned, being all of the members of the board of directors (the “**Board**”) of General Nutrition Corporation, a Pennsylvania corporation (the “**Corporation**”), acting pursuant to Section 1727(b) of the Pennsylvania Business Corporation Law of 1988, as amended, and the Corporation’s bylaws, do hereby waive any notice requirement and hereby consent in writing to take the following actions and adopt the following resolutions by unanimous written consent (the “**Unanimous Written Consent**”) as if such resolutions had been duly adopted at a meeting of the Board duly called and legally held and hereby direct that the Secretary of the Corporation file the original of this Unanimous Written Consent in the minute book of the Corporation:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Corporation is the sole and managing member of GNC Government Services, LLC, a Pennsylvania limited liability company (“**GNC Government Services**”), and together with the Corporation, the “**Companies**”);

**WHEREAS**, the Board has reviewed and considered the materials presented by the management and financial and legal advisors of the Companies regarding the potential present and future liabilities of the Companies, the strategic alternatives available to them, and the impact of the foregoing on the Companies’ respective businesses;

**WHEREAS**, the Board has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Board, on behalf of the Corporation and on behalf of the Corporation in its capacity as the sole and managing member of GNC Government Services, has determined that it is in the best interests of the Companies, their creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Board, on behalf of the Corporation and on behalf of the Corporation in its capacity as the sole and managing member of GNC Government Services, it is desirable and in the best interests of the Companies, their creditors, interest holders, and other interested parties, that the Companies seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Companies to commence a Chapter 11 case by executing,

verifying and delivering a voluntary petition in the name of the Companies under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Companies’ application under the CCAA and the CCAA proceedings (the “**CCAA Case**”), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other professionals which they may deem necessary or proper to enable a successful restructuring of the Companies; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Companies, to take all actions necessary or appropriate for the Companies to obtain post-petition financing, according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into, execute, deliver and perform such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Companies, their creditors, interest holders, and other interested parties, and the Board hereby authorizes and approves the execution and delivery of the RSA by the Companies; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the “**Ancillary Documents**”) to be executed or delivered by the Companies is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Companies, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Companies and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Companies be, and they hereby are, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Companies; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Companies, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate, each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Companies, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Companies in connection with the Chapter 11 Case and to employ the law firm Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Companies, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Companies in carrying out their responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

### ***General***

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Companies, to take or cause to be taken any and all such further action and to execute and deliver, or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any Authorized Person of the Companies or any of the Professionals, as directed by any Authorized Person in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Companies, as applicable; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any

matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and include those individuals with the following titles: (1) President, Chief Executive Officer, (2) Senior Vice President, Chief Financial Officer and (3) Vice President, Secretary; and it is further

**RESOLVED**, that the foregoing resolutions are intended to be as broad as legally permissible so that no further resolutions shall be necessary to carry out the transactions and matters contemplated herein; and it is further

**RESOLVED**, that this Unanimous Written Consent may be executed in any number of counterparts, including by facsimile or electronic signature, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument; and it is further

**RESOLVED**, that this Unanimous Written Consent shall be filed in the minute book of the Corporation.

*[Signature page follows]*



**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**



\_\_\_\_\_  
Tricia Tolivar

\_\_\_\_\_  
Cameron Lawrence

\_\_\_\_\_  
Susan M. Canning

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

---

Tricia Tolivar



---

Cameron Lawrence

---

Susan M. Canning

IN WITNESS WHEREOF, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.


**BOARD OF DIRECTORS:**

---

Tricia Tolivar

---

Cameron Lawrence

  
Susan M. Canning

**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37



Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (___)
	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

- a) General Nutrition Corporation;
  - b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name General Nutrition Corporation

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule \_\_\_\_\_
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration **Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar  
Signature of individual signing on behalf of debtor

Tricia Tolivar  
Printed name

Authorized Signatory  
Position or relationship to debtor



TABH

THIS IS **EXHIBIT “H”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to be 'Leora Jackson', written over a horizontal line.

---

Leora Jackson

Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name General Nutrition Investment Company

2. All other names debtor used in the last 8 years \_\_\_\_\_  
\_\_\_\_\_

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 51 - 0313878

4. Debtor's address      Principal place of business      Mailing address, if different from principal place of business

300 Sixth Ave.  
Number      Street

\_\_\_\_\_  
Number      Street

\_\_\_\_\_  
P.O. Box

Pittsburgh      PA      15222  
City      State      ZIP Code

\_\_\_\_\_  
City      State      ZIP Code

Location of principal assets, if different from principal place of business

Allegheny County  
County

\_\_\_\_\_  
Number      Street

\_\_\_\_\_  
City      State      ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor  
 Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))  
 Partnership (excluding LLP)  
 Other. Specify: \_\_\_\_\_



7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
— — — —

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

- No
- Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

No

Yes. Debtor See Rider 1 Relationship Affiliate

List all cases. If more than 1, attach a separate list.

District \_\_\_\_\_ When \_\_\_\_\_  
MM / DD / YYYY

Case number, if known \_\_\_\_\_

**11. Why is the case filed in this district?**

Check all that apply:

Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

No

Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? \_\_\_\_\_

It needs to be physically secured or protected from the weather.

It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number Street

City State ZIP Code

**Is the property insured?**

No

Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

Funds will be available for distribution to unsecured creditors.

After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

1-49

1,000-5,000

25,001-50,000

50-99

5,001-10,000

50,001-100,000

100-199

10,001-25,000

More than 100,000

200-999

15. Estimated consolidated assets

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

16. Estimated consolidated liabilities

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar

Signature of authorized representative of debtor

Tricia Tolivar

Printed name

Title Authorized Signatory

18. Signature of attorney

**x** /s/ Kara Hammond Coyle

Signature of attorney for debtor

Date 06/23/2020

MM / DD / YYYY

Kara Hammond Coyle

Printed name

Young Conaway Stargatt & Taylor, LLP

Firm name

Rodney Square, 1000 North King Street

Number Street

Wilmington

City

DE

State

19801

ZIP Code

(302) 571-6600

Contact phone

kcoyle@ycst.com

Email address

No. 4410

Bar number

DE

State

## RIDER 1

### PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**UNANIMOUS WRITTEN CONSENT**  
**OF THE BOARD OF DIRECTORS OF**  
**GENERAL NUTRITION INVESTMENT COMPANY**

**June 23, 2020**

The undersigned, being all of the members of the board of directors (the “**Board**”) of General Nutrition Investment Company, an Arizona corporation (the “**Corporation**”), hereby take the following actions and adopt the following resolutions by unanimous written consent in lieu of a meeting pursuant to Section 10-821 of the Arizona Business Corporation Act:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Board has reviewed and considered the materials presented by the management and financial and legal advisors of the Corporation regarding the potential present and future liabilities of the Corporation, the strategic alternatives available to it, and the impact of the foregoing on the Corporation’s business;

**WHEREAS**, the Board has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Board has determined that it is in the best interests of the Corporation, its creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Board, it is desirable and in the best interests of the Corporation, its creditors, interest holders, and other interested parties, that the Corporation seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Corporation to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Corporation under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Corporation’s application under the CCAA and the CCAA proceedings (the “**CCAA Case**”), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other

professionals which they may deem necessary or proper to enable a successful restructuring of the Corporation; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to take all actions necessary or appropriate for the Corporation to obtain post-petition financing according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Corporation, its creditors, interest holders, and other interested parties, and the Board hereby authorizes and approves the execution and delivery of the RSA by the Corporation; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the “**Ancillary Documents**”) to be executed or delivered by the Corporation is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Corporation and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Corporation be, and it hereby is, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Corporation; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Corporation, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Corporation in connection with the Chapter 11 Case and to employ the law firm Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Corporation in carrying out its responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

### *General*

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Corporation, to take or cause to be taken any and all such further action and to execute and deliver or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any officer of the Corporation or any of the Professionals in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and include those individuals with the following titles: (1) President, Chief Executive Officer, (2) Senior Vice President, Chief Financial Officer and (3) Vice President, Secretary.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

  
\_\_\_\_\_  
Aldo Mariutto

\_\_\_\_\_  
Matt Milanovich

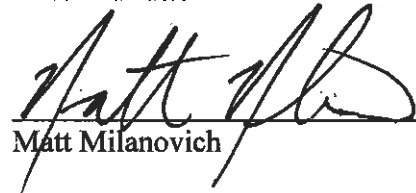
\_\_\_\_\_  
Jonathan D. Moll



**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

\_\_\_\_\_  
Aldo Mariutto

  
\_\_\_\_\_  
Matt Milanovich

\_\_\_\_\_  
Jonathan D. Moll

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

---

Aldo Mariutto

---

Matt Milanovich

---

Jonathan D. Moll

**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITREATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00



Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (___)
	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:

---

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

- a) General Nutrition Corporation;
  - b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name General Nutrition Investment Company

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar

Signature of individual signing on behalf of debtor

Tricia Tolivar

Printed name

Authorized Signatory

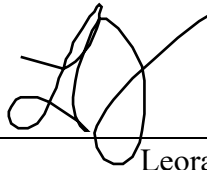
Position or relationship to debtor

Official Form 202  
USDC, 11/15/18, 7-15



TABI

THIS IS **EXHIBIT “I”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', written over a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name Lucky Oldco Corporation

2. All other names debtor used in the last 8 years Lucky Vitamin Corporation, Gary's World of Wellness

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 45 - 3007141

4. Debtor's address

<b>Principal place of business</b>	<b>Mailing address, if different from principal place of business</b>
------------------------------------	---

300 Sixth Ave.  
Number Street

\_\_\_\_\_  
Number Street

Pittsburgh PA 15222  
City State ZIP Code

\_\_\_\_\_  
P.O. Box

\_\_\_\_\_  
City State ZIP Code

Allegheny County  
County

**Location of principal assets, if different from principal place of business**

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor

Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

Partnership (excluding LLP)

Other. Specify: \_\_\_\_\_

7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
\_\_\_\_

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

No

Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY



**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

No

Yes. Debtor See Rider 1 Relationship Affiliate

District \_\_\_\_\_ When \_\_\_\_\_

MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

Case number, if known \_\_\_\_\_

**11. Why is the case filed in this district?**

Check all that apply:

Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

No

Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? \_\_\_\_\_

It needs to be physically secured or protected from the weather.

It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number Street

City State ZIP Code

**Is the property insured?**

No

Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

Funds will be available for distribution to unsecured creditors.

After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

1-49

1,000-5,000

25,001-50,000

50-99

5,001-10,000

50,001-100,000

100-199

10,001-25,000

More than 100,000

200-999

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**x** /s/ Kara Hammond Coyle  
Signature of attorney for debtor

Date 06/23/2020  
MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600 kcoye@ycst.com  
Contact phone Email address

No. 4410 DE  
Bar number State

## **RIDER 1**

### **PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES**

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**UNANIMOUS WRITTEN CONSENT  
OF THE BOARD OF DIRECTORS OF  
LUCKY OLDSCO CORPORATION**

**June 23, 2020**

The undersigned, being all of the members of the board of directors (the “**Board**”) of Lucky Oldco Corporation, a Pennsylvania corporation (the “**Corporation**”), acting pursuant to Section 1727(b) of the Pennsylvania Business Corporation Law of 1988, as amended, and the Corporation’s bylaws, do hereby waive any notice requirement and hereby consent in writing to take the following actions and adopt the following resolutions by unanimous written consent (the “**Unanimous Written Consent**”) as if such resolutions had been duly adopted at a meeting of the Board duly called and legally held and hereby direct that the Secretary of the Corporation file the original of this Unanimous Written Consent in the minute book of the Corporation:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Board has reviewed and considered the materials presented by the management and financial and legal advisors of the Corporation regarding the potential present and future liabilities of the Corporation, the strategic alternatives available to it, and the impact of the foregoing on the Corporation’s business;

**WHEREAS**, the Board has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Board has determined that it is in the best interests of the Corporation, its creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Board, it is desirable and in the best interests of the Corporation, its creditors, interest holders, and other interested parties, that the Corporation seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Corporation to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Corporation under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Corporation's application under the CCAA and the CCAA proceedings (the "**CCAA Case**"), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other professionals which they may deem necessary or proper to enable a successful restructuring of the Corporation; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to take all actions necessary or appropriate for the Corporation to obtain post-petition financing, according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into, execute, deliver and perform such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the "**Credit Documents**") as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Corporation, its creditors, interest holders, and other interested parties, and the Board hereby authorizes and approves the execution and delivery of the RSA by the Corporation; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the "**Ancillary Documents**") to be executed or delivered by the Corporation is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Corporation and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Corporation be, and it hereby is, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Corporation; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Corporation, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time

to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate, each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Corporation in connection with the Chapter 11 Case and to employ the law firm Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Corporation in carrying out its responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

### ***General***

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Corporation, to take or cause to be taken any and all such further action and to execute and deliver, or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any Authorized Person of the Corporation or any of the Professionals, as directed by any Authorized Person in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and include those individuals with the following titles: (1) President, Chief Executive

Officer, (2) Senior Vice President, Chief Financial Officer and (3) Vice President, Secretary; and it is further

**RESOLVED**, that the foregoing resolutions are intended to be as broad as legally permissible so that no further resolutions shall be necessary to carry out the transactions and matters contemplated herein; and it is further

**RESOLVED**, that this Unanimous Written Consent may be executed in any number of counterparts, including by facsimile or electronic signature, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument; and it is further

**RESOLVED**, that this Unanimous Written Consent shall be filed in the minute book of the Corporation.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

*Tricia Tolivar*

\_\_\_\_\_  
Tricia Tolivar

\_\_\_\_\_  
Cameron Lawrence

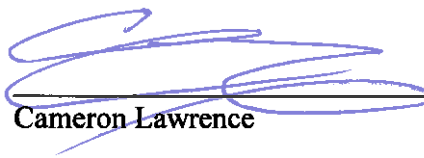
\_\_\_\_\_  
Susan M. Canning



**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

\_\_\_\_\_  
Tricia Tolivar

  
\_\_\_\_\_  
Cameron Lawrence

\_\_\_\_\_  
Susan M. Canning

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**


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Tricia Tolivar

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Cameron Lawrence

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Susan M. Canning

**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00



Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-_____ (___)
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
  - a) General Nutrition Corporation;

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

- b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name Lucky Oldco Corporation

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration **Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar  
Signature of individual signing on behalf of debtor

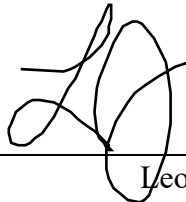
Tricia Tolivar  
Printed name

Authorized Signatory  
Position or relationship to debtor



TABJ

THIS IS **EXHIBIT “J”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', written over a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits

**Fill in this information to identify the case**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name GNC Funding, Inc.

2. All other names debtor used in the last 8 years \_\_\_\_\_

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 20 - 8577837

4. Debtor's address Principal place of business Mailing address, if different from principal place of business

300 Sixth Ave.  
Number Street

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
P.O. Box

Pittsburgh PA 15222  
City State ZIP Code

\_\_\_\_\_  
City State ZIP Code

Location of principal assets, if different from principal place of business

Allegheny County  
County

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor  Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))  
 Partnership (excluding LLP)  
 Other. Specify: \_\_\_\_\_

7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
\_ \_ \_ \_

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

No

Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY



**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

- No
- Yes. Debtor See Rider 1 Relationship Affiliate  
District \_\_\_\_\_ When \_\_\_\_\_  
MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

Case number, if known \_\_\_\_\_

**11. Why is the case filed in this district?**

Check all that apply:

- Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

- No
- Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

- It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
What is the hazard? \_\_\_\_\_
- It needs to be physically secured or protected from the weather.
- It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).
- Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**Is the property insured?**

- No
- Yes. Insurance agency \_\_\_\_\_
- Contact name \_\_\_\_\_
- Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

- Funds will be available for distribution to unsecured creditors.
- After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

- 1-49                       1,000-5,000                       25,001-50,000
- 50-99                       5,001-10,000                       50,001-100,000
- 100-199                       10,001-25,000                       More than 100,000
- 200-999

Debtor GNC Funding, Inc.  
Name

Case number (if known) \_\_\_\_\_

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**X** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**X** /s/ Kara Hammond Coyle

Date 06/23/2020

Signature of attorney for debtor

MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600 kcoye@ycst.com  
Contact phone Email address

No. 4410 DE  
Bar number State

## RIDER 1

### PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**UNANIMOUS WRITTEN CONSENT  
OF THE BOARD OF DIRECTORS OF  
GNC FUNDING, INC.**

**June 23, 2020**

The undersigned, being all of the members of the board of directors (the “**Board**”) of GNC Funding, Inc., a Delaware corporation (the “**Corporation**”), hereby take the following actions and adopt the following resolutions by unanimous written consent in lieu of a meeting pursuant to Section 141(f) of the Delaware General Corporation Law:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Board has reviewed and considered the materials presented by the management and financial and legal advisors of the Corporation regarding the potential present and future liabilities of the Corporation, the strategic alternatives available to it, and the impact of the foregoing on the Corporation’s business;

**WHEREAS**, the Board has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Board has determined that it is in the best interests of the Corporation, its creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Board, it is desirable and in the best interests of the Corporation, its creditors, interest holders, and other interested parties, that the Corporation seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Corporation to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Corporation under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Corporation’s application under the CCAA and the CCAA proceedings (the “**CCAA Case**”), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other

professionals which they may deem necessary or proper to enable a successful restructuring of the Corporation; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to take all actions necessary or appropriate for the Corporation to obtain post-petition financing according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Corporation, its creditors, interest holders, and other interested parties, and the Board hereby authorizes and approves the execution and delivery of the RSA by the Corporation; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the “**Ancillary Documents**”) to be executed or delivered by the Corporation is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Corporation and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Corporation be, and it hereby is, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Corporation; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Corporation, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate, each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Corporation in connection with the Chapter 11 Case and to employ the law firm of Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Corporation in carrying out its responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

### *General*

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Corporation, to take or cause to be taken any and all such further action and to execute and deliver or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any officer of the Corporation or any of the Professionals in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation; and it is further

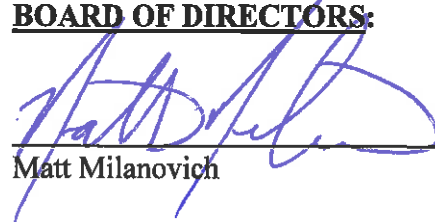
**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and those individuals with the following titles: (1) President, Chief Executive Officer, (2) Senior Vice President, Chief Financial Officer and (3) Vice President, Secretary.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

  
\_\_\_\_\_  
Matt Milanovich

\_\_\_\_\_  
Aldo Mariutto

\_\_\_\_\_  
Jonathan D. Moll

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

\_\_\_\_\_  
Matt Milanovich

  
\_\_\_\_\_  
Aldo Mariutto

\_\_\_\_\_  
Jonathan D. Moll



**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

\_\_\_\_\_  
Matt Milanovich

\_\_\_\_\_  
Aldo Mariutto

  
\_\_\_\_\_  
Jonathan D. Moll

**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (___)
	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

- a) General Nutrition Corporation;
  - b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name GNC Funding, Inc.

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule \_\_\_\_\_
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar  
Signature of individual signing on behalf of debtor

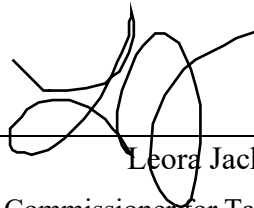
Tricia Tolivar  
Printed name

Authorized Signatory  
Position or relationship to debtor



TABK

THIS IS **EXHIBIT “K”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke.

Leora Jackson  
Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name GNC International Holdings, Inc.

2. All other names debtor used in the last 8 years \_\_\_\_\_  
\_\_\_\_\_

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 61- 1869873

4. Debtor's address **Principal place of business** **Mailing address, if different from principal place of business**

300 Sixth Ave.  
Number Street

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
P.O. Box

Pittsburgh PA 15222  
City State ZIP Code

\_\_\_\_\_  
City State ZIP Code

**Location of principal assets, if different from principal place of business**

Allegheny County  
County

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor  Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))  
 Partnership (excluding LLP)  
 Other. Specify: \_\_\_\_\_

**7. Describe debtor's business**

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
\_\_\_\_

**8. Under which chapter of the Bankruptcy Code is the debtor filing?**

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. *Check all that apply:*

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

**9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?**

- No
- Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

No

Yes. Debtor See Rider 1 Relationship Affiliate  
District \_\_\_\_\_ When \_\_\_\_\_  
Case number, if known \_\_\_\_\_  
MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

**11. Why is the case filed in this district?**

Check all that apply:

Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

No

Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
What is the hazard? \_\_\_\_\_

It needs to be physically secured or protected from the weather.

It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number Street

City

State

ZIP Code

**Is the property insured?**

No

Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

Funds will be available for distribution to unsecured creditors.

After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

1-49

50-99

100-199

200-999

1,000-5,000

5,001-10,000

10,001-25,000

25,001-50,000

50,001-100,000

More than 100,000



Debtor GNC International Holdings, Inc.  
Name

Case number (if known) \_\_\_\_\_

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**x** /s/ Kara Hammond Coyle

Date 06/23/2020

Signature of attorney for debtor

MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600  
Contact phone

kcoyle@ycst.com  
Email address

No. 4410 DE  
Bar number State

## RIDER 1

### PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**UNANIMOUS WRITTEN CONSENT**  
**OF THE BOARD OF DIRECTORS OF**  
**GNC INTERNATIONAL HOLDINGS, INC.**

**June 23, 2020**

The undersigned, being all of the members of the board of directors (the “**Board**”) of GNC International Holdings, Inc., a Delaware corporation (the “**Corporation**”), hereby take the following actions and adopt the following resolutions by unanimous written consent in lieu of a meeting pursuant to Section 141(f) of the Delaware General Corporation Law:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Board has reviewed and considered the materials presented by the management and financial and legal advisors of the Corporation regarding the potential present and future liabilities of the Corporation, the strategic alternatives available to it, and the impact of the foregoing on the Corporation’s business;

**WHEREAS**, the Board has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Board has determined that it is in the best interests of the Corporation, its creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Board, it is desirable and in the best interests of the Corporation, its creditors, interest holders, and other interested parties, that the Corporation seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Corporation to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Corporation under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Corporation’s application under the CCAA and the CCAA proceedings (the “**CCAA Case**”), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other

professionals which they may deem necessary or proper to enable a successful restructuring of the Corporation; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to take all actions necessary or appropriate for the Corporation to obtain post-petition financing according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Corporation, their creditors, interest holders, and other interested parties, and the Board hereby authorizes and approves the execution and delivery of the RSA by the Corporation; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the “**Ancillary Documents**”) to be executed or delivered by the Corporation is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Corporation and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Corporation be, and it hereby is, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Corporation; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Corporation, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate, each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Corporation in connection with the Chapter 11 Case and to employ the law firm Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Corporation in carrying out its responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

### *General*

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Corporation, to take or cause to be taken any and all such further action and to execute and deliver or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any officer of the Corporation or any of the Professionals in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and those individuals with the following titles: (1) President, Chief Executive Officer, (2) Executive Vice President, Chief Financial Officer, (3) Senior Vice President and (4) Vice President, Secretary.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

  
\_\_\_\_\_  
Carl Seletz

\_\_\_\_\_  
Tricia Tolivar

\_\_\_\_\_  
Cameron Lawrence

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

---

Carl Seletz



---

Tricia Tolivar

---

Cameron Lawrence

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

---

Carl Seletz

---

Tricia Tolivar



---

Cameron Lawrence



**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (___)
	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.



- a) General Nutrition Corporation;
  - b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name GNC International Holdings, Inc.

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule \_\_\_\_\_
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration **Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar  
Signature of individual signing on behalf of debtor

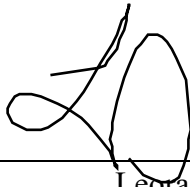
Tricia Tolivar  
Printed name

Authorized Signatory  
Position or relationship to debtor



TABL

THIS IS **EXHIBIT “L”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', positioned above a horizontal line.

---

Leora Jackson

Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name GNC China Holdco LLC

2. All other names debtor used in the last 8 years \_\_\_\_\_

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 27 - 2120004

4. Debtor's address Principal place of business Mailing address, if different from principal place of business

300 Sixth Ave.  
Number Street

Number Street

P.O. Box

Pittsburgh PA 15222  
City State ZIP Code

City State ZIP Code

Location of principal assets, if different from principal place of business

Allegheny County  
County

Number Street

City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor  Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

Partnership (excluding LLP)

Other. Specify: \_\_\_\_\_

7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
\_\_\_\_

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

- No
- Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

- No
- Yes. Debtor See Rider 1 Relationship Affiliate  
 District \_\_\_\_\_ When \_\_\_\_\_  
 Case number, if known \_\_\_\_\_

List all cases. If more than 1, attach a separate list.

MM / DD / YYYY

**11. Why is the case filed in this district?**

Check all that apply:

- Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

- No
- Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

- It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
 What is the hazard? \_\_\_\_\_
- It needs to be physically secured or protected from the weather.
- It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).
- Other \_\_\_\_\_

**Where is the property?**

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**Is the property insured?**

- No
- Yes. Insurance agency \_\_\_\_\_
- Contact name \_\_\_\_\_
- Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

- Funds will be available for distribution to unsecured creditors.
- After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

- 1-49                       1,000-5,000                       25,001-50,000
- 50-99                         5,001-10,000                       50,001-100,000
- 100-199                       10,001-25,000                       More than 100,000
- 200-999

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**x** /s/ Kara Hammond Coyle

Date 06/23/2020

Signature of attorney for debtor

MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600  
Contact phone

kcoyle@ycst.com  
Email address

No. 4410 DE  
Bar number State



## RIDER 1

### PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**WRITTEN CONSENT OF THE SOLE MEMBER**

**OF**

**GNC CHINA HOLDCO, LLC**

**June 23, 2020**

The undersigned, being the sole member (the “**Member**”) of GNC China Holdco, LLC, a Delaware limited liability company (the “**Company**”), hereby takes the following actions and adopts the following resolutions by written consent in lieu of a meeting pursuant to Section 18-302 of the Delaware Limited Liability Company Act, 6 Del. C. § 18-101 *et seq.*:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Member has reviewed and considered the materials presented by the management and financial and legal advisors of the Company regarding the potential present and future liabilities of the Company, the strategic alternatives available to it, and the impact of the foregoing on the Company’s business;

**WHEREAS**, the Member has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Member has determined that it is in the best interests of the Company, its creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Member, it is desirable and in the best interests of the Company, its creditors, interest holders, and other interested parties, that the Company seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Company to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Company under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Company’s application under the CCAA and the CCAA proceedings (the “**CCAA Case**”), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other

professionals which they may deem necessary or proper to enable a successful restructuring of the Company; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to take all actions necessary or appropriate for the Company to obtain post-petition financing according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Company, its creditors, interest holders, and other interested parties, and the Member hereby authorizes and approves the execution and delivery of the RSA by the Company; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the “**Ancillary Documents**”) to be executed or delivered by the Company is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Company and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Company be, and it hereby is, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Company; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Company, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate, each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Company in connection with the Chapter 11 Case and to employ the law firm Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Company in carrying out its responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

### *General*

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Company, to take or cause to be taken any and all such further action and to execute and deliver or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any officer of the Company or any of the Professionals in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Company; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and include those individuals with the following titles: (1) President, Chief Executive Officer, (2) Senior Vice President, Chief Financial Officer and (3) Vice President, Secretary.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the undersigned has executed this written consent to be effective as of the date first written above.

**MEMBER:**

**GENERAL NUTRITION CENTERS, INC.**

By: Tricia Tolivar

Name: Tricia Tolivar

Title: President, Chief Executive Officer

**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE			\$157,899,413.00	
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE			\$4,853,286.39	
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD			\$4,562,909.27	

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67



Name of creditor and complete mailing address, including zip code		Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-_____ (___)
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
  - a) General Nutrition Corporation;

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

- b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name GNC China Holdco LLC

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule \_\_\_\_\_
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration **Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar  
Signature of individual signing on behalf of debtor

Tricia Tolivar  
Printed name

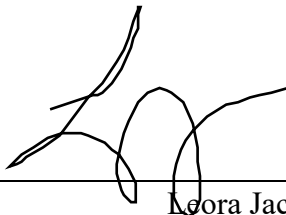
Authorized Signatory  
Position or relationship to debtor



TABM



THIS IS **EXHIBIT “M”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Keora Jackson', written over a horizontal line.

---

Keora Jackson  
Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name GNC Headquarters LLC

2. All other names debtor used in the last 8 years GNC Headquarters, Inc.

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 45 - 4317550

4. Debtor's address **Principal place of business** **Mailing address, if different from principal place of business**

300 Sixth Ave.  
Number Street

\_\_\_\_\_  
Number Street

Pittsburgh PA 15222  
City State ZIP Code

\_\_\_\_\_  
P.O. Box

\_\_\_\_\_  
City State ZIP Code

Allegheny County  
County

**Location of principal assets, if different from principal place of business**

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor  Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

Partnership (excluding LLP)

Other. Specify: \_\_\_\_\_

7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
— — — —

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. *Check all that apply:*

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

No

Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

No

Yes. Debtor See Rider 1 Relationship Affiliate

District \_\_\_\_\_ When \_\_\_\_\_

MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

Case number, if known \_\_\_\_\_

**11. Why is the case filed in this district?**

Check all that apply:

Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

No

Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? \_\_\_\_\_

It needs to be physically secured or protected from the weather.

It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number Street

City

State

ZIP Code

**Is the property insured?**

No

Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

Funds will be available for distribution to unsecured creditors.

After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

1-49

1,000-5,000

25,001-50,000

50-99

5,001-10,000

50,001-100,000

100-199

10,001-25,000

More than 100,000

200-999

Debtor GNC Headquarters LLC  
Name

Case number (if known) \_\_\_\_\_

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**x** /s/ Kara Hammond Coyle

Date 06/23/2020

Signature of attorney for debtor

MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600  
Contact phone

kcoyle@ycst.com  
Email address

No. 4410 DE  
Bar number State

## **RIDER 1**

### **PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES**

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**WRITTEN CONSENT IN LIEU OF MEETING**  
**OF THE SOLE MEMBER OF**  
**GNC HEADQUARTERS, LLC**

**June 23, 2020**

The undersigned, being the sole member (the “**Member**”) of GNC Headquarters, LLC, a Pennsylvania limited liability company (the “**Company**”), acting pursuant to the applicable provisions of the Pennsylvania Uniform Limited Liability Company Act of 2016 and the Company’s operating agreement, hereby consents in writing to take the following actions and adopts the following resolutions by written consent (the “**Written Consent**”) as if such resolutions had been duly adopted at a meeting of the Member duly called and legally held and hereby directs that the original of this Written Consent be filed in the minute book of the Company:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Company is the sole general partner of Gustine Sixth Avenue Associates, Ltd., a Pennsylvania limited partnership (the “**Partnership**”) and is duly authorized to manage the business and affairs of the Partnership;

**WHEREAS**, the Member has reviewed and considered the materials presented by the management and financial and legal advisors of the Company and the Partnership regarding the potential present and future liabilities of the Company and the Partnership, the strategic alternatives available to each of them, and the impact of the foregoing on the Company’s and the Partnership’s respective businesses;

**WHEREAS**, the Member has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Member has determined that it is in the best interests of the Company and the Partnership, their creditors, interest holders, and other interested parties for the Company and the Partnership to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Member, it is desirable and in the best interests of the Company and the Partnership, their creditors, interest holders, and other interested parties, that the Company and the Partnership seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed to act in the name of the Company, for and on its own behalf, and in the

Company's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, to commence a Chapter 11 case for the Company and the Partnership by executing, verifying and delivering a voluntary petition in the name of the Company and the Partnership under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Company's and Partnership's application under the CCAA and the CCAA proceedings (the "**CCAA Case**"), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other professionals which they may deem necessary or proper to enable a successful restructuring of the Company and the Partnership; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, to act in the name of the Company for and on its own behalf, and in the Company's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, to take all actions necessary or appropriate for the Company and the Partnership to obtain post-petition financing, according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into, execute, deliver and perform such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the "**Credit Documents**") as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Company and the Partnership, their creditors, interest holders, and other interested parties, and the Member hereby authorizes and approves the execution and delivery of the RSA by the Company and the Partnership; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the "**Ancillary Documents**") to be executed or delivered by the Company and the Partnership is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company and the Partnership, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Company, the Partnership and their respective stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further



**RESOLVED**, that the Company and the Partnership be, and they hereby are, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the respective affairs of the Company and the Partnership, as applicable; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, to act in the name of the Company for and on its own behalf, and in the Company's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, to execute, verify and/or file, or cause to be filed and/or executed, or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate, each in connection with the Chapter 11 Case, the CCAA Case any post-petition financings or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, to act in the name of the Company for and on its own behalf, and in the Company's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Company and the Partnership in connection with the Chapter 11 Case and to employ the law firm of Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, to act in the name of the Company, for and on its own behalf, and in the Company's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the "**Professionals**") as may be deemed necessary or appropriate by the Authorized Person to assist the Company and the Partnership in carrying out their respective responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization for each of the Company and the Partnership.

### ***General***

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, to act in the name of the Company, for and on its own behalf, and in the Company's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, as applicable, to take or cause to be taken any and all such further action and to execute and deliver, or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the

judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any Authorized Person of the Company, acting in the name of the Company, for and on its own behalf, and in the Company's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, or any of the Professionals as directed by any Authorized Person, in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Company and of the Partnership, as applicable; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term "**Authorized Person**" shall mean and include those individuals with the following titles: (1) President, Chief Executive Officer, (2) Vice President, Secretary and (3) Senior Vice President, Chief Financial Officer, in each case, acting in the name of the Company, for and on its own behalf, and in the Company's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, as applicable; and it is further

**RESOLVED**, that the foregoing resolutions are intended to be as broad as legally permissible so that no further resolutions shall be necessary to carry out the transactions and matters contemplated herein; and it is further

**RESOLVED**, that this Written Consent shall be filed in the minute book of the Company.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the undersigned has executed this Written Consent to be effective as of the date first written above.

**MEMBER:**

**GENERAL NUTRITION CENTERS, INC.**

By: Tricia Tolivar  
Name: Tricia Tolivar  
Title: President, Chief Executive Officer

[Signature Page to Written Consent of the Sole Member of GNC Headquarters, LLC]

**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37



Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (___)
	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

- a) General Nutrition Corporation;
  - b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
  6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
    - a) GNC Government Services, LLC; and
    - b) GNC Puerto Rico Holdings, Inc.;
  7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
  8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
  9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name GNC Headquarters LLC

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule \_\_\_\_\_
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration **Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar  
Signature of individual signing on behalf of debtor

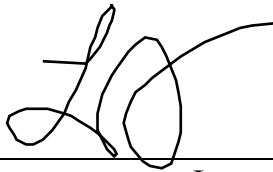
Tricia Tolivar  
Printed name

Authorized Signatory  
Position or relationship to debtor



TABN

THIS IS **EXHIBIT “N”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'LJ', is written above a horizontal line.

---

Leora Jackson

Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name Gustine Sixth Avenue Associates, Ltd.

2. All other names debtor used in the last 8 years \_\_\_\_\_

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 25 - 1780731

4. Debtor's address Principal place of business Mailing address, if different from principal place of business

300 Sixth Ave.  
Number Street

Number Street

P.O. Box

Pittsburgh PA 15222  
City State ZIP Code

City State ZIP Code

Location of principal assets, if different from principal place of business

Allegheny County  
County

Number Street

City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor  Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

Partnership (excluding LLP)

Other. Specify: \_\_\_\_\_



7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
\_\_\_\_

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

- No
- Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

No

Yes. Debtor See Rider 1 Relationship Affiliate

List all cases. If more than 1, attach a separate list.

District \_\_\_\_\_ When \_\_\_\_\_  
MM / DD / YYYY

Case number, if known \_\_\_\_\_

**11. Why is the case filed in this district?**

Check all that apply:

Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

No

Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? \_\_\_\_\_

It needs to be physically secured or protected from the weather.

It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number Street

City State ZIP Code

**Is the property insured?**

No

Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

Funds will be available for distribution to unsecured creditors.

After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

1-49

1,000-5,000

25,001-50,000

50-99

5,001-10,000

50,001-100,000

100-199

10,001-25,000

More than 100,000

200-999

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**x** /s/ Kara Hammond Coyle  
Signature of attorney for debtor

Date 06/23/2020  
MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600 kcoye@ycst.com  
Contact phone Email address

No. 4410 DE  
Bar number State

## **RIDER 1**

### **PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES**

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**WRITTEN CONSENT**  
**OF THE PARTNERS OF**  
**GUSTINE SIXTH AVENUE ASSOCIATES, LTD.**

**June 23, 2020**

The undersigned, being the sole general partner (the “**General Partner**”) and sole limited partner (the “**Limited Partner**”) and collectively with the General Partner, the “**Partners**”) of Gustine Sixth Avenue Associates, Ltd., a Pennsylvania limited partnership (the “**Partnership**”), acting pursuant to the applicable provisions of the Pennsylvania Uniform Limited Partnership Act of 2016 and the Partnership’s agreement of limited partnership, hereby consent in writing to take the following actions and adopts the following resolutions by written consent (the “**Written Consent**”) as if such resolutions had been duly adopted at a meeting of the Partners duly called and legally held and hereby directs that the original of this Written Consent be filed with the proceedings of the Partnership:

*Approval of Bankruptcy Filing*

**WHEREAS**, the General Partner is duly authorized to manage the business and affairs of the Partnership;

**WHEREAS**, the General Partner has reviewed and considered the materials presented by the management and financial and legal advisors of the Partnership regarding the potential present and future liabilities of the Partnership, the strategic alternatives available to it, and the impact of the foregoing on the Partnership’s business;

**WHEREAS**, the General Partner has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the General Partner has determined that it is in the best interests of the Partnership, its creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the General Partner, it is desirable and in the best interests of the Partnership, its creditors, interest holders, and other interested parties, that the Partnership seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Partnership to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Partnership under Chapter 11 of

the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Partnership’s application under the CCAA and the CCAA proceedings (the “**CCAA Case**”), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other professionals which they may deem necessary or proper to enable a successful restructuring of the Partnership; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, to act in the name of the General Partner, for and on its own behalf, and in the General Partner’s capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, to take all actions necessary or appropriate for the Partnership to obtain post-petition financing, according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into, execute, deliver and perform such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Partnership, its creditors, interest holders, and other interested parties, and the General Partner hereby authorizes and approves the execution and delivery of the RSA by the Partnership; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the “**Ancillary Documents**”) to be executed or delivered by the Partnership is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Partnership, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Partnership and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Partnership be, and it hereby is, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Partnership; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, to act in the name of the General Partner, for and on its own behalf, and in the General Partner's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, to execute, verify and/or file, or cause to be filed and/or executed, or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate; each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, to act in the name of the General Partner, for and on its own behalf, and in the General Partner's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Partnership in connection with the Chapter 11 Case and to employ the law firm Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, to act in the name of the General Partner, for and on its own behalf, and in the General Partner's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the "**Professionals**") as may be deemed necessary or appropriate by the Authorized Person to assist the General Partner and the Partnership in carrying out their responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

## *General*

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, to act in the name of the General Partner, for and on its own behalf, and in the General Partner's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, to take or cause to be taken any and all such further action and to execute and deliver or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any Authorized Person of the General Partner, acting in the name of the General Partner, for and on its own behalf, and in the General Partner's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership, or any of the Professionals as directed by any Authorized Person, in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the General Partner and of the Partnership, as applicable; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term "**Authorized Person**" shall mean and include those individuals with the following titles: (1) President, Chief Executive Officer, (2) Vice President, Secretary and (3) Senior Vice President, Chief Financial Officer, in each case acting in the name of the General Partner, for and on its own behalf, and in the General Partner's capacity as the sole general partner of the Partnership, for and on behalf of the Partnership; and it is further

**RESOLVED**, that the foregoing resolutions are intended to be as broad as legally permissible so that no further resolutions shall be necessary to carry out the transactions and matters contemplated herein; and it is further

**RESOLVED**, that this Written Consent shall be filed in the minute book of the General Partner and with the proceedings of the Partnership.

*[Signature page follows]*



**IN WITNESS WHEREOF**, the undersigned has executed this written consent to be effective as of the date first written above.

**GENERAL PARTNER:**

**GNC HEADQUARTERS, LLC**

By: Tricia Tolivar  
Name: Tricia Tolivar  
Title: President, Chief Executive Officer

**LIMITED PARTNER:**

**GENERAL NUTRITION CENTERS, INC.**

By: Tricia Tolivar  
Name: Tricia Tolivar  
Title: President, Chief Executive Officer

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-_____ (___)
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
  - a) General Nutrition Corporation;

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.



- b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name Gustine Sixth Avenue Associates, Ltd.

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule \_\_\_\_\_
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration **Consolidated List of Equity Interest Holders Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar  
Signature of individual signing on behalf of debtor

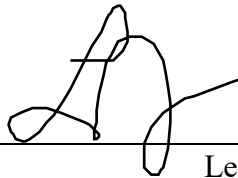
Tricia Tolivar  
Printed name

Authorized Signatory  
Position or relationship to debtor



TABO

THIS IS **EXHIBIT “O”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', written over a horizontal line.

Leora Jackson  
Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name GNC Government Services, LLC

2. All other names debtor used in the last 8 years GNC Transportation, LLC

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 27 - 1532226

4. Debtor's address

Principal place of business

Mailing address, if different from principal place of business

300 Sixth Ave.  
Number Street

\_\_\_\_\_  
Number Street

Pittsburgh PA 15222  
City State ZIP Code

\_\_\_\_\_  
P.O. Box

\_\_\_\_\_  
City State ZIP Code

Allegheny County  
County

Location of principal assets, if different from principal place of business

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor

Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

Partnership (excluding LLP)

Other. Specify: \_\_\_\_\_

7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
— — — —

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

No

Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

- No
- Yes. Debtor See Rider 1 Relationship Affiliate
- District \_\_\_\_\_ When \_\_\_\_\_
- MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

Case number, if known \_\_\_\_\_

**11. Why is the case filed in this district?**

Check all that apply:

- Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

- No
- Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

- It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
What is the hazard? \_\_\_\_\_
- It needs to be physically secured or protected from the weather.
- It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).
- Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**Is the property insured?**

- No
- Yes. Insurance agency \_\_\_\_\_
- Contact name \_\_\_\_\_
- Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

- Funds will be available for distribution to unsecured creditors.
- After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

- 1-49                       1,000-5,000                       25,001-50,000
- 50-99                       5,001-10,000                       50,001-100,000
- 100-199                       10,001-25,000                       More than 100,000
- 200-999

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**X** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**X** /s/ Kara Hammond Coyle

Date 06/23/2020

Signature of attorney for debtor

MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600 kcoye@ycst.com  
Contact phone Email address

No. 4410 DE  
Bar number State



## RIDER 1

### PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**WRITTEN CONSENT IN LIEU OF MEETING  
OF THE SOLE MEMBER OF  
GNC GOVERNMENT SERVICES, LLC**

**June 23, 2020**

The undersigned, being the sole member (the “**Member**”) of GNC Government Services, LLC, a Pennsylvania limited liability company (the “**Company**”), acting pursuant to the applicable provisions of the Pennsylvania Uniform Limited Liability Company Act of 2016 and the Company’s operating agreement, hereby consents in writing to take the following actions and adopts the following resolutions by written consent (the “**Written Consent**”) as if such resolutions had been duly adopted at a meeting of the Member duly called and legally held and hereby directs that the original of this Written Consent be filed the minute book of the Company:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Member has reviewed and considered the materials presented by the management and financial and legal advisors of the Company regarding the potential present and future liabilities of the Company, the strategic alternatives available to it, and the impact of the foregoing on the Company’s business;

**WHEREAS**, the Member has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Member has determined that it is in the best interests of the Company, its creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Member, it is desirable and in the best interests of the Company, its creditors, interest holders, and other interested parties, that the Company seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Company to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Company under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Company's application under the CCAA and the CCAA proceedings (the "**CCAA Case**"), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other professionals which they may deem necessary or proper to enable a successful restructuring of the Company; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to take all actions necessary or appropriate for the Company to obtain post-petition financing, according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into, execute, deliver and perform such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the "**Credit Documents**") as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Company, their creditors, interest holders, and other interested parties, and the Member hereby authorizes and approves the execution and delivery of the RSA by the Company; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the "**Ancillary Documents**") to be executed or delivered by the Company is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Company and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Company be, and it hereby is, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Company; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Company, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time

to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate, each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Company in connection with the Chapter 11 Case and to employ the law firm Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Company in carrying out its responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

### ***General***

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Company, to take or cause to be taken any and all such further action and to execute and deliver, or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any Authorized Person of the Company or any of the Professionals, as directed by any Authorized Person in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Company; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and include those individuals with the following titles: (1) President, Chief Executive

Officer and (2) Senior Vice President, Chief Financial Officer; and it is further

**RESOLVED**, that the foregoing resolutions are intended to be as broad as legally permissible so that no further resolutions shall be necessary to carry out the transactions and matters contemplated herein; and it is further

**RESOLVED**, that this Written Consent shall be filed in the minute book of the Company.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the undersigned has executed this written consent to be effective as of the date first written above.

**MEMBER:**

**GENERAL NUTRITION CORPORATION**

By: Tricia Tolivar

Name: Tricia Tolivar

Title: President, Chief Executive Officer

**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27



Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code		Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (___)
	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

- a) General Nutrition Corporation;
  - b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name GNC Government Services, LLC

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule \_\_\_\_\_
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar

Signature of individual signing on behalf of debtor

Tricia Tolivar

Printed name

Authorized Signatory

Position or relationship to debtor





TABP

THIS IS **EXHIBIT “P”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to be 'LJ', written over a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name GNC Canada Holdings, Inc.

2. All other names debtor used in the last 8 years \_\_\_\_\_

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 46 - 1613879

4. Debtor's address Principal place of business Mailing address, if different from principal place of business

300 Sixth Ave.  
Number Street

Number Street

P.O. Box

Pittsburgh PA 15222  
City State ZIP Code

City State ZIP Code

Location of principal assets, if different from principal place of business

Allegheny County  
County

Number Street

City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor  Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

Partnership (excluding LLP)

Other. Specify: \_\_\_\_\_

7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
— — — —

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

No

Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

- No  
 Yes. Debtor See Rider 1 Relationship Affiliate  
District \_\_\_\_\_ When \_\_\_\_\_  
MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

Case number, if known \_\_\_\_\_

**11. Why is the case filed in this district?**

Check all that apply:

- Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.  
 A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

- No  
 Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

- It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
What is the hazard? \_\_\_\_\_  
 It needs to be physically secured or protected from the weather.  
 It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).  
 Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number Street

City State ZIP Code

**Is the property insured?**

- No  
 Yes. Insurance agency \_\_\_\_\_

Contact name \_\_\_\_\_

Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

- Funds will be available for distribution to unsecured creditors.  
 After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

- 1-49                       1,000-5,000                       25,001-50,000  
 50-99                       5,001-10,000                       50,001-100,000  
 100-199                       10,001-25,000                       More than 100,000  
 200-999

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**x** /s/ Kara Hammond Coyle

Date 06/23/2020

Signature of attorney for debtor

MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600  
Contact phone

kcoyle@ycst.com  
Email address

No. 4410 DE  
Bar number State

## **RIDER 1**

### **PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES**

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**UNANIMOUS WRITTEN CONSENT  
OF THE BOARD OF DIRECTORS OF  
GNC CANADA HOLDINGS, INC.**

**June 23, 2020**

The undersigned, being all of the members of the board of directors (the “**Board**”) of GNC Canada Holdings, Inc., a Nevada corporation (the “**Corporation**”), hereby take the following actions and adopt the following resolutions by unanimous written consent in lieu of a meeting pursuant to Section 78.315 of the Nevada Revised Statutes:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Board has reviewed and considered the materials presented by the management and financial and legal advisors of the Corporation regarding the potential present and future liabilities of the Corporation, the strategic alternatives available to it, and the impact of the foregoing on the Corporation’s business;

**WHEREAS**, the Board has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Board has determined that it is in the best interests of the Corporation, its creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Board, it is desirable and in the best interests of the Corporation, its creditors, interest holders, and other interested parties, that the Corporation seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Corporation to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Corporation under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Corporation’s application under the CCAA and the CCAA proceedings (the “**CCAA Case**”), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other



professionals which they may deem necessary or proper to enable a successful restructuring of the Corporation; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to take all actions necessary or appropriate for the Corporation to obtain post-petition financing according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Corporation, its creditors, interest holders, and other interested parties, and the Board hereby authorizes and approves the execution and delivery of the RSA by the Corporation; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the “**Ancillary Documents**”) to be executed or delivered by the Corporation is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Corporation and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Corporation be, and it hereby is, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Corporation; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Corporation, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate, each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Corporation in connection with the Chapter 11 Case and to employ the law firm Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Corporation in carrying out its responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

### *General*

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Corporation, to take or cause to be taken any and all such further action and to execute and deliver or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any officer of the Corporation or any of the Professionals in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and include those individuals with the following titles: (1) President, Chief Executive Officer, (2) Senior Vice President, Chief Financial Officer and (3) Vice President, Secretary.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

*Tricia Tolivar*

---

Tricia Tolivar

---

Cameron Lawrence

---

Susan M. Canning

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

---

Tricia Tolivar



---

Cameron Lawrence

---

Susan M. Canning

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

---

Tricia Tolivar

---

Cameron Lawrence

*Susan M. Canning*

---

Susan M. Canning

**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code		Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67



Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (___)
	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

- a) General Nutrition Corporation;
  - b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name GNC Canada Holdings, Inc.

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule \_\_\_\_\_
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration **Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar

Signature of individual signing on behalf of debtor

Tricia Tolivar

Printed name

**Authorized Signatory**

Position or relationship to debtor



TABQ



THIS IS **EXHIBIT “Q”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', is positioned above a horizontal line.

---

Leora Jackson

Commissioner for Taking Affidavits

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name GNC Puerto Rico Holdings, Inc.

2. All other names debtor used in the last 8 years \_\_\_\_\_

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 81 - 5034559

4. Debtor's address Principal place of business Mailing address, if different from principal place of business

300 Sixth Ave.  
Number Street

Number Street

P.O. Box

Pittsburgh PA 15222  
City State ZIP Code

City State ZIP Code

Location of principal assets, if different from principal place of business

Allegheny County  
County

Number Street

City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor  Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

Partnership (excluding LLP)

Other. Specify: \_\_\_\_\_

7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
\_\_\_\_

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

- No
- Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

- No  
 Yes. Debtor See Rider 1 Relationship Affiliate  
District \_\_\_\_\_ When \_\_\_\_\_  
Case number, if known \_\_\_\_\_ MM / DD / YYYY

List all cases. If more than 1, attach a separate list.

**11. Why is the case filed in this district?**

Check all that apply:

- Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.  
 A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

- No  
 Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

- It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
What is the hazard? \_\_\_\_\_  
 It needs to be physically secured or protected from the weather.  
 It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).  
 Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**Is the property insured?**

- No  
 Yes. Insurance agency \_\_\_\_\_  
Contact name \_\_\_\_\_  
Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

- Funds will be available for distribution to unsecured creditors.  
 After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

- 1-49  
 50-99  
 100-199  
 200-999  
 1,000-5,000  
 5,001-10,000  
 10,001-25,000  
 25,001-50,000  
 50,001-100,000  
 More than 100,000

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**x** /s/ Kara Hammond Coyle

Date 06/23/2020

Signature of attorney for debtor

MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600  
Contact phone

kcoyle@ycst.com  
Email address

No. 4410 DE  
Bar number State

## RIDER 1

### PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**UNANIMOUS WRITTEN CONSENT  
OF THE BOARD OF DIRECTORS OF  
GNC PUERTO RICO HOLDINGS, INC.**

**June 23, 2020**

The undersigned, being all of the members of the board of directors (the “**Board**”) of GNC Puerto Rico Holdings, Inc., a Delaware corporation (the “**Corporation**”), hereby take the following actions and adopt the following resolutions by unanimous written consent in lieu of a meeting pursuant to Section 141(f) of the Delaware General Corporation Law:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Board has reviewed and considered the materials presented by the management and financial and legal advisors of the Corporation regarding the potential present and future liabilities of the Corporation, the strategic alternatives available to it, and the impact of the foregoing on the Corporation’s business;

**WHEREAS**, the Board has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Board has determined that it is in the best interests of the Corporation, its creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Board, it is desirable and in the best interests of the Corporation, its creditors, interest holders, and other interested parties, that the Corporation seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Corporation to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Corporation under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Corporation’s application under the CCAA and the CCAA proceedings (the “**CCAA Case**”), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other

professionals which they may deem necessary or proper to enable a successful restructuring of the Corporation; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to take all actions necessary or appropriate for the Corporation to obtain post-petition financing according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Corporation, its creditors, interest holders, and other interested parties, and the Board hereby authorizes and approves the execution and delivery of the RSA by the Corporation; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the “**Ancillary Documents**”) to be executed or delivered by the Corporation is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Corporation and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Corporation be, and it hereby is, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Corporation; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Corporation, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate, each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further



**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Corporation in connection with the Chapter 11 Case and to employ the law firm Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Corporation, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Corporation in carrying out its responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

### *General*

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Corporation, to take or cause to be taken any and all such further action and to execute and deliver or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any officer of the Corporation or any of the Professionals in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and those individuals with the following titles: (1) President, Chief Executive Officer, (2) Senior Vice President, Chief Financial Officer and (3) Vice President, Secretary.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

*Tricia Tolivar*

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Tricia Tolivar

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Cameron Lawrence

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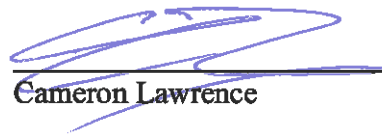
Susan M. Canning

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

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Tricia Tolivar



---

Cameron Lawrence

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Susan M. Canning

IN WITNESS WHEREOF, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF DIRECTORS:**

\_\_\_\_\_  
Tricia Tolivar

\_\_\_\_\_  
Cameron Lawrence

*Susan M. Canning*  
\_\_\_\_\_  
Susan M. Canning

**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4 NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5 BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6 OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7 LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8 RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9 JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10 JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11 DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12 ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13 FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14 BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15 REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60



Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
Debtors. <sup>1</sup>	)	Case No. 20-_____ (___)
	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

- a) General Nutrition Corporation;
  - b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name GNC Puerto Rico Holdings, Inc.

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration **Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar

Signature of individual signing on behalf of debtor

Tricia Tolivar

Printed name

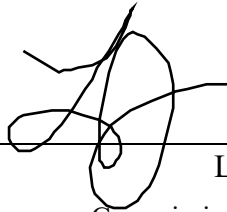
Authorized Signatory

Position or relationship to debtor



TABR

THIS IS **EXHIBIT “R”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to be 'Leora Jackson', written over a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits



**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

District of Delaware

Case number (If known): \_\_\_\_\_ Chapter 11

Check if this is an amended filing

Official Form 201

**Voluntary Petition for Non-Individuals Filing for Bankruptcy**

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name GNC Puerto Rico, LLC

2. All other names debtor used in the last 8 years GNC Puerto Rico, Inc.

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN) 66 - 0507234

4. Debtor's address Principal place of business Mailing address, if different from principal place of business

300 Sixth Ave.  
Number Street

Number Street

P.O. Box

Pittsburgh PA 15222  
City State ZIP Code

City State ZIP Code

Location of principal assets, if different from principal place of business

Allegheny County  
County

Number Street

City State ZIP Code

5. Debtor's website (URL) www.gnc.com

6. Type of debtor  Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

Partnership (excluding LLP)

Other. Specify: \_\_\_\_\_

**7. Describe debtor's business**

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply:

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>  
4461  
\_\_\_\_

**8. Under which chapter of the Bankruptcy Code is the debtor filing?**

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check all that apply:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1). Its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000. **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

**9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?**

- No
- Yes. District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY
- District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

If more than 2 cases, attach a separate list.

**10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?**

- No
- Yes. Debtor See Rider 1 Relationship Affiliate  
 District \_\_\_\_\_ When \_\_\_\_\_  
 Case number, if known \_\_\_\_\_

List all cases. If more than 1, attach a separate list.

MM / DD / YYYY

**11. Why is the case filed in this district?**

Check all that apply:

- Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**

- No
- Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

**Why does the property need immediate attention?** (Check all that apply.)

- It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.  
What is the hazard? \_\_\_\_\_
- It needs to be physically secured or protected from the weather.
- It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).
- Other \_\_\_\_\_

**Where is the property?** \_\_\_\_\_

Number \_\_\_\_\_ Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**Is the property insured?**

- No
- Yes. Insurance agency \_\_\_\_\_
- Contact name \_\_\_\_\_
- Phone \_\_\_\_\_

**Statistical and administrative information**

**13. Debtor's estimation of available funds**

Check one:

- Funds will be available for distribution to unsecured creditors.
- After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

**14. Estimated number of creditors (consolidated)**

- 1-49                       1,000-5,000                       25,001-50,000
- 50-99                         5,001-10,000                       50,001-100,000
- 100-199                       10,001-25,000                       More than 100,000
- 200-999

**15. Estimated consolidated assets**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**16. Estimated consolidated liabilities**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000          | <input type="checkbox"/> \$1,000,001-\$10 million    | <input type="checkbox"/> \$500,000,001-\$1 billion               |
| <input type="checkbox"/> \$50,001-\$100,000    | <input type="checkbox"/> \$10,000,001-\$50 million   | <input checked="" type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000   | <input type="checkbox"/> \$50,000,001-\$100 million  | <input type="checkbox"/> \$10,000,000,001-\$50 billion           |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion                  |

**Request for Relief, Declaration, and Signatures**

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

**17. Declaration and signature of authorized representative of debtor**

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020  
MM / DD / YYYY

**x** /s/ Tricia Tolivar  
Signature of authorized representative of debtor

Tricia Tolivar  
Printed name

Title Authorized Signatory

**18. Signature of attorney**

**x** /s/ Kara Hammond Coyle

Date 06/23/2020

Signature of attorney for debtor

MM / DD / YYYY

Kara Hammond Coyle  
Printed name

Young Conaway Stargatt & Taylor, LLP  
Firm name

Rodney Square, 1000 North King Street  
Number Street

Wilmington DE 19801  
City State ZIP Code

(302) 571-6600  
Contact phone

kcoyle@ycst.com  
Email address

No. 4410 DE  
Bar number State

## **RIDER 1**

### **PENDING OR CONCURRENT BANKRUPTCY CASES FILED BY AFFILIATES**

On the date hereof, each of the affiliated entities listed below (including the debtor in this chapter 11 case) filed a voluntary petition for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. A motion will be filed with the Court requesting that the chapter 11 cases of these entities be jointly administered for procedural purposes only.

<b>Entity Name</b>	<b>Federal Employer Identification Number (EIN)</b>
GNC Holdings, Inc.	20-8536244
GNC Parent LLC	20-5877572
GNC Corporation	72-1575170
General Nutrition Centers, Inc.	72-1575168
General Nutrition Corporation	25-1124574
General Nutrition Investment Company	51-0313878
Lucky Oldco Corporation	45-3007141
GNC Funding Inc.	20-8577837
GNC International Holdings Inc.	61-1869873
GNC China Holdco LLC	27-2120004
GNC Headquarters LLC	45-4317550
Gustine Sixth Avenue Associates, Ltd.	25-1780731
GNC Canada Holdings, Inc.	46-1613879
General Nutrition Centres Company	898190939 (Canadian)
GNC Government Services, LLC	27-1532226
GNC Puerto Rico Holdings, Inc.	81-5034559
GNC Puerto Rico, LLC	66-0507234

**UNANIMOUS WRITTEN CONSENT**  
**OF THE BOARD OF MANAGERS OF**  
**GNC PUERTO RICO, LLC**

**June 23, 2020**

The undersigned, being all of the members of the board of managers (the “**Board**”) of GNC Puerto Rico, LLC a Puerto Rico limited liability company (the “**Company**”), hereby take the following actions and adopt the following resolutions by unanimous written consent in lieu of a meeting pursuant to Section 3975 of the Puerto Rico General Corporations Act:

***Approval of Bankruptcy Filing***

**WHEREAS**, the Board has reviewed and considered the materials presented by the management and financial and legal advisors of the Company regarding the potential present and future liabilities of the Company, the strategic alternatives available to it, and the impact of the foregoing on the Company’s business;

**WHEREAS**, the Board has reviewed and evaluated the proposed Restructuring Support Agreement (substantially in the form attached hereto as Exhibit A, the “**RSA**”) and the transactions contemplated thereby; and

**WHEREAS**, the Board has determined that it is in the best interests of the Company, its creditors, interest holders, and other interested parties to enter into the RSA, commence a case (the “**Chapter 11 Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and to make an application under Part IV of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

**NOW, THEREFORE, BE IT RESOLVED**, that in the judgment of the Board, it is desirable and in the best interests of the Company, its creditors, interest holders, and other interested parties, that the Company seek relief under the provisions of Chapter 11 of the Bankruptcy Code; and it is further

**RESOLVED**, that each “Authorized Person” (as defined below) shall be, and hereby is, authorized and directed on behalf of the Company to commence a Chapter 11 case by executing, verifying and delivering a voluntary petition in the name of the Company under Chapter 11 of the Bankruptcy Code and causing the same to be filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) in such form and at such time as the Authorized Person executing said petition shall determine; and it is further

**RESOLVED**, that each Authorized Person be, and each hereby is, authorized to swear any and all affidavits or execute any documentation or take any and all actions which they may deem necessary or proper in support of or in connection with the Company’s application under the CCAA and the CCAA proceedings (the “**CCAA Case**”), and to retain and employ attorneys, information officers, monitors, investment bankers, accountants, financial advisors and any other

professionals which they may deem necessary or proper to enable a successful restructuring of the Company; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to take all actions necessary or appropriate for the Company to obtain post-petition financing according to the terms negotiated by such Authorized Person, and to effectuate the foregoing, to enter into such loan agreements, documents, notes, guaranties, security agreements, pledge agreements and all other documents, agreements or instruments (collectively, the “**Credit Documents**”) as may be deemed necessary or appropriate by the Authorized Person; and it is further

**RESOLVED**, that the RSA and the agreements and transactions contemplated thereby are in the best interests of the Company, its creditors, interest holders, and other interested parties, and the Board hereby authorizes and approves the execution and delivery of the RSA by the Company; and it is further

**RESOLVED**, that each other agreement, document and instrument contemplated by the RSA (the “**Ancillary Documents**”) to be executed or delivered by the Company is hereby authorized and approved; and it is further

**RESOLVED**, that each Authorized Person shall be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to document, execute, and deliver the RSA, as the same may be amended, supplemented, or modified, as such Authorized Persons may consider necessary, proper, or desirable, and in the best interests of the Company and its stakeholders generally, consistent with the intent of these resolutions, the execution thereof by such Authorized Persons to be conclusive evidence of such determination, and to negotiate, document, execute, and deliver such other documents and to take any and all such further action which such Authorized Person determines to be necessary or appropriate in order to effectuate the general intent of the foregoing resolutions, in each case to the extent such actions, amendments, supplements or modifications are generally inconsistent with the RSA; and it is further

**RESOLVED**, that the Company be, and it hereby is, authorized, to the extent applicable, to obtain the use of cash collateral, in such amounts and on such terms as may be agreed by any Authorized Person, including the grant of replacement liens, as is reasonably necessary for the continuing conduct of the affairs of the Company; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, with full power of delegation, on behalf of and in the name of the Company, to execute, verify and/or file, or cause to be filed and/or executed or verified (or direct others to do so on their behalf as provided herein), and to amend, supplement or otherwise modify from time to time, all necessary or appropriate documents, including, without limitation, petitions, affidavits, schedules, motions, lists, applications, pleadings and other documents, agreements and papers, including all Credit Documents, and to take any and all actions that the Authorized Person deems necessary or appropriate; each in connection with the Chapter 11 Case, the CCAA Case, any post-petition financing or any cash collateral usage contemplated hereby; and it is further

**RESOLVED**, that to the extent not already authorized by prior resolution, each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to employ and retain the law firms of Latham & Watkins LLP and Young Conaway Stargatt & Taylor, LLP to act as attorneys, Evercore Group, L.L.C. to act as investment banker and financial advisor and FTI Consulting, Inc. to act as financial advisor for the Company in connection with the Chapter 11 Case and to employ the law firm Torys LLP to act as attorneys in the CCAA Case; and it is further

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company, to employ and retain such further legal, restructuring, financial, accounting and bankruptcy services firms (together with the foregoing identified firms, the “**Professionals**”) as may be deemed necessary or appropriate by the Authorized Person to assist the Company in carrying out its responsibilities in the Chapter 11 Case and the CCAA Case and attempting to achieve a successful reorganization.

### *General*

**RESOLVED**, that each Authorized Person be, and hereby is, authorized, with full power of delegation, in the name and on behalf of the Company, to take or cause to be taken any and all such further action and to execute and deliver or cause to be executed or delivered, and to amend, supplement or otherwise modify from time to time, all such further agreements, documents, certificates, statements, notices, undertakings and other writings, and to incur and to pay or direct payment of all such fees and expenses, as in the judgment of the Authorized Person shall be necessary, appropriate or advisable to effectuate the purpose and intent of any and all of the foregoing resolutions; and it is further

**RESOLVED**, that all acts lawfully done or actions lawfully taken by any officer of the Company or any of the Professionals in connection with the Chapter 11 Case and CCAA Case or any proceedings related thereto, or any matter related thereto, be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Company; and it is further

**RESOLVED**, that any and all actions, whether previously or subsequently taken by any Authorized Person or any other person authorized to act by an Authorized Person, that are consistent with the intent and purpose of the foregoing resolutions or in connection with any matters referred to herein, shall be, and the same hereby are, in all respects, ratified, approved and confirmed; and it is further

**RESOLVED**, that for the purposes of these resolutions, the term “**Authorized Person**” shall mean and those individuals with the following titles: (1) President, Chief Executive Officer, (2) Senior Vice President, Chief Financial Officer and (3) Vice President, Secretary.

*[Signature page follows]*



**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF MANAGERS:**

*Tricia Tolivar*

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Tricia Tolivar

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Cameron Lawrence

---

Susan M. Canning

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

**BOARD OF MANAGERS:**

---

Tricia Tolivar



---

Cameron Lawrence

---

Susan M. Canning

**IN WITNESS WHEREOF**, the undersigned members of the Board have executed this Unanimous Written Consent to be effective as of the date first written above.

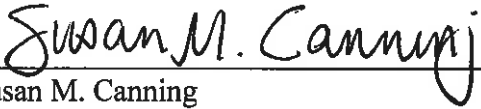
**BOARD OF MANAGERS:**

---

Tricia Tolivar

---

Cameron Lawrence

  
Susan M. Canning

**Exhibit A**

Restructuring Support Agreement

[Intentionally Omitted]

**Fill in this information to identify the case:**

Debtor name: GNC Holdings, Inc., et. al.  
 United States Bankruptcy Court for the: District of Delaware  
 Case number (if known): TBD

Check if this is an amended filing

Modified Official Form 204

**Chapter 11 Case: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders**

12/15

The Debtor and its debtor affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The following is a consolidated list of the Debtors' creditors holding the 30 largest unsecured claims based on the Debtors' books and records estimated as of the petition date. This list is prepared in accordance with Bankruptcy Rule 1007(d) for filing in these chapter 11 cases. The list does not include: (1) persons who come within the definition of "insider" set forth in section 101 of the Bankruptcy C24 Code; (2) secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 30 largest unsecured claims; or (3) claims held by the Debtors' employees. The information presented in the list below shall not constitute an admission of liability by, nor is binding on, the Debtors, and the failure to list a claim as contingent, unliquidated, disputed, or subject to setoff does not constitute a waiver of any of the Debtors' right to contest the validity, priority, or amount of any claim.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
1 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE BNY MELLON CORPORATE TRUST US CORPORATE CLIENT SERVICE MANAGEMENT 500 ROSS STREET, 12TH FLOOR PITTSBURGH, PA 15262	THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. ATTN: MINDY M. WRZESINSKI, SENIOR ANALYST, CLIENT SERVICE PHONE: 412-234-7424 FAX: 412-234-8377 EMAIL: MELINDA.M.WRZESINSKI@BNYMELLON.COM	NOTES PAYABLE				\$157,899,413.00
2 WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO 3891 S TRADITIONS DR BRYAN, TX 77807	WOODBOLT DISTRIBUTION ATTN: DOSS CUNNINGHAM, PRESIDENT AND CEO PHONE: 800-870-2070 EMAIL: CORPORATEAR@WOODBOLT.COM	TRADE PAYABLE				\$4,853,286.39
3 SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 867675 RELIABLE PARKWAY CHICAGO, IL 60686-0076  SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT 225 WEST WASHINGTON STREET INDIANAPOLIS, IN 26204	SIMON PROPERTY GROUP ATTN: DAVID SIMON, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT PHONE: 317- 685-7237 FAX: 317-263-7901 EMAIL: 3172637091@SIMON.COM	LANDLORD				\$4,562,909.27

Name of creditor and complete mailing address, including zip code		Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
4	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS DBA RIVALUS NUTRITION 1083 QUEEN STREET SUITE 221 HALIFAX, NS B3H 0B2 CANADA	NUTRIVO LLC ATTN: MIKE AND TONY COSTELLO, CO-FOUNDERS PHONE: 800-620-4177 EMAIL: CGUMAN@NUTRIVO.COM	TRADE PAYABLE				\$4,012,113.14
5	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO 350 N. ORLEANS STREET SUITE 300 CHICAGO, IL 60654	BROOKFIELD PROPERTY PARTNERS L.P. ATTN: JARED CHUPAILA, CEO PHONE: 312-960-5000 FAX: 312-442-6374 EMAIL: JOSHUA.DECKELBAUM@BROOKFIELDPROPERTIESRETAIL.COM	LANDLORD				\$3,764,737.11
6	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS GLANBIA BUSINESS SERVICES INC 975 MERIDIAN LAKE DR AURORA, IL 60504	OPTIMUM NUTRITION INC ATTN: YUKI PHIPPS PHONE: 630-256-7415 EMAIL: SSNAREMITTANCE@GLANBIA.COM	TRADE PAYABLE				\$3,422,764.70
7	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER C/O SEROYAL INTERNATIONAL INC 490 ELGIN MILLS RD EAST RICHMOND HILL, ON L4C 0L8 CANADA	LIFELONG NUTRITION INC ATTN: JULIE CHUDAK, OWNER FAX: 800-722-9953 EMAIL: ACCOUNTSRECEIVABLE@SEROYAL.COM	TRADE PAYABLE				\$3,143,221.35
8	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO 2255 GLADES ROAD SUITE 342W BOCA RATON, FL 33431	RESVITALE LLC ATTN: NAOMI WHITTEL, CEO PHONE: 561-353-5401 EMAIL: ACCOUNTSRECEIVABLE@RESERVEAGE.COM	TRADE PAYABLE				\$2,585,001.74
9	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER 31356 VIA COLINAS #112 WEST LAKE VILLAGE, CA 91362	JYM SUPPLEMENT SCIENCE ATTN: DR. JIM STOPPANI, FOUNDER PHONE: 714-756-1185 EMAIL: MIKE_MCERLANE@HOTMAIL.COM	TRADE PAYABLE				\$2,308,093.67

Name of creditor and complete mailing address, including zip code		Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
10	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PO BOX 503776 ST LOUIS, MO 64804  JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT 3877 E. 27TH STREET JOPLIN, MO 64804	JASPER PRODUCTS LLC ATTN: KEN HAUBEIN, PRESIDENT PHONE: 417-206-3877; 417-208-1116 FAX: 417-206-3434 EMAIL: JEANA.HARRIS@JASPERPRODUCTS.COM	TRADE PAYABLE				\$1,942,771.06
11	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO 313 SOUTH 740 EAST #3 AMERICAN FORK, UT 84003	DAS LABS LLC ATTN: RYAN GARDNER, MANAGING PARTNER & CEO PHONE: 801-358-3572 EMAIL: RYAN@BUCKEDUP.COM	TRADE PAYABLE				\$1,941,436.18
12	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO 615 S COLLEGE ST #1300 CHARLOTTE, NC 28202	ADAPTIVE HEALTH LLC ATTN: BRANDON ADCOCK, CO-FOUNDER AND CEO PHONE: 704-557-0985 EMAIL: BRANDON@DIRECTDIGITALLLC.COM	TRADE PAYABLE				\$1,797,132.50
13	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PO BOX 371461 PITTSBURGH, PA 15250-7461  FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO 942 SOUTH SHADY GROVE ROAD MEMPHIS, TN 38120	FEDEX ATTN: JOHN A. SMITH, PRESIDENT & CEO PHONE: 800-622-1147; 901-818-7500 EMAIL: DARA.RUPERT@FEDEX.COM	TRADE PAYABLE				\$1,459,464.00
14	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO 5742 WEST HAROLD GATTY DR SALT LAKE CITY, UT 84116	BASIC RESEARCH ATTN: BRAD STEWART, PRESIDENT AND CEO PHONE: 801-517-7074 FAX: 801-517-7002 EMAIL: AR@BASICRESEARCH.ORG	TRADE PAYABLE				\$1,436,989.79
15	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER 701 PARK OF COMMERCE SUITE 100 BOCA RATON, FL 33487	REDCON1 LLC ATTN: AARON SINGERMAN, CEO, OWNER PHONE: 954-551-9038 EMAIL: STEPHANIE@REDCON1.COM	TRADE PAYABLE				\$1,331,896.60

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
16 VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PO BOX 740930 ATLANTA, GA 30374-0930  VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO 1600 NORTH PARK DRIVE WESTON, FL 33326	VPX SPORTS ATTN: JACK OWOC, OWNER, CEO & CSO PHONE: 954-641-0570 FAX: 954-641-4960 EMAIL: ACCOUNTS.RECEIVABLE@VPXSPORTS.COM	TRADE PAYABLE				\$1,154,128.40
17 BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO 3149 SW 42ND STREET HOLLYWOOD, FL 33312	BPI SPORTS ATTN: WALT FREESE, PRESIDENT AND CEO PHONE: 954-926-0900 EMAIL: AR@BPISPORTS.NET	TRADE PAYABLE				\$1,076,852.45
18 VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 29215 NETWORK PLACE CHICAGO, IL 60673-1292  VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO 3400 WOLF RD FRANKLIN PARK, IL 60131	VITAL PROTEINS ATTN: KURT SEIDENSTICKER, CEO PHONE: 847-232-1713 EMAIL: AR@VITALPROTEINS.COM	TRADE PAYABLE				\$1,042,248.78
19 NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER 4509 S 143 ST STE 1 OMAHA, NE 68137	NDS NUTRITION ATTN: RYAN ZINK, PRESIDENT AND CO-OWNER PHONE: 402-504-3043 EMAIL: SKINNAMAN@FITLIFEBRANDS.COM	TRADE PAYABLE				\$1,038,573.76
20 GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL 4575 DEAN MARTIN DR SUITE 2200 LAS VEGAS, NV 89103	GHOST LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 979-492-6711 EMAIL: PAUL@GHOSTLIFESTYLE.COM	TRADE PAYABLE				\$1,032,607.20
21 MYADERM INC ATTN: ERIC SMART, CEO 88 INVERNESS CIRCLE E UNIT A 101 ENGLEWOOD, CO 80112	MYADERM INC ATTN: ERIC SMART, CEO PHONE: 303-562-4876 EMAIL: ACCOUNTING@MYADERM.COM	TRADE PAYABLE				\$970,830.37



Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
22 SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PO BOX 5 STATION D TORONTO, ON M1R 4Y7 CANADA  SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO 130 MCLEVIN AVE UNIT 4 SCARBOROUGH, ON M1B 3R6 CANADA	SONOMA NUTRACEUTICALS INC ATTN: MONTY SHARMA, CEO PHONE: 416-332-1881; 416-292-8560 EMAIL: AR@BODYPLUS.CA; SCOTT@SONOMANUTRACEUTICALS.COM	TRADE PAYABLE				\$945,477.28
23 FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 15161 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693  FACEBOOK INC ATTN ACCOUNTS RECEIVABLE 1 HACKER WAY MENLO, CA 94025	FACEBOOK INC ATTN ACCOUNTS RECEIVABLE PHONE: 650-543-4800 FAX: 650-543-4801 EMAIL: AR@FB.COM	TRADE PAYABLE				\$860,000.00
24 NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO 14790 FLINT LEE ROAD CHANTILLY, VA 20151	NUTRAVAIL LLC ATTN: RICHARD O'NEIL, CEO PHONE: 703-222-6340 FAX: 703-961-1835 EMAIL: KCONNORS@NUTRAVAIL.COM	TRADE PAYABLE				\$844,259.71
25 GOOGLE INC ATTN: SUNDAR PICHAI, CEO PO BOX 39000 DEPT 33654 SAN FRANCISCO, CA 94139  GOOGLE INC ATTN: SUNDAR PICHAI, CEO 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043	GOOGLE INC ATTN: SUNDAR PICHAI, CEO PHONE: 650-253-0000 FAX: 650-253-0001 EMAIL: COLLECTIONS-US@GOOGLE.COM	TRADE PAYABLE				\$830,000.00
26 24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO 240 KENNEDY STREET 2ND FLOOR WINNIPEG, MB R3C 1T1 CANADA	24-7 INTOUCH INC ATTN: GREG FETTES, FOUNDER & CEO PHONE: 204-318-3040 EMAIL: SHARON.INES@24-7INTOUCH.COM	TRADE PAYABLE				\$750,000.00

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim(for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured Claim
27 HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PO BOX 93624 CHICAGO, IL 60673-3624  HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO 1 HORMEL PL AUSTIN , MN 55912	HORMEL FINANCIAL SERVICES ATTN: JIM SNEE, PRESIDENT AND CEO PHONE: 507-437-5634 FAX: 507-437-5489 EMAIL: INTERNATIONALBACK-UP@HORMEL.COM	TRADE PAYABLE				\$748,512.42
28 HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL 1430 W AUTO DR SUITE 109 TEMPE, AZ 85284	HERBAL BRANDS INC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 602-680-1658 EMAIL: VICKI.RICHARDS@HERBALBRANDS.COM	TRADE PAYABLE				\$740,763.26
29 HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL 10711 WALKER STREET CYPRESS, CA 90630	HYBRID PROMOTIONS LLC ATTN: PRESIDENT OR GENERAL COUNSEL PHONE: 714-952-3866 EMAIL: LVALENCIA@HYBRIDAPPAREL.COM	TRADE PAYABLE				\$728,279.50
30 COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 4140 SOLUTIONS CENTER CHICAGO, IL 60677-4001  COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO 530 E MONTECITO ST SANTA BARBARA, CA 93103	COMMISSION JUNCTION LLC ATTN: MAYURESH KSHETRAMADE, CEO PHONE: 805-830-8174; 800-761-1072 EMAIL: CJAR@CJ.COM	TRADE PAYABLE				\$720,000.00

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-_____ (___)
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**CONSOLIDATED LIST OF EQUITY INTEREST HOLDERS AND  
CORPORATE OWNERSHIP STATEMENT PURSUANT TO  
BANKRUPTCY RULES 1007(a)(1), 1007(a)(3), AND 7007.1**

Pursuant to Rules 1007(a)(1), 1007(a)(3), and 7007.1 of the Federal Rules of Bankruptcy Procedure, the above-captioned debtors and debtors in possession (each, a “**Debtor**”) hereby state as follows:

1. Debtor GNC Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, is the sole member of Debtor GNC Parent LLC.
2. Debtor GNC Parent LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Corporation.
3. Debtor GNC Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centers, Inc.
4. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
  - a) General Nutrition Corporation;

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559), and GNC Puerto Rico, LLC (7234). The Debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

- b) Lucky Oldco Corporation;
  - c) General Nutrition Investment Company;
  - d) GNC Funding, Inc.;
  - e) GNC International Holdings, Inc.;
  - f) GNC China Holdco LLC.; and
  - g) GNC Headquarters LLC.
5. Debtor General Nutrition Centers, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 75% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd. Debtor GNC Headquarters LLC, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 25% of the equity interests in Debtor Gustine Sixth Ave Associates, Ltd.
6. Debtor General Nutrition Corporation, whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtors:
- a) GNC Government Services, LLC; and
  - b) GNC Puerto Rico Holdings, Inc.;
7. Debtor GNC Puerto Rico Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 70% of the equity interests in Debtor GNC Puerto Rico, LLC.
8. Debtor GNC International Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor GNC Canada Holdings, Inc.
9. Debtor GNC Canada Holdings, Inc., whose address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, owns 100% of the equity interests in Debtor General Nutrition Centres Company.

**Fill in this information to identify the case:**

Debtor name GNC Puerto Rico, LLC

United States Bankruptcy Court for  
the: DISTRICT OF DELAWARE

Case number (if  
known) \_\_\_\_\_

Check if this is an  
amended filing

Official Form 202

**Declaration Under Penalty of Perjury for Non-Individual Debtors**

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

**WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.**

**Declaration and signature**

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G)
- Schedule H: Codebtors (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum)
- Amended Schedule \_\_\_\_\_
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders (Official Form 204)
- Other document that requires a declaration **Consolidated List of Equity Interest Holders and Corporate Ownership Statement Pursuant to Bankruptcy Rules 1007(a)(1), 1007(a)(3), and 7007.1**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 06/23/2020

/s/ Tricia Tolivar  
Signature of individual signing on behalf of debtor

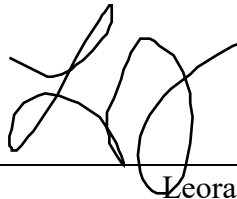
Tricia Tolivar  
Printed name

Authorized Signatory  
Position or relationship to debtor



TABS

THIS IS **EXHIBIT “S”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', written over a horizontal line.

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Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**DECLARATION OF TRICIA TOLIVAR, CHIEF  
FINANCIAL OFFICER OF GNC HOLDINGS, INC.  
IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

Under 28 U.S.C. § 1764, Tricia Tolivar declares as follows under the penalty of perjury:

1. I am the Executive Vice President and Chief Financial Officer of GNC Holdings, Inc. which is incorporated in Delaware and is one of the above-captioned debtors and debtors in possession (collectively, the “*Debtors*” and, together with non-Debtor affiliates, the “*Company*” or “*GNC*”) in the above captioned chapter 11 cases (collectively, the “*Chapter 11 Cases*”). I have served as GNC’s Chief Financial Officer since 2015. I am authorized to submit this declaration (this “*Declaration*”) on behalf of the Debtors.

2. As GNC’s Executive Vice President and Chief Financial Officer, I am responsible for overseeing the Company’s cash flow, business relationships, financial planning, real estate, IT, accounting, investor relations and legal functions among other things. As a result of my tenure with the Debtors, my review of public and non-public documents, and my discussions with other

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.



members of the Debtors' management team, I am generally familiar with the Debtors' businesses, financial condition, policies and procedures, day-to-day operations, and books and records. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from the Debtors' Chief Executive Officer, Ken Martindale as well as the employees or retained advisers that report to me in the ordinary course of my responsibilities.

3. I submit this Declaration on behalf of the Debtors in support of the Debtors' (a) voluntary petitions for relief that were filed under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the "*Bankruptcy Code*") and (b) "first-day" pleadings, which are being filed concurrently herewith (collectively, the "*First Day Pleadings*").<sup>2</sup> I have reviewed the Debtors' petitions and the First Day Pleadings, or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is essential to ensure the uninterrupted operation of the Debtors' businesses and to successfully maximize the value of the Debtors' estates. References to the Bankruptcy Code, the chapter 11 process, and related matters are based in part on my understanding of such matters in reliance on the explanations provided by, and the advice of, counsel. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

#### **Preliminary Statement**

4. For 85 years, GNC (and its predecessor, "Lackzoom") has been a leading global specialty retailer of health and wellness products. Since David Shakarian opened a single store in 1935 called "Lackzoom"—in the midst of the Great Depression—in Pittsburgh, Pennsylvania, GNC has strategically grown to approximately 5,200 retail locations (including Rite Aid store-

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<sup>2</sup> Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the applicable First Day Pleadings.

within-a-store locations) throughout the United States, and franchise operations in approximately 50 international markets. While Lackzoom specialized in yogurt—a food that Mr. Shakarian and his father helped introduce to the United States—GNC now specializes in selling vitamins and minerals, as well as herbal supplement products, sports nutrition products and diet products.

5. In late 2018, well in advance of a springing maturity date set to occur in May 2020 under the Debtors’ existing indebtedness, the Debtors began to review their business plan and also commenced refinancing efforts to alleviate near-term liquidity strains and to de-stress their capital structure. To that end, in the third quarter of 2019, the Company engaged legal and financial advisors to explore a comprehensive refinancing of the Company’s balance sheet, and the Company conducted a non-deal roadshow where it met with approximately 50 potential investors. While attempts to engage in a comprehensive refinancing of the Company’s debt with lenders in the United States were unsuccessful, due in large part to the Company’s high leverage and the high cost of capital offered by lenders, certain Asia-based lenders, in connection with the Company’s partnership with Harbin (as described below) expressed interest in providing a comprehensive refinancing solution at a significantly lower cost of capital.

6. In October 2019, due to certain potential conflicts of interest, the Board established a special committee of the Board (the “*Special Committee*”) to be comprised of independent and disinterested directors to conduct and oversee the Company’s refinancing processes. From October 2019 through April 2020, the Special Committee and its advisors actively engaged in a series of negotiations with the Asia-based lenders to consummate a comprehensive refinancing of the Company’s existing indebtedness.

7. However, before any deal could be reached, COVID-19 began to spread globally until, on March 11, 2020, the World Health Organization declared COVID-19 a pandemic. In

response to COVID-19, national, state, and local governments in the United States and throughout the world imposed quarantines, social distancing protocols, and shelter-in-place orders. GNC temporarily closed approximately 1,200 domestic retail locations, 118 domestic franchise locations, 477 international franchise locations, and 106 Canadian locations. These unprecedented events severely impacted the Company's business and liquidity, as well as its ability to consummate a comprehensive refinancing.

8. The Debtors and their advisors nonetheless explored a variety of out-of-court options, including the possibility of long-term maturity extensions under the ABL/FILO Credit Agreement and the Term Loan Credit Agreement (each as defined below), but those negotiations ultimately proved unsuccessful. The Debtors were able, however, to enter into amendments to the ABL/FILO Credit Agreement and the Term Loan Credit Agreement to extend the springing maturities under those agreements to provide additional time to negotiate a consensual restructuring and prepare the Debtors to file these Chapter 11 Cases.

9. The Debtors made the most of that extra time. Following several weeks of extensive, arm's-length negotiations, the Debtors were able to negotiate debtor-in-possession financing and a pre-arranged standalone plan of reorganization with certain of their secured lenders (the "*Standalone Plan Transaction*"), the details of which are memorialized in a signed restructuring support agreement (the "*Restructuring Support Agreement*"), that is executed by more than 92% of the Prepetition Tranche B-2 Term Loan Lenders (as defined below) and 87% of the Prepetition ABL/FILO Lenders (as defined below) (together, collectively, the "*Supporting Secured Lenders*").<sup>3</sup> Importantly, the overwhelming support of the Debtors' creditors will enable the Debtors to emerge from this process expeditiously.

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<sup>3</sup> A copy of the Restructuring Support Agreement is attached hereto as **Exhibit B**.

10. The Restructuring Support Agreement is premised on \$100 million in “new money” loans provided by certain Prepetition Tranche B-2 Term Loan Lenders, together with a “roll-up” on a dollar-for-dollar basis of \$100 million of prepetition Tranche B-2 Term Loans, under the DIP Term Facility (as defined below), as well as a “roll-up” on a dollar-for-dollar basis of all of the outstanding principal of and accrued and unpaid interest on prepetition ABL/FILO Term Loans into a postpetition ABL FILO facility (the “*DIP ABL FILO Facility*”) on terms that will generate an additional \$30 million of liquidity. The Standalone Plan Transaction enjoys committed post-effective date exit facilities in an aggregate principal amount of \$525 million, provides for a new post-effective date ownership structure led by the Prepetition Tranche B-2 Term Loan Lenders and contemplates a recovery to general unsecured creditors.

11. Additionally, the Debtors, a significant majority of the Supporting Secured Lenders, and Harbin Pharmaceutical Group Holding Co., Ltd., an affiliate of GNC’s largest shareholder (the “*Proposed Buyer*”), have reached an agreement in principle for the sale of the Debtors’ business (the “*Sale Transaction*”), the terms of which are set forth in a term sheet attached hereto as Exhibit C. The Sale Transaction contemplates a \$760 million purchase price for a going-concern sale of the Debtors’ business, which would be executed through a section 363 auction process, at which higher and better bids may be presented. The Sale Transaction remains subject to definitive documentation acceptable to the Debtors, the Supporting Secured Lenders and the Proposed Buyer. If the Sale Transaction is timely consummated as set forth in the Restructuring Support Agreement, it would be implemented instead of the Standalone Plan Transaction. The Debtors’ largest vendor and a joint venture partner, International Vitamin Corporation (“*IVC*”) is working with the Debtors to ensure a continued supply of products to the Debtors and to advance the proposed sale of the Debtors’ business.

12. With the support of its lenders and key stakeholders, the Debtors expect to either consummate the Sale Transaction or the Standalone Plan Transaction and exit bankruptcy in the fall of this year. The Restructuring Support Agreement ensures that the Debtors will have sufficient liquidity to pursue both the Sale Transaction and the Standalone Plan Transaction.

Importantly, the Restructuring Support Agreement:

- enjoys the support of holders of more than 92% of the Tranche B-2 Term Loans and 87% of the ABL FILO Term Loans;
- ensures that the Debtors will have approximately \$130 million in additional liquidity through (i) a commitment from certain of the Prepetition Tranche B-2 Term Loan Lenders to provide \$100 million in “new money” debtor-in-possession financing and (ii) approximately \$30 million to come from certain modifications to the existing ABL/FILO Credit Agreement; and
- contemplates that the Debtors will emerge from bankruptcy either by consummating the Sale Transaction or the Standalone Plan Transaction no later than 141 days following the Petition Date (as defined below).

13. The Debtors firmly believe that the Restructuring Support Agreement affords them with significant optionality and puts the Debtors on the best path at this time to maximize the value of their estates and ensure that they can efficiently and expeditiously emerge from chapter 11 and continue to fulfill their promise as a leading health and nutrition retailer. Moreover, the Debtors are confident that between the liquidity provided under the DIP Facilities (as defined below) and cash flow from normal operations, and with the support of their largest vendor, the Debtors will meet their go-forward financial commitments as they work to achieve their financial objectives.

14. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in the United States Bankruptcy Court for the District of Delaware (the “*Court*”). The Debtors will continue to operate their businesses and manage their properties as debtors in possession. Relatedly, Debtor General Nutrition Centres Company (“*GNC Canada*”), an unlimited liability company organized under the laws of Nova Scotia, which operates the Debtors’

Canadian business will also be commencing an ancillary proceeding (the “*Canadian Proceeding*”) under Part IV of the Companies’ Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List) (the “*Canadian Court*”).<sup>4</sup>

15. To familiarize the Court with the Debtors, their business, the circumstances leading to these Chapter 11 Cases, and the relief the Debtors are seeking in the motions and applications filed today, I have organized this Declaration as follows:

- **Part I** provides a general overview of the Debtors’ corporate history and operations;
- **Part II** provides an overview of the Debtors’ prepetition corporate and capital structure;
- **Part III** describes the circumstances leading to these Chapter 11 Cases;
- **Part IV** describes the Restructuring Support Agreement and Debtors’ proposed debtor-in-possession financing; and
- **Part V** describes the evidentiary basis for the relief requested in each of the first day pleadings.

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<sup>4</sup> GNC Canada is a wholly-owned subsidiary of Debtor GNC Canada Holdings, Inc., a Nevada corporation. All material decisions regarding GNC Canada and its operations are made by GNC employees located at the Company’s headquarters in Pittsburgh, Pennsylvania. And, proposed co-counsel to the Debtors, Young, Conaway, Stargatt & Taylor LLP (“*YCST*”) holds an approximately \$50,000 retainer from GNC Canada separate from the retainer held by YCST on behalf of the other Debtors. Accordingly, the Debtors believe that the center of main interest for GNC Canada is in the United States and this Court has appropriate jurisdiction over GNC Canada’s Chapter 11 Case.

## PART I: GNC's Corporate History and Operations

### A. GNC's History and Business Overview.

16. In 1935, at the height of the Great Depression, David Shakarian audaciously opened a single health food store at 418 Wood Street in downtown Pittsburgh, Pennsylvania. He called the store, "Lackzoom."



17. Lackzoom specialized in the sale of health foods and yogurt—a product that was known abroad, but had not yet been fully introduced to the United States. Mr. Shakarian's first store was profitable enough to allow him to open a second location nearly six months later. While the 1936 St. Patrick's Day flood wiped out both Lackzoom



stores, Mr. Shakarian was undeterred. He reopened both Lackzoom locations and opened four more stores in the Pittsburgh area over the next five years.

18. In the 1960s, people began to embrace the concept of natural foods and better nutrition. As the popularity of natural foods and nutritional products increased in the 1960s, Mr. Shakarian met that growing demand by opening stores outside of Pennsylvania. It was during this growth period that Mr. Shakarian also changed the Lackzoom name to "General Nutrition Centers" or "GNC." As GNC grew, it began to produce its own vitamin and mineral supplements, as well as foods, beverages and cosmetics.

19. By the time that Mr. Shakarian passed away in 1984, GNC had more than 1,000 locations all around the United States. Today, the Company is a leading global brand of health, wellness and performance products with a worldwide network of over 7,000 locations operating under the GNC brand name and through the Company's e-commerce channels. The Company maintains an omni-channel business model deriving revenue from product sales through Company-owned retail stores, domestic and international franchise activities, e-commerce, and corporate partnerships, as described in further detail below. Corporate retail store operations are located in the United States, Canada, Puerto Rico and Ireland.



Franchise locations exist in the United States and in approximately 50 other countries. Additionally, the Company licenses the use of its trademarks and trade names.

20. The Company's focus on its customers has never wavered. GNC remains committed to connecting its customers to their best selves by offering a premium assortment of health, wellness, and performance products, including protein, performance supplements, weight management supplements, vitamins, herbs and greens, wellness supplements, health and beauty, food and drink, and other general merchandise, featuring both proprietary GNC and nationally-recognized third-party brands.

#### **B. GNC's Corporate Structure.**

21. GNC Holdings, Inc. ("*GNC Holdings*") is the ultimate parent company for the Debtors and their non-Debtor affiliates. A chart depicting the corporate organizational structure of the Company is attached hereto as **Exhibit A**.



22. A summary of the operations and purpose for each Debtor can be found in the following table:

<b><u>Debtor</u></b>	<b><u>Purpose</u></b>
GNC Holdings, Inc.	Ultimate, publicly traded, parent company.
GNC Parent LLC	Holding company for the remainder of the corporate structure.
GNC Corporation	Holding company for the remainder of the corporate structure.
General Nutrition Centers, Inc.	Main operating company, which employs the Company's headquarters employees.
General Nutrition Corporation	Operates all US retail and wholesale operations, employs store-level employees, and is the lessee on mainland US stores as well as certain stores located in Puerto Rico.
General Nutrition Investment Company	Owns all of the Company's intellectual property, other than intellectual property related to operations in China.
Lucky Oldco Corporation	Inactive entity with no operations, entities, or employees.
GNC Funding Inc.	Inactive entity with no operations, entities, or employees.
GNC International Holdings, Inc.	Holding company for entities organized in jurisdictions outside of the United States.
GNC China Holdco, LLC	Holding company for the HK JV (as defined below) and the Company's mainland China operations.
GNC Headquarters LLC	Partially owns Gustine Sixth Avenue Associates, Ltd. (The other owner is General Nutrition Centers, Inc.)
Gustine Sixth Avenue Associates, Ltd.	Owns the Company's corporate headquarters in Pittsburgh.
GNC Canada Holdings, Inc.	Holding company for the Company's Canadian operating entity.
General Nutrition Centres Company	Operates the Company-owned stores located in Canada.
GNC Government Services, LLC	Manages the Company's transportation needs.
GNC Puerto Rico Holdings, Inc.	Owns 70% of the Company's operating entity in Puerto Rico; GNC Puerto Rico, LLC; the other 30% of GNC Puerto Rico, LLC is held by non-Debtor affiliate GNC Live Well Ireland.

<b><u>Debtor</u></b>	<b><u>Purpose</u></b>
GNC Puerto Rico, LLC	Operates store locations in Puerto Rico and leases some of those store locations.

23. A summary of the operations and purpose for each non-Debtor affiliate can be found in the following table:

<b><u>Non - Debtor</u></b>	<b><u>Purpose</u></b>
Nutra Insurance Company	Inactive captive insurance company.
GNC Newco Parent, LLC	Holding company for the Company's interests in the Manufacturing JV.
Nutra Manufacturing, LLC	The Manufacturing JV.
GNC Supply Purchaser, LLC	Purchases goods from Manufacturing JV pursuant to a supply agreement.
GNC Colombia SAS	Inactive entity.
GNC Intermediate IP Holdings, LLC	Holding company for GNC Intellectual Property Holdings, LLC
GNC Intellectual Property Holdings, LLC	Owns intellectual property related to the Company's operations in China and Hong Kong.
GNC Korea Limited	Contracts for manufacturing in South Korea.
GNC Hong Kong Limited	The HK JV.
GNC (Shanghai) Trading Co., Ltd.	Subsidiary of HK JV that holds assets related to the China business that are to be transferred to GNC (Shanghai) Food Technology Limited upon consummation of the China JV transaction.
GNC China JV Holdco Limited	Holding company for the Company's interests in the contemplated China JV.
GNC (Shanghai) Food Technology Limited	Currently operates the Company's business in China.  Upon the consummation of the China JV transaction, GNC (Shanghai) Trading Co., Ltd. will transfer assets related to its China business to GNC (Shanghai) Food Technology Limited, which will operate as the

<u>Non - Debtor</u>	<u>Purpose</u>
	China JV and will be 35% owned by GNC China JV Holdco Limited and 65% owned by Harbin.
GNC Jersey One Limited	Holding company for Irish operating entities.
GNC Jersey Two Unlimited	Holding company for Irish operating entities.
GNC South Africa (Pty) Ltd.	Contracts for manufacturing in South Africa.
THSD	Operates store locations in Ireland.
GNC Live Well Ireland	Operates a distribution center in Ireland and manages Amazon sales in continental Europe.

24. As of the Petition Date, approximately 84 million shares of GNC Holdings’ Class A common stock were issued and outstanding. GNC Holdings’ shares are currently traded on the New York Stock Exchange under the symbol “GNC.”

25. As described in greater detail in Part III below, in a series of negotiated transactions culminating on February 13, 2019, Harbin Pharmaceutical Group Co., Ltd. (“*Harbin*”) acquired 299,950 shares of a newly created series of convertible perpetual preferred stock of GNC Holdings, designated as “Series A Convertible Preferred Stock”, for an aggregate purchase price of approximately \$300 million (the “*Equity Issuance*”). As a result of the Equity Issuance, Harbin owns an approximately 41% voting interest in GNC Holdings, with the public shareholders owning the remaining 59% voting interest.

**C. Overview of the Company’s Operations and Revenue.**

**1. GNC’s Products**

26. As discussed above, the Company is a global health and wellness brand providing premium assortment of health, wellness, and performance products, including protein, performance supplements, weight management supplements, vitamins, herbs and greens, wellness

supplements, health and beauty, food and drink, and other general merchandise. The Company develops high-quality, innovative nutritional supplement products that can be purchased only through the company-owned and franchise store locations, GNC.com, the Amazon.com marketplace and other marketplaces, and the Company's select wholesale partners. The Company's objective is to offer a broad and deep mix of products, including both proprietary GNC-branded products and other nationally recognized third-party brands. This depth of brands, exclusive products and range of merchandise, combined with the customer support and service offered by the Company, differentiates the Company from competitors and allows it to effectively compete against food, drug and mass channel players, specialty stores, independent vitamin, supplement and natural food shops and online retailers.

27. Sales of the Company's proprietary brands at its U.S. company-owned and franchise stores, GNC.com, and wholesale partners such as Rite Aid, PetSmart, and Sam's Club, represented 52% of total system-wide retail product sales in 2019. The Company also offers products through nationally recognized third-party brand names. Sales of third-party products at its U.S. company-owned and franchise stores, GNC.com, and wholesale partners represented approximately 48% of total system-wide retail product sales in 2019. Sales of proprietary products and third-party products together yielded total U.S. system-wide sales of approximately \$1.95 billion in 2019.

28. Products are delivered to retail stores and customers who make purchases via the Company's websites, via a third-party transportation network, through the Company's distribution centers located in Leetsdale, Pennsylvania, Whitestown, Indiana, and Phoenix, Arizona. Each of the Company's distribution centers has a quality control department that monitors products received from vendors to manage to quality standards. Internet purchases are fulfilled and shipped

directly from the distribution centers or stores to consumers using a third-party transportation service, or directly by Amazon for certain marketplace orders. In connection with the manufacturing joint venture agreement with IVC, which is described in further detail herein, the Company transitioned out of the Anderson, South Carolina distribution center in the first quarter of 2020.

## **2. *GNC's Three Main Business Segments***

29. The Company generates revenues from three main segments: (1) U.S. and Canada; (2) International; and (3) Manufacturing / Wholesale.

30. The U.S. and Canada Business Segment. The Company's U.S. and Canada segment generates revenues primarily from the sales of products to customers at Company-owned stores in the United States, Canada, and Puerto Rico, as well as through product sales to franchisees, royalties on franchise retail stores, franchise fees, and sales through GNC.com and the Company's Amazon marketplace, as well as other marketplaces.

31. As of May 31, 2020, the Debtors operated approximately 2,501 Company-owned stores in the United States (including Puerto Rico) and a further approximately 132 Company-owned stores in Canada. In the U.S., there are Company-owned stores across all fifty states and the District of Columbia. Most Company-owned stores in the U.S. are located on leased premises that range in size from 1,000 to 2,000 square feet and are located primarily in shopping malls and strip shopping centers.

32. As of May 31, 2020, there were over 917 domestic franchise stores operated by approximately 344 franchisees. The Company's domestic franchise stores are also typically between 1,000 and 2,000 square feet, and approximately 90% are located in strip shopping centers. Substantially all of the Company's domestic franchise stores are located on premises leased by the Company and then subleased to the respective franchisee. The Company's domestic franchise

renewal rate was approximately 87% between 2014 and 2019. The Company does not rely heavily on any single franchise operator in the United States, rather the largest franchisee owns and/or operates 75 store locations. The Franchises represent a significant portion of the Debtors' revenues and profitability and reach a huge number of the Debtors' customers. A healthy Franchisee is more likely to buy product from the Debtors, resulting in additional revenue. In contrast, the shutdown of a Franchise causes a loss of two major revenue streams for the Debtors—(i) a loss of revenue from the Franchisee's purchase of product from the Debtors, and (ii) a loss of royalty revenue from the Franchisee's sale of products.

33. The Debtors invest in the health of their franchises because the Debtors fail to perform their obligations under the Franchise Agreements in the ordinary course of business, including honoring any prepetition obligations thereunder, the Franchises and the Franchisees could be severely harmed, potentially leading to shut-down of stores and loss of corresponding revenues.

34. The International Segment. The Company's International segment generates revenue primarily from international franchisees through product sales, royalties, and franchise fees. As of May 31, 2020, there were approximately 1,886 international franchise locations operated by approximately 37 franchisees, operating in 50 countries outside the United States (including Puerto Rico) and Canada (including distribution centers where retail sales are made). The international franchise locations are typically smaller and, depending on the country and cultural preferences, are located in mall, strip shopping center, street or store-within-a-store locations. In addition, some international franchisees conduct internet sales and distribute to other retail outlets in their respective countries. The Company's international franchise locations offer a more limited product selection than franchise stores in the United States, primarily due to

regulatory constraints. Revenues from international franchisees accounted for approximately 82% of the Company's total international segment revenues for the year ended December 31, 2019.

35. The Company's international franchise program has enabled GNC to expand into international markets with limited investment. New international franchisees are required to pay an initial fee of approximately \$25,000 for a franchise license for each full-size store, \$12,500 for a franchise license for a store-within-a-store and continuing royalty fees. The Company enters into development agreements with international franchisees which grant the right to develop a specific number of stores, for either full-size stores or store-within-a-store locations, in a territory, typically an entire country. The Company also enters into distribution agreements with international franchisees which grant the right to distribute product through the store locations, wholesale distribution centers and, in some cases, limited internet distribution. The franchisee then enters into a franchise agreement for each location. The full-size store franchise agreement has an initial ten-year term with two five-year renewal options. The franchisee typically has the option to renew the agreement at 33% of the current initial franchise fee that is then being charged to new franchisees. Franchise agreements for international store-within-a-store locations have an initial term of five years, with two five-year renewal options. At the end of the initial term and each of the renewal periods, the franchisee has the option to renew the store-within-a-store agreement for up to a maximum of 50% of the franchise fee that is then in effect. The Company's international franchisees often receive exclusive franchising rights to the entire country, generally excluding United States military bases. The Company's international franchisees must meet minimum standards and responsibilities similar to the Company's United States franchisees.

36. The Manufacturing/Wholesale Business Segment. The Company's Manufacturing/Wholesale segment was comprised of manufacturing operations in South Carolina

prior to the formation of the manufacturing joint venture described in further detail below, and wholesale partner relationships. The manufacturing joint venture supplies the Company's U.S. and Canada segment, International segment and wholesale partner business with proprietary product and also manufactures products for other third parties. The Company's wholesale partner business includes the sale of products to wholesale customers, the largest of which include Rite Aid, Sam's Club, and PetSmart.

37. As described in further detail in Part III below, in March 2019, the Company entered into a strategic joint venture with IVC regarding the Company's manufacturing operations (the "*Manufacturing JV*" or "*Nutra*"). Under the terms of the agreement with IVC, the parties engaged in a series of transactions, the immediate result of which was IVC's acquisition of a 57.14% stake in Nutra for an aggregate purchase price of \$101 million, with GNC initially retaining a 42.86% indirect interest in Nutra. On February 28, 2020, the Company received an additional \$15.6 million from IVC in exchange for an additional 10.715% of GNC's equity interest in the Manufacturing JV. And, on May 13, 2020, non-Debtor GNC Newco Parent, LLC assigned to Debtor General Nutrition Corporation its right to receive payment for any subsequent acquisitions by IVC related to the Manufacturing JV. GNC currently indirectly owns approximately 32% of the equity interests of the Manufacturing JV, with IVC holding the remaining interests. The Company expects to receive an additional \$56.25 million from IVC, adjusted up or down based on the Manufacturing JV's future performance, over the next three years as IVC's ownership of the joint venture increases to 100%. The Company believes that the Manufacturing JV enables GNC's quality and research and development teams to continue to support product development and to increase its focus on product innovation, while IVC manages



manufacturing and integrates with GNC's supply chain, thereby driving more efficient usage of capital.

38. To increase brand awareness and promote customer access, the Company entered into a strategic alliance with Rite Aid in December 1998 to open GNC franchise "store-within-a-store" locations. As of May 31, 2020, the Company had 1,626 of these locations. Through this strategic alliance, the Company generates revenues from sales of its products to Rite Aid at wholesale prices, the manufacture of Rite Aid private label products, and license fees.

### **3. *GNC's Online Sales***

39. GNC.com and the Company's Amazon marketplace, as well as other marketplaces, represent a growing part of the Company's business. The Company may offer products on its GNC.com website that are not available at its retail locations, enabling the Company to broaden the assortment of products available to its customers. Internet purchases are fulfilled and shipped directly from the Company's distribution centers and stores to consumers using a third-party transportation service or directly by Amazon for certain marketplace orders.

### **4. *The Harbin JVs***

40. As described in further detail in Part III below, in February 2019, the Company completed the formation of a commercial joint venture in Hong Kong (the "**HK JV**") with respect to its e-commerce business in the People's Republic of China (the "**PRC**") with Harbin. The Hong Kong-based China e-commerce joint venture includes the operations of the Company's existing profitable, growing cross-border China e-commerce business. The Company anticipates completing the formation of a second, retail-focused joint venture located in China (the "**China JV**") with Harbin in the third quarter of 2020 following the completion of certain routine regulatory and legal requirements. The Company expects that the establishment of the HK JV and the China JV will accelerate its presence and maximize the Company's growth opportunities in the Chinese

supplement market. The Company currently owns a 35% interest in the HK JV and Harbin owns the remaining 65% interest. Upon completion of the China JV transaction, the Company will contribute its China business to the China JV and own a 35% interest in the China JV, with Harbin owning the remaining 65% interest.

#### **5. *GNC's 2019 Revenue***

41. Consolidated net revenue was \$2,068.2 million in 2019. This amount is comprised of approximately \$1,822.3 million net revenue for the U.S. and Canada segment, \$158.2 million net revenue for the International segment, and \$87.7 million net revenue for the Manufacturing/Wholesale segment (excluding intersegment revenue).

#### **D. *GNC's Employees.***

42. As of the Petition Date, the Company had approximately 11,000 employees, including approximately 4,000 full-time and approximately 7,000 part-time employees. None of the Company's employees belongs to a union or is a party to any collective bargaining or similar agreement.

### **PART II: GNC's Prepetition Capital Structure**

#### **A. *Overview of GNC's Funded Debt.***

43. As described in further detail below, the Debtors' funded debt consists of: (a) an asset-based revolving credit facility; (b) an asset-based first-in, last-out secured term loan facility; (c) a secured term loan facility; and (c) unsecured convertible notes. Here is a summary of the Debtors' prepetition funded debt is provided below:

<u>Instrument</u>	<u>Line Size / Original Amount</u>	<u>Approximate Amount Outstanding as of the Petition Date</u>	<u>Priority of Prepetition Security Interests</u>
ABL Revolving Credit Facility	Up to \$81 million <sup>5</sup>	\$60 million	<ul style="list-style-type: none"> <li>• First priority lien on ABL/FILO Priority Collateral (as defined below); senior in right of payment to the FILO Term Loan Facility</li> <li>• Second priority lien on Term Priority Collateral (as defined below)</li> </ul>
FILO Term Loan Facility	\$275 million	\$275 million	<ul style="list-style-type: none"> <li>• First priority lien on ABL/FILO Priority Collateral; subordinated in right of payment to the ABL Revolving Credit Facility</li> <li>• Second priority lien on Term Priority Collateral</li> </ul>
Term Loan Facility Tranche B-1	\$151.8 million	\$0	N/A
Term Loan Facility Tranche B-2	\$704.3 million <sup>6</sup>	\$410.8 million	<ul style="list-style-type: none"> <li>• First priority lien on Term Priority Collateral</li> <li>• Second priority lien on ABL/FILO Priority Collateral</li> </ul>
Notes	\$287.5 million	\$157.6 million – net of conversion feature and discounts	Unsecured
<b>Total:</b>		<b>\$903.4 million</b>	

<sup>5</sup> The original amount of the commitments under the ABL Revolving Credit Facility was \$100 million, commitments have been voluntarily reduced over time.

<sup>6</sup> After giving effect to certain mandatory prepayments occurring on the closing date thereof.

**B. The ABL Revolving Credit Facility and FILO Term Loan.**

44. Certain of the Debtors are party to the ABL Credit Agreement dated as of February 28, 2018 (as amended by the First Amendment, dated as of March 18, 2018, the Second Amendment, dated as of May 15, 2020, and the Third Amendment dated as of June 12, 2020, and as may be further amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “*ABL/FILO Credit Agreement*”) by and among the Debtors party thereto<sup>7</sup>, Barclays Bank plc, and Citizens Bank, N.A., as co-documentation agents, JPMorgan Chase Bank, N.A., as administrative agent and collateral agent, and the lenders from time to time party thereto (the “*Prepetition ABL/FILO Lenders*”). Pursuant to the ABL/FILO Credit Agreement, the Prepetition ABL/FILO Lenders have provided (a) an asset-based revolving credit facility (the “*ABL Revolving Credit Facility*”) of up to \$81 million, and (b) an asset-based secured term loan incurred on a “first-in, last-out” basis (the “*FILO Term Loan Facility*”) in an initial principal amount of \$275 million.<sup>8</sup>

45. The obligations arising under the ABL Revolving Credit Facility and FILO Term Loan Facility are secured by first priority security interests in, and liens upon, all of the following assets of the Debtor Obligors other than certain excluded assets (collectively, the “*ABL/FILO Priority Collateral*”): (a) accounts receivable (other than those arising as a result of the disposition of Term Priority Collateral (as defined below)), (b) inventory, (c) tax refunds (except tax refunds in respect of Term Priority Collateral), (d) cash, deposit accounts, securities accounts and investment property (other than (i) capital stock and (ii) any deposit account or securities account

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<sup>7</sup> The obligors under the ABL Credit Agreement are: GNC Corporation, General Nutrition Centers, Inc., General Nutrition Corporation, General Nutrition Investment Company, Lucky Oldco Corporation, GNC Funding, Inc., GNC Canada Holdings, Inc., General Nutrition Centres Company, GNC Government Services, LLC, and GNC International Holdings, Inc. (collectively, the “*Debtor Obligors*”)

<sup>8</sup> The loans under the FILO Term Loan Facility are referred to herein as the “*ABL FILO Term Loans*”

(or amount on deposit therein) established solely to hold identifiable proceeds of Term Priority Collateral), (e) all insurance proceeds (including business interruption insurance) (other than proceeds in respect of Term Priority Collateral), (f) all general intangibles, contract rights (including under franchise agreements and customer contracts), chattel paper, documents, documents of title, supporting obligations and books and records related to the foregoing, provided that to the extent any of the foregoing items in this clause (f) also relates to Term Priority Collateral, only that portion related to the items referred to in the preceding clauses (a) through (e) shall be included in the ABL/FILO Priority Collateral, (g) all commercial tort claims and letter of credit rights to the extent such commercial tort claims and letter of credit rights arise in connection with collateral that is ABL/FILO Priority Collateral pursuant to clauses (a) through (f) above, and (h) all products and proceeds of any and all of the foregoing (other than identifiable proceeds of Term Priority Collateral).

46. Additionally, the obligations arising under the ABL Revolving Credit Facility and FILO Term Loan Facility are secured by second priority security interests in, and liens upon all of the following assets of the Debtor Obligors other than certain excluded assets (collectively, the “*Term Priority Collateral*”): (a) all capital stock issued by Debtor General Nutrition Centers, Inc. and certain capital stock issued by certain of its Restricted Subsidiaries (as defined in the Term Loan Credit Agreement (as defined below)), (b) all intellectual property, (c) substantially all other assets to the extent not constituting ABL/FILO Priority Collateral, including, without limitation, contracts (other than those relating to ABL/FILO Priority Collateral), equipment, other general intangibles (other than those relating to ABL/FILO Priority Collateral) and intercompany notes, (d) all products and proceeds of any and all of the foregoing (other than identifiable proceeds of ABL/FILO Priority Collateral).

47. On May 15, 2020, the ABL/FILO Credit Agreement was amended to allow the Debtor Obligors to avoid a springing maturity provision that would have resulted in the accelerated maturity of the ABL Revolving Credit Facility and the FILO Term Loan Facility on May 16, 2020; the amendment changed such springing maturity date to August 10, 2020, as described below. The ABL Revolving Credit Facility matures on the earlier of (a) August 28, 2022 or (b) August 10, 2020 (or, if later, the date that is 91 days prior to the maturity date of any debt that refinances the Notes (as defined below)) (the “**Revolver Springing Maturity Date**”) if, as of such date, the outstanding principal balance under the Notes is greater than \$50 million (the “**Springing Maturity Trigger**”). The FILO Term Loan Facility matures on the earlier of (y) December 31, 2022 or (z) August 10, 2020 (or, if later, the date that is 91 days prior to the maturity date of any debt that refinances the Notes) (the “**FILO Term Loan Springing Maturity Date**”), if, as of such date, the Springing Maturity Trigger has occurred. Notwithstanding the foregoing, each of the Revolver Springing Maturity Date and the FILO Term Loan Springing Maturity Date (and the testing of the Springing Maturity Trigger) would have accelerated from August 10, 2020 to June 15, 2020 (the “**Accelerated Springing Maturity Date**”) if (a) liquidity of the Debtor Obligors and certain of their subsidiaries was less than \$100 million on the Accelerated Springing Maturity Date or on any date thereafter and (b) the holders of more than 25% of any of (i) the loans and commitments under the ABL Revolving Credit Facility, (ii) the loans under the FILO Term Loan Facility or (iii) the loans under the Term Loan Facility (as defined below) elect to so accelerate (and if any such acceleration occurred, each of the Revolver Springing Maturity Date, the FILO Term Loan Springing Maturity Date and the Term Loan Springing Maturity Date (as defined below) would have accelerated to the Accelerated Springing Maturity Date) (the foregoing clauses (a) and (b) are referred to herein collectively as the “**Liquidity Trigger**”).

48. On June 12, 2020, the ABL/FILO Credit Agreement was further amended to change the Accelerated Springing Maturity Date to June 30, 2020.

49. As of the Petition Date, there was approximately \$60 million in principal and \$5.1 million in face amount of letters of credit outstanding under the ABL Revolving Credit Facility and \$275 million in principal outstanding under the FILO Term Loan Facility. As discussed below, subject to Court approval, the Debtors intend to repay the outstanding loans and terminate the commitments under, the ABL Revolving Credit Facility simultaneously with entering into the DIP ABL FILO Facility.

**C. The Term Loan Facility.**

50. Debtor General Nutrition Centers, Inc., as borrower, and Debtor GNC Corporation, as parent guarantor are party to the amended and restated term loan credit agreement (as amended by the First Amendment, dated as of May 15, 2020, and the Second Amendment, dated as of June 12, 2020, and as may be further amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “*Term Loan Credit Agreement*”) by and among, General Nutrition Centers, Inc., as borrower, and GNC Corporation, as parent guarantor, Barclays Bank plc, and Citizens Bank, N.A., as co-documentation agents, GLAS Trust Company LLC as collateral agent, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders from time to time party thereto (the “*Prepetition Tranche B-2 Term Loan Lenders*”). Pursuant to the Term Loan Credit Agreement, the Prepetition Tranche B-2 Term Loan Lenders have provided a secured term loan facility in the initial principal amount of approximately \$856.1 million (the “*Term Loan Facility*”).<sup>9</sup> The Term Loan Credit Agreement represents an amendment and restatement of the

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<sup>9</sup> On the initial closing date of the Term Loan Facility, the Term Loan Facility consisted of a Tranche B-1 in the initial principal amount of \$151.8 million and a Tranche B-2 in the initial principal amount of \$704.3 million. Tranche B-1 was fully repaid on March 4, 2019.

Debtors' previous credit agreement, dated as of November 26, 2013 (the "**Old Credit Agreement**") and was entered into at the same time as the ABL/FILO Credit Agreement as part of a restructuring of the Company's capital structure in connection with the Harbin Transaction described in greater detail herein.

51. The obligations arising under the Term Loan Facility are secured by (a) first priority security interests in, and liens upon, the Term Priority Collateral and (b) second priority security interests in, and liens upon the ABL/FILO Priority Collateral. On May 15, 2020, the Term Loan Credit Agreement was amended to allow the Debtor Obligors to avoid a springing maturity provision that would have resulted in the accelerated maturity of the Term Loan Facility on May 16, 2020; the amendment changed such springing maturity date to August 10, 2020, as described below. The Term Loan Facility matures on the earlier of (y) March 4, 2021 or (z) August 10, 2020 (or, if later, the date that is 91 days prior to the maturity date of any debt that refinances the Notes) (the "**Term Loan Springing Maturity Date**"; the Term Loan Springing Maturity Date, together with the Revolver Springing Maturity Date and the FILO Term Loan Springing Maturity Date are referred to herein collectively as the "**Springing Maturity Dates**") if, as of such date, the Springing Maturity Trigger has occurred. Notwithstanding the foregoing, the Term Loan Springing Maturity Date (and the testing of the Springing Maturity Trigger) would have accelerated from August 10, 2020 to the Accelerated Springing Maturity Date if the Liquidity Trigger has occurred. On June 12, 2020, the Term Loan Credit Agreement was amended to change the Accelerated Springing Maturity Date to June 30, 2020.

52. As of the Petition Date, there was approximately \$410.8 million in principal (the "**Tranche B-2 Term Loans**") outstanding under the Term Loan Facility.



**D. Convertible Senior Notes.**

53. On August 10, 2015, GNC Holdings issued \$287.5 million principal amount of 1.5% convertible senior notes due 2020 (the “*Notes*”) in a private offering. The Notes are governed by the terms of an Indenture between GNC Holdings, as issuer, the subsidiary guarantors party thereto, and BNY Mellon Trust Company, N.A., as the Trustee (the “*Indenture*”). The Notes will mature on August 15, 2020, unless earlier purchased by GNC Holdings or converted by the holders. In connection with the issuance of the Notes, the Company paid down \$164.3 million of its then outstanding term loan facility.

54. The Notes are unsecured obligations and do not contain any financial covenants or restrictions on the payments of dividends, the incurrence of indebtedness, or the issuance or repurchase of securities by GNC Holdings or any of its subsidiaries. The Notes are fully and unconditionally guaranteed on an unsecured basis by certain subsidiaries of GNC Holdings (the “*Note Guarantors*”) and rank equal in right of payment with respect to the Note Guarantors’ other obligations.

55. On December 20, 2017, GNC Holdings executed exchange agreements with certain holders of the Notes to exchange, in privately negotiated transactions, \$98,935,000 aggregate principal amount of the Notes for an aggregate of 14,626,473 newly issued shares of GNC Holding’s Class A common stock, \$0.001 par value per share, together with approximately \$500,000 in cash, representing accrued and unpaid interest on the Notes being exchanged.

**E. Trade Debt.**

56. In the ordinary course of their businesses, the Debtors incur trade debt with numerous vendors in connection with their operations. The Debtors believe that, as of the Petition Date, their unsecured trade debt is approximately \$111 million in the aggregate on account of prepetition goods and services provided to the Debtors.

### **PART III: Events Leading to the Chapter 11 Filing**

57. The Debtors have filed these Chapter 11 Cases to effect both (1) a restructuring of their funded debt obligations and (2) operational changes necessary to ensure their continued viability as a going concern.

#### **A. Prepetition Strategic Transactions and Initiatives to Reduce the Company's Debt Obligations.**

58. Over the past several years, retail companies have faced a challenging commercial environment brought on by increased competition and a shift away from shopping at brick-and-mortar stores. While GNC is no exception, it has taken various steps to significantly reduce its funded debt obligations and position its business for long-term success going forward.

59. In late 2017 and early 2018, the Company explored a variety of strategic and financing alternatives before entering into the Harbin Transaction, described in detail below, which allowed the Company to significantly reduce its funded debt obligations. Likewise, the Company has been able to further reduce its outstanding debt obligations and optimize its operations as a result of the IVC Transaction, also described in more detail below.

60. In addition, the Company has increased its efforts to move its business toward a model based more on internet sales, expanding its ecommerce operations and offering online customers new options, including the ability for customers to pick up internet orders at stores or ship such orders directly from such stores directly to customers for faster delivery. To that end, the Company also began to review its real estate portfolio and make necessary adjustments, as described in more detail below.

61. As a result of the Harbin Transaction and the IVC Transaction, together with other cost-saving efforts, the Company was able to reduce its overall funded debt from \$1.59 billion as of December 31, 2016 to \$888 million as of March 31, 2019.

**1. The Harbin Transaction and the 2018 Balance Sheet Restructuring.**

62. On February 13, 2018, GNC Holdings entered into a securities purchase agreement (the “*Securities Purchase Agreement*”) with Harbin Pharmaceutical Group Holdings Co., Ltd. (“*Harbin Holdco*”) pursuant to which GNC Holdings agreed to issue and sell to Harbin Holdco, and Harbin Holdco agreed to purchase from GNC Holdings, 299,950 shares of a newly created series of convertible perpetual preferred stock of GNC Holdings, designated as “Series A Convertible Preferred Stock” (the “*Convertible Preferred Stock*”), for a purchase price of \$1,000 per share, or an aggregate of approximately \$300 million (the “*Equity Issuance*”). The Convertible Preferred Stock is convertible into shares of the common stock of the Company (the “*Common Stock*”) at an initial conversion price of \$5.35 per share, subject to customary anti-dilution adjustments. Prior to the closing of the Equity Issuance, Harbin Holdco assigned its rights and obligations under the Securities Purchase Agreement to its subsidiary Harbin.

63. The Securities Purchase Agreement also obligated the Company and Harbin to, among other things, (a) enter into a stockholders agreement governing the rights and obligations of Harbin as a major stockholder of the Company upon completion of the Equity Issuance, and (b) use their respective reasonable best efforts to negotiate in good faith definitive documentation with respect to a commercial joint venture in China, which joint venture, among other things, would be granted an exclusive right to use the Company’s trademarks and manufacture and distribute the Company’s products in mainland China.

64. The Company used the funds received from Harbin pursuant to the Securities Purchase Agreement, to facilitate a restructuring of the Company’s funded debt obligations. As part of this restructuring, the Company and certain lenders under the Old Credit Agreement (\$225 million of which was scheduled to mature in September 2018 and an additional \$1.1 billion of which was scheduled to mature in March 2019) agreed to: (a) the termination and repayment by

the Company of the revolving credit loans then outstanding under the Old Credit Agreement; (b) entry into of the ABL/FILO Credit Agreement; and (c) repayment by the Company of a portion of the term loans then outstanding under the Old Credit Agreement and exchange of certain other term loans then outstanding under the Old Credit Agreement into term loans under the Term Loan Facility and the FILO Term Loan Facility.

65. In November 2018, the Company and Harbin agreed to amend the structure of their contemplated joint venture. The amended structure contemplated two joint ventures: a Hong Kong-based joint venture for the Company's e-commerce business in China (the "**HK JV**") and a China-based joint venture for the Company's retail operations in China (the "**China JV**"), as described in Part I above. On November 7, 2018, the Company, Harbin, GNC Hong Kong Limited ("**GNC HK**"), GNC (Shanghai) Trading Co., Ltd. ("**GNC Shanghai**"), GNC China Holdco, LLC ("**GNC China**"), and Harbin Pharmaceutical Hong Kong II Limited ("**Harbin HK**") all entered into a Master Reorganization and Subscription Agreement (the "**JV Framework Agreement**"), pursuant to which, among other things, (i) Harbin HK would acquire a 65% interest in GNC HK, and GNC HK would become the HK JV with GNC China retaining a 35% interest in the HK JV; (ii) GNC Shanghai would transfer its China assets and liabilities to a newly formed entity in China (which would become the China JV); (iii) Harbin would acquire a 65% interest in the China JV, with the Company retaining the remaining 35% interest in the China JV; and (iv) Harbin would invest \$20.0 million in the China JV.

66. At the same time as their entry into the JV Framework Agreement in November 2018, the Company and Harbin agreed to amend the Securities Purchase Agreement to split the Equity Issuance into three tranches. The three tranches were funded as follows: (a) on November 8, 2018, Harbin purchased 100,000 shares of the Convertible Preferred Stock for a total purchase

price of \$100,000,000; (b) on January 2, 2019, Harbin purchased an additional 50,000 shares of the Convertible Preferred Stock for a total purchase price of \$50,000,000; and (c) on February 13, 2019, Harbin purchased an additional 149,950 shares of the Convertible Preferred Stock for a total purchase price of \$149,950,000. Following the completion of the Equity Issuance, Harbin owned approximately 41% of the outstanding voting securities of the Company and had the right to designate up to five (5) individuals to serve on the board of directors of GNC Holdings (the “*Board*”).

67. On February 13, 2019, the Company, Harbin and the other parties to the JV Framework Agreement agreed to amend the JV Framework Agreement in order to close the HK JV concurrently therewith and to close the China JV on a deferred basis upon receipt of requisite Chinese regulatory and legal approvals. The Company currently anticipates that the China JV will close in the third quarter of 2020.

**STRATEGIC PARTNERSHIP**

**STRATEGIC PARTNERSHIP: HARBIN**

**On 2/13/18, GNC and Harbin announced that they reached an agreement regarding a strategic partnership**

- Harbin invested \$300 million in GNC in the form of convertible preferred shares
- Final tranche of investment was received in Q1 2019

**JOINT VENTURE BENEFITS**

Harbin will provide JV with access to its leading pharmaceutical distribution network in China as well as expertise in operations and manufacturing, which will serve as critical resources as we expand our reach in China.

 <p>Entry to \$25 billion supplement market</p>	 <p>Leverage Harbin's "Blue Hat" registrations and regulatory expertise</p>	 <p>Robust distribution network with nationwide retail pharmacy coverage</p>	 <p>Best-in-class manufacturing capabilities via Harbin's 6 cGMP facilities</p>
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68. At the time the Company entered into its strategic relationship with Harbin, the Company believed that a partnership with Harbin would allow it to further expand its business in

China, and that Harbin’s expertise in distribution and regulation in China would be the ideal match for the Company’s highly valued brand and assortment of products in the China market. Further, in light of the upcoming maturity at such time of over \$1.3 billion of indebtedness by March 2019, the Company believed that the Harbin transactions and the 2018 restructuring of its funded debt obligations represented important and necessary steps in the Company’s efforts to optimize its capital structure and position the Company to drive growth, improve financial performance, increase financial flexibility and enhance long-term shareholder value.

## 2. *The IVC Transaction*

69. On March 1, 2019, the Company entered into a Master Transaction Agreement (the “*Master Agreement*”) by and among GNC Holdings, Debtor General Nutrition Corporation (“*General Nutrition Corp.*”), non-Debtor GNC Newco Parent, LLC (“*Seller*”, and together with GNC Holdings and General Nutrition Corp., the “*GNC Parties*”), non-Debtor Nutra, which operates the Company’s manufacturing business, IVL, LLC (“*Buyer*”), IVL Holding, LLC and IVC (together with Buyer and IVL Holding, LLC, the “*IVC Parties*”), pursuant to which the parties agreed to a series of transactions, the immediate result of which was Buyer’s acquisition of a 57.14% stake in Nutra for an aggregate purchase price of \$101 million (the “*Initial Sale*”), with the Seller initially retaining a 42.86% interest in Nutra (the “*Remaining Interest*”). The Master Agreement also requires the sale of the Remaining Interest to IVC, in equal installments on or around each of the four anniversaries following the date of the Initial Sale, for an aggregate purchase price of \$75 million (subject to adjustment as described further in the Master Agreement) (the “*Subsequent Acquisitions*”). Until all of the Remaining Interests have been sold to IVC, Nutra will be operated in accordance with Amended and Restated Limited Liability Company Agreement of Nutra, entered into on March 1, 2019 (the “*LLC Agreement*”). On February 28, 2020, the first Subsequent Acquisition closed, with the Buyer acquiring an additional 10.715%

interest in Nutra in exchange for payment of \$15.6 million to the Seller. On May 13, 2020, Seller assigned to Debtor General Nutrition Corporation its right to receive payment for any Subsequent Acquisition under the Master Agreement. Seller currently holds a 32.14% interest in Nutra, with IVC holding the remainder of the interests in Nutra.

70. In connection with the Master Agreement, the Seller entered into the LLC Agreement, and its wholly owned subsidiary, non-Debtor GNC Supply Purchaser, LLC entered into a Product Supply Agreement with Nutra (the “*Supply Agreement*”), and certain other ancillary agreements. The Company used the proceeds of the Initial Sale, and intended to use the proceeds of the Subsequent Acquisitions, to repay its funded debt obligations.

71. At the time the Company entered into the Master Agreement with IVC, the Company believed that a strategic partnership with IVC would give the Company access to IVC’s industry-leading experience and expertise, greatly increase the Company’s manufacturing capacity and allow the Company to leverage the collective buying power of two organizations. Under the terms of the agreements with IVC, the Company would continue to be responsible for product development and innovation, while IVC manages manufacturing and integrates into GNC’s supply chain.

STRATEGIC PARTNERSHIP: IVC/NUTRA  
**TRANSACTION OVERVIEW**

**STRATEGIC BENEFITS**

GNC will leverage International Vitamin Corporation's (IVC's) robust processes, stable supply of low cost raw materials and buying power generate meaningful efficiencies

IVC's global manufacturing expertise will deliver unmatched quality and speed to market at the most competitive costs

Long-term contract manufacturing agreement ensures no disruption to flow of product to GNC

GNC will continue to control product development with in-house R&D and QA teams

THE SALE OF NUTRA GENERATED UPFRONT PROCEEDS OF \$101M—SUBSEQUENT PAYMENTS OF \$75M OVER FOUR YEARS, SUBJECT TO PERFORMANCE BENCHMARKS

AVOIDED ~\$30M OF CAPEX

IVC OWNS 57% OF THE JOINT VENTURE, WITH GNC OWNING THE REMAINING 43%

ESTIMATED YEAR 1 NET EBITDA IMPACT ADJUSTED FOR EQUITY INCOME: (\$12) MILLION



Allows GNC to focus on core strengths



Maintains highest quality of manufacturing



Meaningful efficiencies and cost savings



No disruption to business or products



72. The Company believed that this arrangement would give GNC room for future growth and support its global expansion plans without the need for significant future capital investment. In addition to the strategic and operational benefits of the partnership with IVC, the Company believed that the proceeds received from IVC pursuant to the Master Agreement would continue to improve and optimize the Company's capital structure, while increasing the Company's financial flexibility and performance.

**B. Efforts in 2019 and 2020 to Refinance the Company's Debt.**

73. Prior to recent amendments entered into with respect thereto and described above, the ABL/FILO Credit Agreement and the Term Loan Credit Agreement contained springing maturity provisions which provided that, if the remaining principal amount outstanding under the Debtors' Notes was greater than \$50 million on May 16, 2020, all of the Debtors' outstanding obligations under the ABL/FILO Credit Agreement and the Term Loan Credit Agreement would



have come due immediately on such date (the “*Original Springing Maturity Date*”). Facing the Original Springing Maturity Date, and mindful of near-term liquidity strains, which limited the availability of funds necessary to pay down the Notes and avoid triggering such Original Springing Maturity Date, in 2019, the Company engaged UBS Securities LLC (“*UBS*”) and Evercore Group, L.L.C. (“*Evercore*”) as its financial advisors to explore, together with Latham & Watkins LLP (“*Latham*”), the Company’s legal advisor, a comprehensive refinancing of its balance sheet with potential investors in the United States (the “*U.S. Refinancing Process*”). As part of the U.S. Refinancing Process, the Company conducted a non-deal roadshow in July-August 2019 during which it met with approximately 50 potential investors (including both new investors and existing lenders). Despite some initial interest, discussions with U.S.-based lenders regarding a comprehensive refinancing of the Company’s indebtedness were unsuccessful, mainly due to the Company’s high leverage and the high cost of capital offered by lenders. While the Company continued to engage in discussions with potential investors in the U.S. regarding a bifurcated senior and junior tranche debt structure, the Company has not received any actionable proposals to date from the U.S. Refinancing Process.

74. Concurrently with the U.S. Refinancing Process, the Company, with the assistance of Harbin, also began parallel discussions with certain Asia-based lenders regarding a comprehensive refinancing of its balance sheet (the “*Asia Bank Financing*”). Following a series of discussions between the Company, Harbin and certain Asia-based lenders, the Company learned that certain Asia-based lenders were potentially willing to provide the Company with a comprehensive refinancing solution at a significantly lower cost of capital than what was available to the Company from U.S.-based lenders, provided that the lenders received a direct or indirect guarantee or other credit support from Harbin in connection with such financing. The Company

also learned that, in exchange for Harbin's provision of credit support to the lenders, Harbin would seek consideration from the Company, the form of which could include, among other things, guarantee fees, the issuance of additional equity interests in the Company, the ability to designate additional directors to the board and/or the negotiation of additional or revised governance rights with respect to the Company.

75. On October 4, 2019, the Board held a telephonic meeting (the "**October 4<sup>th</sup> Meeting**"), during which management and the Company's financial and legal advisors updated the Board on the U.S. Refinancing Process and the Asia Bank Financing, including Harbin's potential participation in the Asia Bank Financing. Given Harbin's existing significant ownership interest in the Company and the presence of Harbin-designated individuals on the Board, the Board concluded, consistent with its fiduciary duties, that it would be in the best interest of the Company and its shareholders that the Board establish a special committee, to be comprised of independent and disinterested directors to conduct and oversee the Company's refinancing processes in a manner that is independent and disinterested with respect to any potential Harbin-related conflicts of interest. The members of the Board present at the October 4<sup>th</sup> Meeting voted unanimously in favor of establishing the Special Committee.

76. On October 4, 2019, following its establishment by the Board, the Special Committee held its initial meeting and decided to engage Young Conaway Stargatt & Taylor, LLP ("**Young Conaway**") as its independent legal counsel and Evercore as its financial advisor to advise it in reviewing and investigating potential refinancing options. At the direction of the Special Committee, the Company's management and its financial and legal advisors continued their discussions with potential investors to consummate a comprehensive refinancing of the Company's indebtedness. Since its establishment, the Special Committee has continued to meet

on a regular basis to receive updates from, and provide guidance to, the Company's management and its financial and legal advisors with respect to a potential refinancing of the Company's indebtedness.

77. From October 2019 through April 2020, the Special Committee and its advisors engaged in a series of negotiations with the Asia-based lenders to consummate a comprehensive refinancing of the Company's existing indebtedness. At the same time, the Special Committee and its advisors were also concurrently negotiating the terms under which Harbin would be willing to provide credit support in connection with the Asia Bank Financing. During this period, the Special Committee and its advisors exchanged several term sheets, and eventually proceeded to commence the drafting certain key transaction documents, with both the Asia-based lenders to consummate the Asia Bank Financing and with Harbin in connection with its provision of credit support for the Asia Bank Financing. Unfortunately, the COVID-19 pandemic hit before any deal could be consummated.

**C. Real Estate Portfolio Review.**

78. Beginning in 2018, the Company also began to review its real estate and lease portfolio as part of its overall effort to streamline operations, reduce costs and transition its business toward ecommerce, as discussed above. As part of this effort, the Company worked with ASG Real Estate Inc. to identify and close unprofitable store locations and determined that 700-900 stores would be closed over a three year period. Prior to the outbreak of the COVID-19 pandemic the Company had shuttered approximately 206 stores in 2018, 314 stores in 2019, and 76 stores through the first three months of 2020 and negotiated lease accommodations for more than 1,500 stores over the same period of time.

79. As a result of the COVID-19 pandemic, the Company again reviewed its real estate and lease portfolio during April and May 2020 to evaluate opportunities to accelerate the store

portfolio optimization strategy. As part of this effort, the Company worked to permanently close 248 unprofitable stores in advance of the Petition Date so that the Company is positioned to seek the rejection of the leases related to such stores effective as of the Petition Date, as described in more detail in the Omnibus Rejection Motions (as defined below). Accordingly, on June 18, 2020, the Company prepared letters to each landlord counterparty to the lease for each such store, to be delivered on or prior to the Petition Date, notifying such landlords that the Company had unequivocally surrendered such store to the landlord and identifying the location of the keys to such location.

80. Despite these efforts, given continuously declining profitability and operational challenges, and despite the best efforts of the Company and their advisors to secure the capital necessary to preserve the business as a going concern, the Company is unable to meet its financial obligations and the Company must continue to analyze its real estate and lease holdings during the Chapter 11 Cases to identify additional possible savings and efficiencies.

81. To that end, the Debtors retained A&G Realty Partners, LLC (“**A&G**”) to negotiate lease concessions with the landlords of U.S. company-owned stores, and MPA Inc. (“**MPA**”) to negotiate lease concessions with Canadian landlords. A&G and MPA will seek, among other things, rent concessions for the months of April, May, and June 2020, early termination rights, waiver of certain other financial obligations under the leases, and other accommodations from landlords. A&G and MPA will also help refine the Debtors’ go-forward lease and real property disposition strategy in the U.S. and Canada to be implemented in the Chapter 11 Cases, with the aim of maximizing the value of the Debtors’ leases and real property portfolio. Among other things, A&G and MPA will evaluate which leases can be retained in light of such accommodations and which leases should ultimately be rejected, with the ultimate goal of improving the financial

performance of the Debtors' remaining store base. The lease negotiations will be ongoing and the Debtors' ability to negotiate more favorable lease terms and rent reductions will drive the determination of whether or not to close additional stores. Where the Debtors are unable to obtain sufficient relief in the lease negotiations concerning stores that are on the cusp of failing to meet certain performance standards, such stores may be closed (either simultaneously or on a rolling basis, depending on the relative timing the various lease negotiations conclude).

82. Accordingly, the Debtors have also retained Tiger Capital Group, LLC and Great American Group, LLC (collectively, the "*U.S. Consultant*") and Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (collectively, the "*Canadian Consultant*" and, together with the U.S. Consultant, "*Tiger*") to help the Debtors wind down approximately 726 store locations throughout the U.S. and Canada, respectively, through a going-out-of-business sales process. As noted above, the number of stores to be closed may be increased based on the outcome of the lease negotiations described above. The Debtors have worked in concert with their secured lenders to facilitate an expedited sale and orderly wind-down process for these stores that will maximize value and recoveries for stakeholders in the Chapter 11 Cases. Tiger will manage the store closings, sell the store inventory and owned furniture, furnishings, trade fixtures, machinery, equipment, office supplies, supplies and other tangible personal property located at these stores, and otherwise prepare the stores for turnover to the applicable landlords in advance of the Debtors seeking to reject the leases at such stores.

83. With respect to the Debtors' franchised stores, the Debtors intend to continue negotiations with franchisees regarding their leases. Currently, the Debtors' franchise stores are located on premises leased by the Debtors, and then subleased to the franchisees. Going forward,

the Debtors' strategy is to remove the Debtors from these leases so that the franchisees can take over the leases directly with the landlords.

**D. The COVID-19 Pandemic.**

84. In response to COVID-19, national, state, and local governments in the United States and throughout the world imposed quarantines, social distancing protocols, and shelter-in-place orders. Although GNC's business was deemed essential in many locations, many municipalities disagreed with this classification, resulting in significant forced closures. This, coupled with a significant decline in brick and mortar foot traffic as a result of shelter-in-place orders and a shift in consumer demand, cut off a significant source of the Company's revenue. As described further below, GNC was forced to temporarily close thousands of locations, of which less than 500 remain closed today.

***1. The Company's Continued Refinancing Efforts***

85. Despite the pandemic, the Debtors and their advisors continued to explore options for amending or entering into long term maturity extensions under the ABL/FILO Credit Agreement and the Term Loan Credit Agreement, but negotiations with the lenders under those agreements did not result in an out-of-court restructuring. As described above, the Debtors were able to enter into the amendments to the ABL/FILO Credit Agreement and the Term Loan Credit Agreement to extend the springing maturities under those agreements in the short term, which provided needed time to negotiate a consensual in-court restructuring and prepare the Debtors to file these Chapter 11 Cases.

86. The Debtors and their advisors also engaged in discussions with certain holders of Notes regarding an exchange transaction designed to avoid triggering the springing maturities in the ABL/FILO Credit Agreement and the Term Loan Credit Agreement. Ultimately, the Debtors determined that none of these proposals were actionable because they did not address the Debtors'

larger liquidity issues nor their overleveraged capital structure. The Debtors and their advisors continue to engage with the advisors to certain holders of the Notes.

## ***2. Store Closures and Revenue Impact***

87. Since the World Health Organization declared a pandemic in March 2020, GNC has been forced to temporarily close many of its retail locations, including approximately 1,200 domestic retail locations, 118 domestic franchise locations, 477 international franchise locations, and 106 Canadian locations. Indeed, more than 40% of the Debtors' stores were forced to close for a period of seven (7) or more weeks due to state and local mandates or significant declines in customer traffic. While some states and cities have relaxed those mandates, the Company, like other retailers, nonetheless faces the practical and logistical challenges of opening its stores to the public while taking appropriate precautions to protect the health of both its customers and its employees. The pandemic has undermined GNC's efforts to transform and improve customers' in-store experience.

88. As of today, approximately 420 domestic retail locations, 40 franchise locations, and 40 Canadian locations still remained closed. Those locations that have opened are almost universally experiencing a significant drop in revenue while customers are hesitant to venture out to retail locations, even if government mandates have slowly been relaxed. In addition, 22 locations were damaged in the recent civil unrest, and 17 locations were proactively boarded up and closed.

89. The COVID-19 pandemic has caused a sizeable drop in revenue. Due in large part to the pandemic, the Debtors' year-over-year revenues were down approximately 20.6%, 42.3%, and 39.1% in March, April, and May, respectively. This decline was the result of a decline in sales at US brick and mortar locations of 50-60% during April and May, partially offset by a significant increase in on-line demand of 80% to over 100% during April and May. As the Debtors' e-

commerce business has only been 8% of the overall US business, the surge in e-commerce demand has not been enough to offset the US brick and mortar declines. The Debtors' International business has also been disrupted with more than 25% of all locations closed during April and May. While June results are improving, based on the performance of the locations that have reopened, the Debtors do not anticipate that the reopening of additional stores will generate near-term revenue that comes close to the Company's pre-pandemic in-store revenue. Indeed, while the Company is hopeful that the pandemic will subside soon, it is simply unclear what course this pandemic will take and whether customers will feel more comfortable venturing outside their homes to shop for health and nutrition products.

### **3. *Landlords***

90. On or about April 9, 2020, the Debtors asked their landlords to defer rent payments for April, May, June, and July, due to challenges arising from the COVID-19 pandemic. Ultimately, landlords for about 1,000 out of the Debtors' 3,600 locations agreed to accept delayed payments for April and May rent. With limited exceptions, the Debtors have not paid rent for domestic retail and franchise locations in April, May, or June.

### **4. *Trade Creditors***

91. The lack of sales has affected the Company's ability to expeditiously pay its trade creditors. In response, some trade creditors have demanded more restrictive trade terms from the Company. Some of the more restrictive trade terms, such as the requirement that the Company pay cash on delivery of products from its vendors, have further strained the Company's liquidity position. While some of these adverse effects were initially counterbalanced with increased online sales, the cumulative effect of these circumstances has been a severe decline in the Company's liquidity, and shared concessions by nearly all of the Company's economic constituencies,



including the management of trade vendor payments. As a result, certain vendor payments have been delayed in excess of 30 days past historical terms and in some cases even longer.

## **5. Employees**

92. Due to the unprecedented and unforeseen disruption to the Debtors' business caused by COVID-19, the Debtors made the incredibly difficult decision to eliminate planned merit increases and institute both partial and full furloughs that affected over 4,000 of the Debtors' employees. As of the Petition Date approximately 2,100 employees remain furloughed, which represents approximately 20 percent of the Company's workforce. During the duration of the furlough, the furloughed employees will remain on unpaid leave unless otherwise scheduled to work, but will remain eligible to participate in any health benefits programs in which such employees are currently enrolled.

## **PART IV: The Proposed DIP Financing and the RSA**

### **A. The Debtors' Need to Borrow under the DIP Facilities and Use Cash Collateral During the Interim Period.**

93. Pursuant to the *Motion of Debtors for Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Grant Liens and Superiority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties, and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Schedule a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (III) Granting Related Relief* (the "**DIP Motion**"), the Debtors seek approval of up to \$475 million in postpetition financing. The proposed financing (collectively, the "**DIP Facilities**"), among other things, provides for (i) \$100 million in "new money" loans provided by a group of prepetition Tranche B-2 Term Loan Lenders (the "**New Money DIP Term Loans**"), (ii) a "roll-up" on a dollar-for-dollar basis of \$100 million of prepetition Tranche B-2 Term Loans (the "**Term Roll-Up**," and together with the New Money DIP

Term Loans, the “*DIP Term Facility*”), and (iii) in exchange for the release of certain restricted cash after giving effect to amendments to the prepetition ABL/FILO Credit Agreement, (A) a “roll-up” on a dollar-for-dollar basis of \$275 million in principal, and all accrued and outstanding interest thereon, of prepetition ABL FILO Term Loans (the “*ABL FILO Roll-Up*”), and (B) the cash collateralization of approximately \$5.1 million in Letters of Credit issued under the prepetition ABL/FILO Credit Agreement. The DIP Facilities provide the Debtors with the necessary cash to meet immediate operational needs, address significant landlord and vendor pressures, and provides the liquidity for a smooth transition into chapter 11.

***1. The Debtors’ Need For Interim Relief***

94. Prior to preparing for these Chapter 11 Cases, the Debtors’ leadership carefully managed cash flows and successfully aligned operational inflows and outflows. The process of preparing for and filing these chapter 11 cases disrupted these efforts. As of the Petition Date, absent immediately obtaining funding through the DIP Facilities, the Debtors lack sufficient funds to responsibly operate their business due to the restriction of their cash under the borrowing base pursuant to the ABL/FILO Credit Agreement, increased process-related costs and decreased revenues as a result of the ongoing global pandemic and other business interruptions. The Debtors’ businesses are cash intensive, with significant daily and monthly costs required to satisfy obligations to vendors, employees, and landlords, among others. As such, the Debtors require immediate access to postpetition financing and use of cash collateral to operate their businesses, preserve value, and avoid irreparable harm pending the final hearing. Pending the final hearing, the Debtors propose to borrow \$30 million under the DIP Term Facility on an interim basis.

95. As stated above, the Debtors’ liquidity has been severely constrained and is subject to significant volatility because it is subject to a borrowing base formula and reserve restrictions pursuant to the Debtors’ prepetition ABL/FILO Credit Agreement. Through various amendments

to the prepetition ABL/FILO Credit Agreement negotiated by the Debtors and their advisors, approximately \$30 million in otherwise restricted cash will be made available for the Debtors' use during the Chapter 11 Cases. Additionally, in connection with the agreed-upon amendments to the borrowing base formula and reserve restrictions, upon approval of the Interim DIP Order, the Debtors will repay the prepetition ABL Revolving Credit Facility (approximately \$60 million in principal outstanding as of the Petition Date) in full in cash with cash that is currently pledged under the prepetition borrowing base construct. I believe this repayment is in the Debtors' best interests as it (i) reduces a significant portion of the Debtors' prepetition secured debt, (ii) reduces postpetition interest expenses, (iii) makes available to the Debtors approximately \$30 million in interest-free cash during the pendency of the Chapter 11 Cases after giving effect to the agreed-upon amendments to the prepetition ABL FILO credit agreement, and (iv) eliminates one of several prepetition secured creditor constituencies with whom the Debtors and their advisors would otherwise need to negotiate.

96. Without the cash and stability provided by the DIP Facilities, I believe that irreparable harm would occur as a result of the Debtors' inability to continue ordinary course operations. A liquidity crisis would not only impact revenue generation but also risk losing the confidence of the Debtors' employees, vendors, and landlords. All of these parties are currently navigating the challenges of the COVID-19 pandemic, which has made them increasingly sensitive to risk. The Debtors will materially benefit from the strong message the DIP Facilities and authorization to use Cash Collateral (as defined in section 363(a) of the Bankruptcy Code) will provide to the Debtors' key stakeholders that operations will continue and that the bankruptcy filing will not affect postpetition ordinary-course operations. The DIP Facilities and authorization to use Cash Collateral will ensure that the Debtors have sufficient cash to continue operating as a

going concern, and maintain key relationships, while adequately protecting the interests of prepetition secured lenders during these cases. Authorizing the Debtors access to the DIP Facilities therefore enables the Debtors to weather the storm and maximize the value of their estates by continuing to operate as a going concern.

## **2. *DIP Facility Sizing***

97. In light of the Debtors' liquidity position, FTI and Evercore worked closely with the Debtors to evaluate the Debtors' operations and cash requirements to responsibly and successfully operate their businesses during these cases. As part of their evaluation of the Debtors' liquidity position, FTI and Evercore assisted in the development of the Debtors' 13-week and long-term cash flow forecasts. These forecasts take into account anticipated cash receipts and disbursements during the projected period and consider the effects of the chapter 11 filing, including incremental administrative costs of a complex chapter 11 filing with a larger number of stakeholders, interest expenses associated with the DIP Facilities, required operational payments, and cost-saving initiatives already undertaken.

98. FTI and Evercore also considered the unprecedented, adverse market conditions facing the retail industry during the COVID-19 pandemic. With no certainty as to when certain of the Debtors' retail stores can re-open or whether and when sales will return to the levels the Debtors saw before the COVID-19 pandemic, FTI and Evercore ran a series of sensitivity analyses to determine the Debtors' potential liquidity needs both during and following these Chapter 11 Cases.

99. Based on these extensive sensitivity analyses and other considerations, the Debtors and their advisors determined that smooth postpetition operations would require postpetition financing of approximately \$100 million to operate their business and satisfy all administrative costs and expenses associated with these Chapter 11 Cases as they come due.

### 3. *The DIP Marketing Process*

100. As stated in the *Declaration of Robert Del Genio, Senior Managing Director of FTI Consulting, Inc., in Support of the Motion of Debtors for Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(B) and 4001(C); and (III) Granting Related Relief* (the “**Del Genio Declaration**”), and the *Declaration of Pranav Goel, in Support of the Motion of Debtors for Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(B) and 4001(C); and (III) Granting Related Relief* (the “**Goel Declaration**” and together with the Del Genio Declaration and this First Day Declaration, the “**DIP Declarations**”), also filed today, the Debtors retained Evercore to assist the Debtors with exploring and analyzing restructuring alternatives, including undertaking a marketing process to secure the additional liquidity the Debtors need to operate during these chapter 11 cases. After searching for financing sources from both within and outside of the Debtors’ existing capital structure, the Debtors obtained a commitment from an ad hoc group of Prepetition Tranche B-2 Term Loan Lenders and Prepetition ABL/FILO Lenders (the “**Ad Hoc Group of Crossover Lenders**”) and an ad hoc group of Prepetition ABL/FILO Lenders (the “**Ad Hoc FILO Term Lender Group**”) to fund these chapter 11 cases, subject to the Court’s approval. I personally participated in the negotiation and analysis of various economic aspects of the DIP Facilities, which lasted for weeks and was hard-fought and at arms’-length.

101. The resulting proposed DIP Facilities provide necessary liquidity and avoid the costly and protracted priming fight that would be inevitable absent a consensual DIP proposal. The Prepetition Secured Parties will inherently benefit from the DIP Facilities, as such facilities will preserve the value of their collateral. Under the completely unprecedented conditions caused by the COVID-19 pandemic, the Debtors, in consultation with the board and their advisors, reached a consensus that it would be imprudent to forego the value-maximizing DIP Facilities deal. Accordingly, I believe the proposed DIP Facilities are necessary to avoid irreparable harm to the Debtors and their estates, and is in their best interests.

#### ***4. The Debtors' Proposed Use of Cash Collateral***

102. Pursuant to the DIP Motion, the Debtors also seek the continued use of Cash Collateral to provide sufficient liquidity for their operations during these chapter 11 cases. As described in the DIP Motion, the Debtors' business is cash intensive, with significant daily and monthly costs required to satisfy obligations to vendors, employees, and landlords, among others. Without access to Cash Collateral, the Debtors would be unable to operate their business and administer their estates, and their stakeholders would be immediately and irreparably harmed as a result.

103. Authorization to use Cash Collateral during the interim period will ensure the Debtors have sufficient cash to comply with their borrowing base covenants and adequately protect the prepetition secured lenders during these chapter 11 cases, including by providing the Debtors with sufficient liquidity to continue operating as a going-concern and to maintain key relationships.

104. In consideration for the consensual use of Cash Collateral, the Debtors have agreed to provide the prepetition secured parties with adequate protection as set forth in the DIP Motion and the accompanying Interim DIP Order. The Debtors' use of Cash Collateral will generally be

subject to a set of reasonable milestones agreed upon in the DIP Facilities. In addition, the parties agreed on additional reporting covenants.

**B. The Restructuring Support Agreement.<sup>10</sup>**

105. The Restructuring Support Agreement contemplates a comprehensive restructuring that is supported by the Debtors and their major prepetition secured creditor constituencies.<sup>11</sup> In particular, the Restructuring Support Agreement provides the Debtors with the flexibility to pursue a dual path of (a) the Sale Transaction, which contemplates an approximately \$760 million going-concern sale of the Debtor's business through a Court-supervised auction, subject to the consent of the Debtors' major secured creditors and the completion of definitive documentation, or (b) if those conditions cannot be met, the Standalone Plan Transaction, which will result in a substantial deleveraging of the Debtors' balance sheet (reducing the Debtors' funded debt by over \$300 million). In all cases, the Restructuring Support Agreement provides the Debtors with the necessary liquidity to properly utilize these Chapter 11 Cases to accomplish their goal of operationally re-aligning their businesses by, among other things, closing underperforming locations. This structure is intended to minimize any potential adverse effects to the Debtors' businesses, employees, customers, landlords and trade partners as a result of the restructuring, and will position the Debtors for a timely emergence from bankruptcy. The Restructuring Support Agreement is supported by holders of more than 92% of the Tranche B-2 Term Loans and holders of more than 87% of the prepetition ABL FILO Term Loans.

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<sup>10</sup> Capitalized terms used in this section and not defined elsewhere in this Declaration shall have the meanings set forth in the Restructuring Support Agreement or the DIP Motion, as applicable.

<sup>11</sup> While the Debtors have engaged with the holders of the Notes and their advisors the holders of the Notes do not yet support the transaction contemplated by the Restructuring Support Agreement. The Debtors have also not had the opportunity to engage with their other unsecured creditors because such creditors have not yet organized in any formal way. The Debtors and their advisors plan to engage with all creditor constituencies following the Petition Date.

106. The key components of the restructuring are as follows:

- DIP Facilities that will provide the Debtors with an expected \$130 million in liquidity during the Chapter 11 Cases in order to operate their businesses, and which mature at the earlier of 6 months from the Petition Date or consummation of a plan of reorganization approved pursuant to the Restructuring Support Agreement;
- Committed post-effective date exit facilities in an aggregate principal amount of \$525 million, consisting of (i) an Exit ABL Facility in the principal amount of \$275 million, into which the DIP ABL FILO Facility obligations will be converted, comprised of a first priority lien on all ABL Priority Collateral and a second priority lien on all Non-ABL Collateral, and (ii) a First-Lien-First-Out Term Loan Facility in the principal amount of \$100 million, comprised of \$100 million of converted New Money DIP Term Loan obligations and (iii) a First-Lien-Second-Out Term Loan Facility in the principal amount of \$150 million into which (a) \$100 million of Term Roll-Up obligations and \$50 million of prepetition Tranche B-2 Term Loans will be converted;
- Post-effective date, in exchange for providing the liquidity offered by the DIP Facilities and in consideration for converting \$100 million of prepetition Tranche B-2 Term Loans into First-Lien-Second-Out Term Loans, the holders of the prepetition Tranche B-2 Term Loans will also own 100% of the common stock in the Reorganized Debtors (the “*New Common Shares*”), subject to dilution by a management incentive plan providing for up to 10% of the New Common Shares to be awarded to management and employees as well as by a proposed equity distribution to general unsecured creditors;
- Under the approved Plan, if the class of unsecured creditors, including holders of Convertible Notes Unsecured Claims, Tranche B-2 Term Loan Deficiency Claims, and allowed General Unsecured Claims, votes to accept the approved Plan, they will have a choice to receive 3-year warrants for 5% of the pro forma equity of the Reorganized Debtors or their pro rata share of \$250,000 in cash.
- A reasonable and expeditious timeframe of approximately six (6) months within which the Debtors can effectuate their restructuring through the implementation of certain key “milestones”, including (i) that a Final DIP Order must be entered by the Bankruptcy Court within 35 calendar days of the Petition Date, (ii) that a confirmation order confirming the approved Plan must be entered by the Bankruptcy Court within 120 calendar days of the Petition Date, and (iii) that Effective Date of the approved Plan must occur within 141 calendar days of the Petition Date.



## **PART V: Evidentiary Support for First Day Motions**<sup>12</sup>

107. I have reviewed each of the First Day Pleadings, the related orders (the “*Proposed Orders*”), and the exhibits thereto (or have otherwise had their contents explained to me), and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. Moreover, I believe that the relief sought in each of the First Day Pleadings (a) is vital to enabling the Debtors to make the transition to, and operate in, Chapter 11 with minimum interruptions and disruptions to their businesses or loss of productivity or value and (b) constitutes a critical element in the Debtors’ being able to successfully maximize value for the benefit of their estates. The Term DIP Facility matures December 2020, subject to certain exceptions that will cause such maturity to accelerate to an earlier date.

### **A. Administrative and Procedural Pleadings**

#### ***I. Joint Administration Motion***<sup>13</sup>

108. The Debtors seek the joint administration of their 17 Chapter 11 Cases for procedural purposes only. The Debtors are “affiliates” as that term is defined in section 101(2) of the Bankruptcy Code and as used in Bankruptcy Rule 1015(b). Many of the motions, hearings, and other matters involved in the Chapter 11 Cases will affect the Debtors. Thus, I believe that the joint administration of these cases will avoid the unnecessary time and expense of duplicative motions, applications, orders, and other pleadings, thereby saving considerable time and expense for the Debtors and resulting in substantial savings for their estates.

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<sup>12</sup> Capitalized terms used in this Part V of the Declaration, but not defined have the meanings ascribed to such terms in the applicable First Day Pleading.

<sup>13</sup> “*Joint Administration Motion*” means the *Motion of Debtors for Order Authorizing Joint Administration of Chapter 11 Cases*.

## 2. *Creditor Matrix Motion*

109. By the Consolidated Creditor Matrix Motion, the Debtors request entry of an order (i) authorizing the Debtors to (a) file a consolidated list of creditors (the “*Consolidated Creditor Matrix*”) in lieu of a separate mailing matrix for each Debtor, (b) file a consolidated list of the Debtors’ thirty (30) largest unsecured creditors, excluding insiders, (the “*Consolidated Top Thirty (30) Creditors List*”) in lieu of submitting separate lists of the thirty (30) largest unsecured creditors of each Debtor, (c) modify requirements to file a list of, and provide notice to, all equity holders, (d) redact portions of their Consolidated Creditor Matrix and list of equity interest holders (if the Debtors are required to file a list of equity interest holders) containing the email addresses and home addresses of the Debtors’ individual creditors and equity interest holders, and (ii) approving notice procedures with respect to certain of the Debtors’ customers.

### (a) The Debtors’ Pro Access Members

110. The Debtors maintain a paid-membership program called “PRO Access,” under which customers pay an annual fee, and in return receive (i) certain benefits not available to other rewards members, and (ii) two shipments per year of sample merchandise and other materials tailored to each member.<sup>14</sup> The PRO Access program has approximately 840,762 current members.

111. As set forth in the Customer Programs Motion, the Debtors are seeking authority to continue to honor their customer programs in the ordinary course of business and pay prepetition obligations related thereto, including for PRO Access members. Accordingly, subject to approval of the Customer Programs Motion, the Debtors intend to continue the PRO Access program in the

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<sup>14</sup> A more detailed summary of the Pro Access program is set forth in the *Motion of Debtors for Interim and Final Orders Authorizing the Debtors to (I) Maintain and Administer Prepetition Customer Programs and (II) Pay Prepetition Obligations Related Thereto* (the “*Customer Programs Motion*”), filed contemporaneously herewith.

ordinary course of business and continue to provide PRO Access members with the benefits under that program.

112. Currently, the Debtors' list of creditors and interested parties, as listed in the Creditor Matrix, filed contemporaneously herewith, contains approximately 79,174 parties. If the Debtors are required to serve PRO Access members, the Creditor Matrix would multiply to over 11 times its original size.

113. Completion of a single mailing via first class U.S. mail on all parties currently listed on the Creditor Matrix (not including PRO Access members) will cost the estate approximately \$43,545.70 in postage alone, plus the additional costs associated with photocopying the notice and paying for the services of Prime Clerk LLC, the Debtors' noticing agent (the "*Noticing Agent*"). If the Debtors are required to serve notices to PRO Access members in addition to parties on the Creditor Matrix, the cost of postage alone will grow to approximately \$505,964.80 for the completion of a single mailing. In addition, the Debtors most common method of communication with the PRO Access members is via email.

114. In light of the extremely high cost of completing mailings on over 840,000 additional parties, and the fact that the Debtors intend to continue honoring all obligations owed to PRO Access members (subject to Court approval), the Debtors should not be required to include PRO Access members in the Creditor Matrix. To be clear, the Debtors are not requesting to waive service to the PRO Access members. Rather, consistent with the Debtors' ordinary course method of communication with such members, the Debtors propose to provide (i) notice by email to the PRO Access members, where available, (ii) notice to the home address of the PRO Access where email is not available, and (iii) publication in a nationally circulated newspaper to achieve as wide a distribution as possible where neither email nor home address is available.

(b) The Debtors' Equity Interest Holders

115. The Debtors request to modify the requirement to file the list of equity holders and provide notice of the order for relief or commencement of the Chapter 11 Cases to all of the equity holders. The Debtors propose to file a list of those equity holders directly registered with the transfer agent for the Debtors' common equity (with instructions to serve down to beneficial holders, as applicable). As an initial matter, GNC Holdings, Inc. is a publicly held company with approximately 84.61 million common shares outstanding as of the Petition Date. Preparing a list of the equity holders for GNC Holdings, Inc. with last known addresses would have little value. Further, to the extent that the Debtors were even able to ascertain such information, the list would ultimately serve little or no beneficial purpose. In particular, the equity markets will have immediate notice of these Chapter 11 Cases through public news outlets and GNC Holdings, Inc.'s filing of a Form 8-K statement with the Securities and Exchange Commission (the "*SEC*"). The Debtors further submit that if it becomes necessary for such equity interest holders to file proofs of interest, the Debtors will provide them with particularized notice of the deadline and an opportunity to assert such interests. Thus, I believe that equity interest holders will not be prejudiced, and a modification of the requirement that GNC Holdings, Inc. file a list of equity interest holders is appropriate.

(c) Consolidated Creditor Matrix and Top 30 List

116. I believe that requiring the Debtors to file a separate creditor matrix for each Debtor would be an unnecessarily burdensome task. In addition, I believe that filing a Consolidated Top Thirty (30) Creditors List will provide the U.S. Trustee with a sufficiently clear picture of the Debtors' unsecured creditor constituency. Plus, the Consolidated Top Thirty (30) Creditors List will help alleviate administrative burdens, costs, and the possibility of duplicative service.

### 3. *Automatic Stay Comfort Motion*<sup>15</sup>

117. By the Automatic Stay Comfort Motion, the Debtors seek entry of an order confirming, restating, and enforcing the worldwide automatic stay, anti-discrimination, and ipso facto protections set forth in section 362, 365, 525, and 541(c) of the Bankruptcy Code and approval of a notice to customers, suppliers and other stakeholders of the Non-Debtor Global Affiliates confirming that such entities are not included in these chapter 11 cases and are not subject to (i) the supervision of this Court, or (ii) the provisions of the Bankruptcy Code. Given the Debtors' expansive global footprint, the Debtors routinely operate, purchase materials and record sales in numerous countries with different legal systems across the globe, including without limitation, Argentina, Australia, Bangladesh, Bolivia, Bulgaria, Chile, China, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Hong Kong, India, Indonesia, Ireland, Israel, Japan, Kazakhstan, Latvia, Lithuania, Malaysia, Mexico, Mongolia, Myanmar; Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Romania, Singapore, Saudi Arabia, South Africa, South Korea, Spain, Sri Lanka, Taiwan, Thailand, Turkey, the United Arab Emirates, the United Kingdom, Uruguay and Vietnam. The Debtors' business necessitates daily interaction with a variety of foreign customers, suppliers, and other vendors, as well as foreign regulators and other governmental units. Moreover, certain of the Debtors' key contracts are governed by the laws of foreign jurisdictions.

118. Although the provisions set forth in sections 362, 365, 525, and 541(c) of the Bankruptcy Code are self-executing, it is possible, if not likely, that many foreign creditors and governmental units will not be familiar with the protections afforded to debtors under the

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<sup>15</sup> "*Automatic Stay Comfort Motion*" means the *Motion of Debtors for an Order (A) Enforcing the Protections of 11 U.S.C. §§ 362, 365, 525, and 541(c) and (B) Approving Notice to Customers, Suppliers, and Other Stakeholders of Debtors' Non-Debtor Global Affiliates*.

Bankruptcy Code. As such, these parties may attempt to proceed against the Debtors' or their property outside the United States in violation of the Bankruptcy Code. Such unilateral self-help, litigation, or collection actions could adversely impact the Debtors' ordinary course operations. Therefore, I believe it is prudent to obtain an order of the Court restating and enforcing the relevant provisions of the aforementioned sections of the Bankruptcy Code. Such an order of the Court will provide the Debtors with a powerful tool that does not exist by simply citing the Bankruptcy Code and will ensure that foreign creditors and/or governmental units unfamiliar with the Bankruptcy Code do not take adverse actions against the Debtors in violation thereof.

119. Because non-U.S. stakeholders may not be familiar with U.S. chapter 11 reorganizations, I believe it is imperative to communicate to the Debtors' non-U.S. customers and suppliers that the Non-Debtor Global Affiliates are not included in these Chapter 11 Cases and thus, are not subject to this Court's supervision or the chapter 11 process. Accordingly, to sustain customer confidence and to minimize the risk of an interruption in the supply of goods, I believe that the Debtors need a court-approved notice communicating this message. The Debtors operate a complex and highly competitive international business. As an industry leader in the global specialty nutritional products retail industry, I believe that word of these Chapter 11 Cases will quickly spread internationally to various third parties that deal with the Debtors and the Non-Debtor Global Affiliates, likely creating confusion as to which affiliates are, and which affiliates are not, debtors in these Chapter 11 Cases.

120. As a result of this confusion, I believe that some third parties may be hesitant or, worse yet, refuse to deal with Non-Debtor Global Affiliates under the mistaken assumption that such affiliates are part of these bankruptcy cases. Such a result would impair the operations of the Non-Debtor Global Affiliates, which would ultimately prejudice the Debtors' reorganization

efforts, particularly where the Debtors rely on intercompany relationships with their Non-Debtor Global Affiliates as part of their business. I believe that sending a court-approved notice that the Non-Debtor Global Affiliates are not debtors in these Chapter 11 Cases will help in educating the Debtors' non-U.S. customers and suppliers, which in turn will assist the Debtors in achieving a successful reorganization.

#### **4. Foreign Representative Motion<sup>16</sup>**

121. The Debtors are a leading retailer of a premium assortment of health, wellness, and performance products with a worldwide network of over 7,000 company-owned and franchised locations worldwide, including in Canada. GNC Holdings, a publicly traded Delaware corporation, is the ultimate parent of the Company's corporate group. Debtor General Nutrition Centres Company ("**GNC Canada**") is the operating entity for the Debtors' business in Canada. GNC Canada is an indirect wholly-owned subsidiary of GNC Holdings. All material decisions regarding GNC Canada and its operations are made by personnel located at the Debtors' Pittsburgh headquarters, and substantially all of its books and records are located in the United States. Further, proposed co-counsel to the Debtors, Young, Conaway, Stargatt & Taylor LLP holds an approximately \$50,000 retainer from GNC Canada pursuant to its engagement letter with GNC Canada. As a result, the center of main interest for GNC Canada is located in the United States.

122. Following the filing of these Chapter 11 Cases, the Debtors intend to commence an ancillary proceeding (the "**Ancillary Proceeding**") under Part IV of the *Companies' Creditors Arrangement Act* (Canada), R.S.C. 1985, c. C-36 (as amended, the "**CCAA**"), in the Ontario

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<sup>16</sup> "**Foreign Representative Motion**" means the *Motion to Authorize GNC Holdings, Inc. to Act As Foreign Representative of the Debtors*.

Superior Court of Justice (Commercial List) (the “*Canadian Court*”).<sup>17</sup> GNC Holdings, as the proposed foreign representative for the Debtors in the Ancillary Proceeding, intends to seek recognition of these Chapter 11 Cases and certain orders entered in the Chapter 11 Cases. I believe that the relief requested in the Foreign Representative Motion is in the best interests of the Debtors’ estates, their creditors and all other parties in interest.

**B. Retention Applications**

**1. Claims Agent Application<sup>18</sup>**

123. Pursuant to the Claims Agent Application, the Debtors seek entry of an order appointing Prime Clerk LLC as the Claims and Noticing Agent for the Debtors in the Chapter 11 Cases. Specifically, Prime Clerk will perform the following tasks in its role as Claims and Noticing Agent, as well as all quality control relating thereto:

- (a) Prepare and serve required notices and documents in these Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of these Chapter 11 Cases and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors’ plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan and (vii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of these Chapter 11 Cases;

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<sup>17</sup> The Debtors intend to propose that FTI Consulting Canada Inc. be appointed by the Canadian Court as information officer in the CCAA proceedings (the “*Information Officer*”). The Information Officer will serve as an officer of the Canadian Court and report to the Canadian Court from time to time (including at the hearing on the initial application) on the status of these Chapter 11 Cases, the Debtors’ proposed restructuring, and any other information that may be material to the Canadian Court.

<sup>18</sup> “*Claims Agent Application*” means the *Debtors’ Application for Appointment of Prime Clerk LLC as Claims and Noticing Agent*.



- (b) Maintain an official copy of the Debtors' schedules of assets and liabilities and statements of financial affairs (collectively, the "***Schedules***"), listing the Debtors' known creditors and the amounts owed thereto;
- (c) Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest and (ii) a "core" mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update and make said lists available upon request by a party-in-interest or the Clerk;
- (d) Furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- (e) Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- (f) For *all* notices, motions, orders or other pleadings or documents served, prepare and file or cause to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service and (iv) the date served;
- (g) Process all proofs of claim received, including those received by the Clerk, check said processing for accuracy and maintain the original proofs of claim in a secure area;
- (h) Maintain the official claims register for each Debtor (collectively, the "***Claims Registers***") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), (vi) the applicable Debtor and (vii) any disposition of the claim;
- (i) Provide public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge;
- (j) Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;

- (k) Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (l) Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of Prime Clerk, not less than weekly;
- (m) Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the Claims Registers for the Clerk's review (upon the Clerk's request);
- (n) Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- (o) Identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- (p) Assist in the dissemination of information to the public and respond to requests for administrative information regarding these Chapter 11 Cases as directed by the Debtors or the Court, including through the use of a case website and/or call center;
- (q) Monitor the Court's docket in these Chapter 11 Cases and, when filings are made in error or containing errors, alert the filing party of such error and work with them to correct any such error;
- (r) If these Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk's office within three (3) days of notice to Prime Clerk of entry of the order converting the cases;
- (s) Thirty (30) days prior to the close of these Chapter 11 Cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing Prime Clerk as Claims and Noticing Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of these Chapter 11 Cases;
- (t) Within seven (7) days of notice to Prime Clerk of entry of an order closing these Chapter 11 Cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of the Chapter 11 Cases; and

124. At the close of these Chapter 11 Cases, (i) box and transport all original documents, in proper format, as provided by the Clerk's office, to (A) the Philadelphia Federal Records Center, 14700 Townsend Road, Philadelphia, PA 19154-1096 or (B) any other location requested by the

Clerk's office; and (ii) docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

125. Although the Debtors have not yet filed their schedules of assets and liabilities, the anticipate that there will be hundreds of thousands of persons and entities to be noticed and that many of these parties will file claims. In view of the numbers of anticipated claimants and the complexity of the Debtors' businesses, I believe that the appointment of a claims and noticing agent will provide the most effective and efficient means of, and relieve the Debtors and/or the office of the court clerk of the administrative burden of, noticing, administering claims, and soliciting and tabulating votes and is in the best interests of both the Debtors' estates and their creditors.

## **2. *Other Retention Applications***

126. In addition to the retention of Prime Clerk LLC as Claims and Noticing Agent, I believe that the retention of other chapter 11 professionals is essential to the Chapter 11 Cases. Accordingly, during the Chapter 11 Cases, the Debtors anticipate that they will request permission to retain, among others, the following professionals: (i) Latham & Watkins LLP, as co-counsel; (ii) Young, Conaway, Stargatt & Taylor LLP, as co-counsel; (iii) Torys LLP as Canadian restructuring counsel; (iv) Lax O'Sullivan Lisus Gottlieb LLP as Canadian conflicts counsel; (v) Prime Clerk LLC, as administrative advisor; (vi) Evercore Group L.L.C. as investment banker; (vii) FTI Consulting, Inc. as financial advisor; (viii) A&G Realty Partners, LLC as real estate consultant and advisor; (ix) MPA Inc. as Canadian real estate consultant and advisor; (x) Pricewaterhousecoopers LLP as tax and accounting advisor; and (xi) Riveron Consulting LLC as accounting advisor.

127. I believe that the above professionals are well-qualified to perform the services contemplated by their various retention applications, the services are necessary for the success of

the Chapter 11 Cases, and the professionals will coordinate their services to avoid duplication of efforts. I understand that the Debtors may find it necessary to seek retention of additional professionals as the Chapter 11 Case progress.

**C. Business Operation Motions**

***1. DIP Motion<sup>19</sup>***

128. By the DIP Motion, the Debtors seek (i) authorization to obtain senior secured postpetition financing on a superpriority basis pursuant to the DIP Facilities and for each of the Guarantors to guarantee unconditionally, on a joint and several basis, and subject to the terms and limitations set forth in the DIP Term Credit Agreement in all respects, the DIP Term Borrower's obligations under the respective DIP Term Facility; (ii) authorization immediately upon entry of the Interim Order, to effectuate the ABL FILO Roll-Up which shall both be final and indefeasible, subject to expiration of the Challenge Period; (iii) authorization, upon entry of the Final Order, to effectuate the Term Roll-Up, which shall both be final and indefeasible, subject to expiration of the Challenge Period; (iv) authorization to execute and enter into the DIP Agreements and to perform their respective obligations thereunder and to perform such other and further acts as may be required in connection with the DIP Documents, including, without limitation, the payment of all principal, interest, fees, expenses and other amounts payable under the DIP Documents as such amounts become due and payable; (v) authorization to grant security interests, liens and superpriority claims (including a superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code and liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy

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<sup>19</sup> ***"DIP Motion"*** means the *Motion of Debtors for Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties, and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (III) Granting Related Relief.*

Code (and, solely as set forth in the Proposed Orders, priming liens pursuant to section 364(d)(1) of the Bankruptcy Code), to the DIP Agents, for the benefit of the DIP Lenders, in the DIP Collateral (and all proceeds thereof), including, without limitation, all property constituting “cash collateral,” as defined in section 363(a) of the Bankruptcy Code (“**Cash Collateral**”), to secure the DIP Obligations, subject to the Carve Out, and on the terms and conditions set forth in the Interim Order and Final Order and the DIP Documents; (vi) authorization to use of Cash Collateral of the Prepetition Secured Parties solely as provided herein, and the provision of adequate protection to the Prepetition Secured Parties for any diminution in value (“**Diminution in Value**”) resulting from the imposition of the automatic stay, the Debtors’ use, sale, or lease of the Prepetition Collateral, including Cash Collateral, the priming of their respective interests in the Prepetition Collateral (including by the Carve-Out); (vii) the scheduling of an interim hearing (the “**Interim Hearing**”) on the DIP Motion for the Court to consider entry of the Interim Order; (viii) the scheduling of a final hearing (the “**Final Hearing**”) on the DIP Motion for a date that is before the thirtieth (30th) day after the Petition Date to consider entry of the Final Order, *inter alia*, authorizing the borrowings under the DIP Facility on a final basis and approval of notice procedures with respect thereto; and (ix) modifying the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents, the Interim Order, and the Final Order.

129. As set forth in the DIP Motion and the declarations filed in support of the DIP Motion, access to the DIP Facilities is critical to ensure the Debtors’ smooth entry into chapter 11 and their ability to ensure they have sufficient liquidity to operate their business and administer their estates during these Chapter 11 Cases. The commencement of these Chapter 11 Cases will place increased demands on liquidity due to, among other things, the costs of administering these

Chapter 11 Cases and the acceleration or elimination of trade terms. Accordingly, I believe, the Debtors will suffer immediate and irreparable harm if the requested relief is not granted.

130. Without the funds available under the DIP Facilities and the use of the Cash Collateral, the Debtors will not have sufficient available sources of working capital and financing to carry on the operation of their businesses. The Debtors' ability to maintain business relationships with their vendors, suppliers, operators and managers, to make capital expenditures and to satisfy other working capital and operational needs and otherwise finance their operations is essential to the Debtors' continued viability. Accordingly, I believe the Debtors will suffer immediate and irreparable harm if the requested relief is not granted.

131. The Debtors, in consultation with their advisors, determined that the DIP Facilities represented the best postpetition DIP financing alternative available to the Debtors. The DIP Facilities were the product of extensive arm's-length, good-faith negotiations. Alternative sources of postpetition financing were not readily available to the Debtors (whether unsecured or secured) on terms better than or comparable to the DIP Facilities. The proposed DIP Facilities provide the Debtors with immediate and critical access to liquidity that is necessary to ensure that the Debtors' businesses are stabilized, that chapter 11 administrative costs are paid in full, and that value is preserved during the course of the Debtors' Chapter 11 Cases.

## **2. Cash Management Motion<sup>20</sup>**

132. By the Cash Management Motion, the Debtors request entry of interim and final orders (a) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of the Debtors' existing bank accounts, checks,

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<sup>20</sup> "**Cash Management Motion**" means the *Motion of Debtors for Orders (A) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (B) Authorizing Continuation of Existing Deposit Practices (C) Authorizing Continuation of Intercompany Transactions, and (D) Granting Administrative Claim Status to Postpetition Intercompany Claims.*

and business forms; (b) granting the Debtors a 45-day extension of the time to comply with certain bank account and related guidelines of the Office of the United States Trustee for the District of Delaware to the extent that the requirements are inconsistent with the Debtors' practices under their existing cash management system or other actions described in the Cash Management Motion; (c) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices; (d) authorizing, but not directing, the Debtors to continue certain ordinary course intercompany transactions; (e) according administrative claim status to postpetition intercompany claims arising from those transactions; and (f) authorizing the Debtors to open and close bank accounts.

(a) The Debtors' Cash Management System

133. The Debtors maintain a complex cash management system (the "**Cash Management System**") that manages the Debtors' cash inflows and outflows through various Bank Accounts to effect the collection, disbursement, and movement of cash. I believe the Cash Management System is integral to the Debtors' operations as it enables them to, among other things, (i) accurately forecast and report their cash flow requirements, (ii) monitor and control all of their cash receipts and disbursements, and (iii) track intercompany cash transfers and transactions with other Debtors and their non-Debtor affiliates.

134. The Cash Management System is similar to those used by other companies of similar size and complexity to collect, transfer, and disburse funds in a cost-effective and efficient manner. The Cash Management System is comprised of 294 bank accounts (together with any accounts opened after the Petition Date, the ("**Bank Accounts**") held at various financial institutions (the "**Banks**"). The Cash Management System is organized around two concentration accounts, one for the United States business held at JPMorgan Chase Bank, N.A. ("**JPMorgan**"), and one for the Canada business held at Toronto Dominion Bank ("**TD**"), which pool incoming

funds from deposit accounts, credit and debit card receipts accounts, and other payments, and disburse those funds into the Debtors' various disbursement and other accounts, on an as-needed basis. The Debtors maintain 27 Bank Accounts with JPMorgan, 11 Bank Accounts with TD, and seven Bank Accounts with PNC Bank N.A., that are used for the Debtors' business operations. The remaining Bank Accounts are held at numerous other Banks.

(b) Continued Ordinary-Course Intercompany Transaction and Postpetition Intercompany Claims and Granting Administrative Expenses Status

135. The Debtors conduct various business transactions with each other and their non-Debtor affiliates (the "*Intercompany Transactions*"), including moving cash within the Cash Management System between different Debtors, and from Debtors to their non-Debtor affiliates. For example, certain Debtors purchase inventory on account of other Debtors, which results in Intercompany Claims between such Debtor entities. In addition, the Debtors may send funds from a United States Bank Account to a Canada Bank Account to support their Canadian operations. Additionally, Debtor General Nutrition Centers, Inc. allocates certain corporate overhead expenses and management fees to certain Debtor and non-Debtor affiliates, so that each entity bears its share of such costs. Such costs are allocated based on the revenue of each entity, so that each entity's net income is more accurately represented for tax purposes. Typically, these Intercompany Transaction are not settled in cash but are rather reflected as intercompany payables on the books and records of the applicable entity.

136. There are few Intercompany Transactions between the Debtors and their non-Debtor affiliates, even fewer of which relate to payments of Debtors to non-Debtors. However, certain dividends are made between Debtors and non-Debtors, specifically (a) a periodic dividend payment from non-Debtor GNC Korea Limited to Debtor General Nutrition Corporation and (b) a monthly dividend payment by Debtor GNC Puerto Rico, LLC ("*GNC Puerto Rico*") to non-Debtor



affiliate GNC Live Well Ireland (“*LWI*”) on account of LWI’s 30% ownership interest in GNC Puerto Rico.

137. As a result of the Intercompany Transactions there may be intercompany claims owing among the Debtors or their non-Debtor affiliates at any given time (the “*Intercompany Claims*”), including outstanding prepetition Intercompany Claims. It is my understanding that with the help of the Cash Management System, the Debtors are able to track and account for each Intercompany Transaction and the resulting Intercompany Claims. I believe these Intercompany Transactions as further described in the Cash Management Motion, are necessary and beneficial to the Debtors’ business operations.

138. I believe the Intercompany Transactions ensure the efficient and smooth functioning and operations of the Debtors’ businesses, as certain of the Debtors are better suited to perform certain functions to the businesses on behalf of the Debtors. If the Debtors were required to cease the Intercompany Transactions, their operations would be disrupted, resulting in possible degradation of value to the detriment of their estates and creditors.

(c) Payment of Bank Fees

139. The Debtors pay fees to the Banks related to the costs of administering the Bank Accounts (the “*Bank Fees*”) on a monthly basis. I believe paying the Bank Fees is critical to maintaining the Debtors’ banking relationships.

(d) Corporate Card and Payment Processors

(i) Corporate Purchase Cards

140. As part of the Cash Management System, the Debtors utilize corporate purchasing cards (collectively, the “*Purchase Cards*”) issued by Citizens Bank N.A (“*Citizens*”). The Purchase Cards are primarily used for payment to vendors in connection with the shipment of

goods. As of the Petition Date, I estimate the Debtors owe approximately, \$50,000 on account of the Purchase Cards.

141. It is my understanding, that the Debtors are in the process of terminating the Purchase Cards program. However, until such time as the Purchase Cards program is terminated, I believe it is important for the Debtors to continue honoring obligations on account of the Purchase Cards because certain of the Debtors' key vendors are paid through the program. Further, I understand that claims on account of amounts owed under the Purchase Cards are Cash Management Obligations which are secured claims under the ABL/FILO Credit Agreement, and thus paying such claims now likely only affects the timing of payment.

(ii) Corporate Credit Cards

142. In addition to the Purchase Cards, as part of the Cash Management System, the Debtors also provide certain employees with access to corporate credit cards issued by JPMorgan (the "*Corporate Credit Cards*," and the Debtors' program relating to such cards, the "*Corporate Credit Card Program*", and together with the Purchase Card Program, the "*Corporate Card Programs*") that are utilized by the Debtors' employees to pay for eligible business-related expenses incurred on behalf of the Debtors in the ordinary course of business.

143. I understand that on average, the Debtors pay approximately \$144,168.40 per month on account of the Corporate Credit Cards. I am informed that as of the Petition Date, the Debtors owe approximately \$70,000 on account of the Corporate Credit Cards. I believe it is important for the Debtors to continue honoring obligations on account of the Corporate Credit Cards. Further, I understand that JPMorgan's claims on account of amounts owed under the Corporate Credit Cards are Cash Management Obligations (as defined in the ABL/FILO Credit Agreement), which are secured claims under the ABL/FILO Credit Agreement, and thus paying JPMorgan now likely only affects the timing of payment.

144. By the Cash Management Motion the Debtors seek authority to pay any prepetition amounts outstanding with respect to the Corporate Credit Cards and Purchase Cards and to continue the such programs, subject to any terms and conditions thereof, on a postpetition basis consistent with their past practices.

(iii) Payment Processing Providers

145. In addition to cash, the Debtors accept other non-cash methods of payments from customers at points of sale. To process non-cash payments, the Debtors are party to certain agreements with payment processors (the “*Payment Processing Providers*” and the program related to such non-cash payment processing, the “*Payment Processing Program*”). Under the Payment Processing Program, the Debtors generally pay the fees owing to the Payment Processing Providers once a month. As of the Petition Date, I estimate that the Debtors owe approximately \$800,000 to the Payment Processing Providers on account of the Payment Processing Program.

146. The Debtors’ continued acceptance of non-cash payments is essential to the operation of the Debtors’ business. Most of the Debtors’ sales occur by non-cash payments. Thus, requiring all purchases to be made in cash would have a severely negative effect on the Debtors’ cash flow and ongoing operations.

(e) Continued Use of the Debtors’ Existing Checks and Business Forms

147. In the ordinary course, the Debtors use checks, invoices, letterhead, purchase orders, and other forms and correspondence (the “*Business Forms*”). The Debtors’ existing Business Forms are not marked with any designation referencing their status as debtors in possession. To minimize expense and avoid potential operational issues with their employees, customers, vendors, and other parties during this critical time, the Debtors seek authority to

continue to use the existing Business Forms, notwithstanding any applicable U.S. Trustee Guidelines, but subject to Local Rule 2015-2(a).

148. I believe changing the Debtors' Business Forms would be expensive, unnecessary, and burdensome to the Debtors and their estates. Further, such changes to their Business Forms, would disrupt the Debtors' business operations and would not confer any benefit upon the Debtors or parties that deal with the Debtors.

(f) Compliance with Certain U.S. Trustee Guidelines

149. I understand that the U.S. Trustee has established certain operating guidelines (the "*U.S. Trustee Guidelines*") for debtors in possession. I understand that the U.S. Trustee Guidelines require Chapter 11 debtors to, among other things, deposit all estate funds into an account with an authorized depository that agrees to comply with the requirements of the Office of the U.S. Trustee. Of the 294 Bank Accounts, 103 of them are held at Banks that are designated as authorized depositories under the U.S. Trustee Guidelines, including the Concentration Accounts which are held at JPMorgan and TD, each of which is an authorized depository. In addition, the Card Receipts Accounts, the Disbursement Accounts, the Franchise & Wholesale Receipts Accounts, the Other Receipt Accounts, and certain of the Investment Accounts are held at authorized depositories. The vast majority of the 190 Bank Accounts at Banks that are not authorized depositories are Store Depository Accounts, which as described herein, receive deposits from stores that are regularly swept into one of the Concentration Accounts. Further, the Banks at which these Store Depository Accounts are held are, in most cases, are the only bank located near the respective store, and if the stores are not permitted to use such Banks, it would create additional operational and administrative burdens and expenses that would harm the Debtors' business and be detrimental to their estates. In addition, with few exceptions, the Banks that are not authorized depositories, are insured by the Federal Deposit Insurance Corporation ("*FDIC*"), the Canadian

Deposit Insurance Corporation (“*CDIC*”), or the National Credit Union Administration (“*NCUA*”).

150. Of the remaining Bank Accounts that are held at Banks that are not authorized depositories, four are Investment Accounts and one is the NFS Returns Account. As noted above, no additional funds will be deposited into the Investment Accounts during the pendency of these Chapter 11 Cases.

151. Nevertheless, where the Debtors hold one or more accounts at a Bank that is not an authorized depository, the Debtors will use their good faith efforts to cause such Bank to execute a Uniform Depository Agreement in a form prescribed by the Office of the U.S. Trustee within forty-five (45) days after an order is entered granting the Cash Management Motion.

### 3. *Workforce Obligations Motion*<sup>21</sup>

152. In the Workforce Obligations Motion, the Debtors request entry of interim and final orders, (a) authorizing, but not directing, the Debtors, in their discretion, to pay, continue, or otherwise honor various prepetition labor-related obligations to their Workforce; (b) confirming the Debtors’ authority to continue each of the Workforce Programs in the ordinary course of business during the pendency of these Chapter 11 Cases; (c) authorizing the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes and other Workforce Deductions relating to the Workforce Obligations; and (d) authorizing the Debtors, in their discretion, to pay any prepetition claims owing to the Administrators in the ordinary course of business to ensure the uninterrupted delivery of payments or other benefits to the Workforce.

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<sup>21</sup> “*Workforce Obligations Motion*” means the *Motion of Debtors for Orders (A) Authorizing Payment of Certain Prepetition Workforce Obligations, (B) Authorizing Continuance of Workforce Programs, (C) Authorizing Payment of Withholding and Payroll-Related Taxes, and (D) Authorizing Payment of Prepetition Claims Owing to Workforce Program Administrators.*

153. The Workforce Programs under which the Workforce Obligations arise are described more fully in the Workforce Obligation Motion and include but are not limited to: (i) wages, salaries, and related compensation, (ii) incentive and/or bonus obligations to non-Insider Employees, (iii) deductions associated with the forgoing, (iv) various health, financial, and welfare benefits historically provided to the Debtors' Workforce, (v) paid time off, and (vi) reimbursable expenses and related obligations, all as more fully described in the Workforce Obligations Motion. In addition, in connection with the Workforce Programs, the Debtors incur and pay certain fees and expenses to third-party Administrators to administer the various Workforce Programs.

(a) The Debtors' Workforce

154. As of the Petition Date, inclusive of the Furloughed Employees the Debtors employ 10,833 employees, of which 3,944 are full-time employees and 6,889 are part-time employees. 10,220 of the Debtors' employees are employed in the United States (including Puerto Rico) (the "***U.S. Employees***"), and 613 are employed in Canada (the "***Canadian Employees***" and together with the U.S. Employees, the "***Employees***"). Approximately 845 of the Debtors' Employees are salaried employees and 9,988 are hourly employees. Of the Debtors' Employees, 995 perform functions at the corporate level related to the management of the Debtors' omni-channel enterprise as a whole, including those employed in the Debtors' supply chain (the "***Corporate Employees***") and 9,838 are employed in roles dedicated the management of the infrastructure and ongoing operations of the Debtors' company-owned and franchised retail locations (the "***Field Employees***"). The U.S. Corporate Employees are employed by Debtor General Nutrition Centers, Inc., the U.S. Field Employees are employed by Debtor General Nutrition Corporation, and the Canadian Employees are employed by Debtor General Nutrition Centres Company. The Debtors have ten Employees who, the Debtors believe, constitute "insiders" as the term is defined in section

101(31) of the Bankruptcy Code (each, an “*Insider*” and collectively, the “*Insiders*”).<sup>22</sup> All of the Insiders are U.S. Corporate Employees. Approximately 24 Employees have the title of Vice President or above (such Employees, the “*Senior Employees*”). Not all of the Senior Employees are Insiders.

155. Due to store closures and other stresses to the Debtors’ business caused by the COVID-19 pandemic, the Debtors have furloughed a total of approximately 4,000 Employees in both the U.S. and Canada, (the “*Furloughed Employees*”) in recent months, approximately 1,700 of whom remain furloughed as of the Petition Date. While furloughed, the Furloughed Employees are no longer receiving their wages or salaries, however, the Debtors are covering the full costs of U.S. Medical Plans, Canadian Health Benefits, U.S. Dental Plans, and U.S. Vision Plans relating to the Furloughed Employees while they remain on furlough, including certain obligations that would otherwise be deducted from such Employees’ paychecks.

156. In addition to the Employees, the Debtors also utilize independent contractors and temporary employees in the jurisdictions in which they operate (the “*ICs*” and “*Temporary Employees*,” respectively, and together with the Employees, collectively the “*Workforce*”). It is my understanding that, the Debtors source ICs and Temporary Employees through several Staffing Agencies. I am not aware of the Debtors’ Workforce being subject to a collective bargaining agreement or similar labor agreement.

157. The Workforce provides a variety of critical functions relating to the management and day-to-day operations of the Debtors’ businesses, including general administrative functions,

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<sup>22</sup> The following ten executives are considered to be potential “insiders” as defined by the Bankruptcy Code: (1) Ken Martindale, Chief Executive Officer; (2) Tricia Tolivar, Executive Vice President; (3) Josh Burris, Chief U.S. Officer; (4) Ryan Ostrom, Chief Brand Officer; (5) Carl Seletz, Chief Global Officer; (6) Susan Canning, General Counsel; (7) Nathan Frazier, Senior Vice President, U.S. Field Operations; (8) Steve Piano, Chief Human Resources Officer; (9) Cam Lawrence, Chief Accounting Officer; and (10) John Learish, Senior Vice President, Marketing.

supply chain management, procurement, sales, human resources, accounting, financial, and general corporate. The skills, expertise, and experience of the Workforce, as well as their relationships with customers and vendors and their knowledge of the Debtors’ business, are essential to the Debtors’ operations and ability to effectively maximize the value of their businesses during the Chapter 11 Cases.

158. As set forth in the Workforce Obligations Motion, the estimated outstanding amounts due as of the Petition Date in relation to the Workforce Programs are summarized below:

<b>Workforce Obligations</b>	<b>Approximate Outstanding Prepetition Amount</b>	<b>Approximate Amount Due Within Interim Period</b>
<b><i>U.S. Workforce Obligations</i></b>		
i. U.S. Wage Obligations (including U.S. Deductions)	\$9,360,000	\$9,360,000
ii. U.S. Incentive Obligations	\$365,000	\$98,000
iii. U.S. Benefits Obligations	\$1,268,800	\$1,268,000
iv. U.S. PTO Obligations	\$9,020,000 <sup>23</sup>	\$0
v. U.S. Workers’ Compensation	\$731,500	\$473,000
<b>U.S. Total</b>	<b>\$20,745,300</b>	<b>\$11,199,800</b>
<b><i>Canadian Workforce Obligations</i></b>		
i. Canadian Wage Obligations (including Canadian Deductions)	\$901,000	\$901,000
ii. Canadian Incentive Obligations	\$197,583	\$44,000
iii. Canadian Benefits Obligations	\$58,000	\$58,000
iv. Canadian PTO Obligations	\$1,080,000 <sup>24</sup>	\$0

<sup>23</sup> The Debtors estimate that, as of the Petition Date, aggregate accrued but unpaid PTO Obligations for all U.S. Employees totals approximately \$9.02 million. This accrued amount, however, does not represent a true “cash” liability for the Debtors, as the Debtors anticipate that Employees will use most of their PTO in the ordinary course of business, and eligible departing Employees may receive cash payments on account of unused PTO.

<sup>24</sup> The Debtors estimate that, as of the Petition Date, aggregate accrued but unpaid PTO Obligations for all Canadian Employees totals approximately \$1.08 million. This accrued amount, however, does not represent a true “cash”



<b>Workforce Obligations</b>	<b>Approximate Outstanding Prepetition Amount</b>	<b>Approximate Amount Due Within Interim Period</b>
v. Canadian Workers' Compensation	\$25,600	\$16,000
<b>Canadian Total</b>	<b>\$2,262,183</b>	<b>\$1,019,000</b>
i. Reimbursable Expenses Obligations	\$20,000	\$6,000
<b>Non-Employee Director Fees and Expenses</b>	<b>\$0</b>	<b>\$0</b>
<b>Administrator Fees and Expenses</b>	<b>\$252,800</b>	<b>\$230,800</b>
<b>ICs and Temporary Employees</b>	<b>\$637,000</b>	<b>\$637,000</b>
<b>GRAND TOTAL</b>	<b>\$23,931,283</b>	<b>\$13,092,600</b>

(b) The Debtors' U.S. Wages Obligation

159. The Debtors process payroll internally utilizing Intuit's Lawson payroll software ("*Lawson*"). The Debtors' Field Employees working in Rhode Island, Connecticut, New York and New Hampshire are paid wages and salaries on a weekly basis, whereas the Debtors' Corporate Employees and Field Employees working other U.S. states, are paid wages and salaries on a bi-weekly basis.<sup>25</sup> The average gross payroll on account of U.S. Employees for each pay period is approximately \$11.4 million and that U.S. Employees are paid in arrears for work performed one or two week(s) prior to the Debtors' normal weekly or bi-weekly payroll, as applicable. Hourly U.S. Employees are eligible for overtime pay at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week, subject to prior authorization. I am advised that the overtime pay policy allows the Debtors to assign mandatory overtime work for certain U.S. Employees as needed.

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liability for the Debtors, as the Debtors anticipate that Employees will use most of their PTO in the ordinary course of business, and eligible departing Employees may receive cash payments on account of unused PTO.

<sup>25</sup> In order to avoid any potential delay in payment to the Employees as a result of the Chapter 11 Cases, the Debtors paid accrued wages for five Employees on June 12, 2020 and six Employees on June 23, 2020.

160. I am advised that, as of the Petition Date, the Debtors owe approximately \$9.18 million in Wage Obligations to U.S. Employees.

(c) U.S. Incentive Programs<sup>26</sup>

161. In addition to wages and salaries, in the ordinary course of business, to incentivize and reward outstanding performance, the Debtors offer certain Employees the opportunity to earn awards under certain incentive programs, including a set of short-term incentive plans (each of the plans described in subsection (a) below, a “**2020 STI Plan**” and such plans together, collectively, the “**2020 STI Plans**”) and long-term incentive plans (the “**2020 LTI Plans**” and together with the 2020 STI Plans, the “**U.S. Incentive Programs**”). I believe the U.S. Incentive Programs are essential to maintain employee morale.

162. The 2020 STI Plans comprise a set of incentive plans targeted across all of the Debtors’ enterprise-wide and worldwide operations. Below is my understanding of the terms of the 2020 STI Plans provided by the Debtors:

- a) Store Pilot Incentive Plan. The Debtors intend to begin a new incentive plan, pursuant to which approximately 1,381 Field Employees with the title of “Store Manager”, “Assistant Store Manager”, and “Sales Associate” who work in a store that is a part of the pilot program are eligible to earn bonuses based on achieving certain sales goals of the store(s) in which the Employee works (the “**Store Pilot Incentive Plan**”).

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<sup>26</sup> In addition to the Incentive Programs (as defined and described herein), pursuant to the *Motion of Debtors for Orders (A) Approving Procedures for Store Closing Sales, (B) Authorizing Customary Bonuses to Employees of Closing Stores, and (D) Granting Related Relief* filed contemporaneously herewith (the “**GOB Motion**”) the Debtors are separately requesting to make incentive payments (“**GOB Bonuses**”) to Retail Employees working at stores that are in the process of undergoing going out of business sales (“**GOB Sales**”). The details of the GOB Bonuses are set forth in the GOB Motion. For the avoidance of doubt, the Debtors are not seeking to pay any GOB Bonuses pursuant to the Workforce Obligations Motion.

- b) Corporate Incentive Plan. Corporate and Field Employees with a job level of “Manager” or higher, who are not eligible for any other STI Plans, of which there are approximately 247 Employees, are eligible to receive incentive payouts under a corporate incentive plan based on the performance of their respective business units (the “*Corporate Incentive Plan*”).
- c) RD Incentive Plan. Approximately nine Field Employees with the title of “Domestic Regional Director” are eligible to participate in an incentive plan based on achieving certain sales and inventory shrinkage goals for the stores the applicable Domestic Regional Director oversees. (the “*RD Incentive Plan*”).
- d) DM Incentive Plan. Approximately 114 Field Employees with the title of “Domestic District Manager” are eligible to participate in an incentive plan based on achieving certain sales and inventory shrinkage goals for the respective regions the applicable Domestic District Manager oversee (the “*DM Incentive Plan*”).
- e) DFD Incentive Plan. Approximately three Field Employees with the title of “Divisional Franchise Director” are eligible to participate in an incentive plan based on achieving certain sales and inventory shrinkage goals for the franchises they oversee. (the “*DFD Incentive Plan*”).
- f) DFO Incentive Plan. Approximately 22 Field Employees with the title of “Domestic Director Franchise Operations” are eligible to participate in an incentive plan based on achieving certain sales goals at the franchises they oversee (the “*DFO Incentive Plan*”).

- g) Nutrimarket Product Representative Incentive Plan. Approximately five Field Employees with the title of “Franchise Product Representative II” and “Senior Franchise Product Representative” are eligible to participate in an incentive plan based on achieving certain sales goals to reward the extra effort required to increase sales of the Debtors’ branded products (the “*Nutrimarket Product Representative Incentive Plan*”).
- h) Loss Prevention Incentive Plans. Approximately 14 Field Employees with the title of “Regional LP Manager,” “Senior Regional LP Manager,” and “Senior Director, LP Field” are eligible to participate in incentive plans based on controlling inventory shrinkage, cash loss goals, and sales goals for their respective regions (the “*Loss Prevention Incentive Plans*”).
- i) Supply Chain Incentive Plans. Approximately 393 Corporate Employees employed in the Debtors’ distribution centers are eligible to participate in several short term incentive plans. All supply chain production associates are eligible to participate in an incentive plan intended to optimize, among other things, time spent locating and picking products, observance of best practices for grasping and bending, travel time, and delays in deliveries (the “*LMS Incentive Plan*”). Additionally, all supply chain and production associates except those that are eligible for incentive plans other than the LMS Incentive Plan are eligible to participate in an incentive plan designed to incentivize cost reduction and increased productivity based on savings to budgeted sales for the applicable distribution center (the “*Production Incentive Plan*”). Finally, supply chain Employees with the title of “Logistics Supervisor” are eligible to participate in an incentive plan based on increasing productivity goals

(the “*Logistics Supervisor Incentive Plan*” and together with the LMS Incentive Plan and the Production Incentive Plan, the “*Supply Chain Incentive Plans*”).

- j) Wholesale Incentive Plans. Approximately four Corporate Employees with the title of “VP Wholesale and Senior Director,” “DMM –Owned Brand,” “National Account Manager” and “Wholesale Business Specialist” are eligible to participate in incentive plans (the “*Wholesale Incentive Plans*”) based on achieving EBITDA and revenue goals related to the Debtors’ wholesale sales of branded goods to third-party retailers.
- k) International Franchise Incentive Plans. Approximately five Field Employees with the title of “International Market Manager” and “International Senior Market Manager” are eligible to participate in incentive plans based on achieving certain sale plan goals for their respective regions (the “*International Franchise Incentive Plans*”).
- l) Store Manager Pilot Incentive Plan. Approximately 205 Field Employees with the title of “Store Manager” who are in a store that is a part of the pilot program are eligible to participate in an incentive plan based on achieving certain sales goals for the stores the applicable Store Manager oversees (the “*SM Pilot Incentive Plan*”).
- m) Merchandise Sales Incentive Plan. Approximately five Field Employees with the title of “Category Merchant” are eligible to participate in an incentive plan based on achieving certain merchandise sale goals (the “*Merchandise Incentive Plan*”).

163. I understand that pursuant to the STI Plans described in subsections (b)—(f), (h), (j) and (k) above, quarterly bonuses accrued are paid to eligible Employees following the close of

the Fiscal Year and that pursuant to the STI Plans described in subsections (g) and (i) above, quarterly bonuses accrued are paid to eligible Employees following the close of the applicable Fiscal Quarter. I understand that pursuant to the STI Plans described in subsections (a), (l) and (m) above, monthly bonuses accrued are paid to eligible Employees following the close of the applicable month or Fiscal Quarter.

164. As of the Petition Date, U.S. Employees have earned approximately \$365,000 pursuant to the STI Plans described in subsections (b) and (m) above, approximately \$98,000 of which will become payable during the Interim Period whereas, I am advised that no amounts have been earned under any of the STI Plans described in subsections (a) and (c)—(l) above, due to the poor financial performance as the Debtors' business, in large part caused by the global outbreak of COVID-19. It is my understanding that the Debtors seek authority to continue each of the STI Plans described above for non-Insider Employees, and to make any payments to non-Insider Employees (including Senior Employees solely pursuant to the Final Order) to the extent any amounts become due and owing during the pendency of these Chapter 11 Cases.

165. I understand that the Debtors are not seeking authority under the Workforce Obligations Motion to pay any amounts to Insiders under the STI Plans.

(d) Long-Term Incentive Plans

166. The Debtors also offer certain Employees long term incentive awards in the form of lump sum cash awards, restricted stock units, and restricted cash (the "*LTI Plan*"). The Debtors assess the use of LTI Plan awards in Employee compensation on a case-by-case basis. Restricted stock units, performance cash and restricted cash awarded under the LTI Plan typically vest after three years, with some awards vesting after one year. As of the Petition Date, the Debtors have allocated \$5.1 million in performance cash awards under the LTI Plan in 2020, for eligible U.S. Employees, however, no performance cash awards have been earned in the current Fiscal Year.

There are also approximately 5.9 million unvested shares issued to U.S. Employees under the LTI Plan which will not be payable until 2021. Additionally, there are approximately \$3.1 million accrued in restricted cash awards under the LTI Plan that will become payable in 2020, approximately \$2.6 million accrued in restricted cash awards under the LTI Plan that will become payable in 2021, and approximately \$1.3 million accrued in restricted cash awards under the LTI Plan that will become payable in 2022, for non-Insider Employees. My understanding is that an Employee is only entitled to payments on account of the restricted cash awards under the LTI Plan, if such Employee is employed by the Debtors on the applicable date and that the next payment date on account of the restricted cash awards occurs in 2021. As such no amounts are due and owing on account of the restricted cash awards as of the Petition Date. By the Workforce Obligations Motions, the Debtors respectfully request authority to continue the LTI Plan in the ordinary course of business for non-Insider Employees. The Debtors do not seek authority to pay any amounts to Insiders or Senior Employees under the LTI Plan.

(e) U.S. Deductions.

167. In the ordinary course of their businesses, the Debtors make deductions from the Workforce's paychecks for payments to third parties on behalf of members of the Workforce employed in the United States, for various federal, state, local, and foreign income, FICA, employment insurance and other taxes, as well as for court ordered garnishments, savings programs, repayments for loans taken against the savings programs, benefit plans, insurance and other similar programs (collectively, the "*U.S. Deductions*"). ADP, LLC ("*ADP*") provides the Debtors with services related to the management of the U.S. Deductions and the Canadian Deductions as well as certain other tax-related services. I believe the average monthly U.S. Deductions is approximately \$3,460,000. I am advised that as of the Petition Date, the Debtors

owe ADP approximately \$47,000 related to management of the Workforce Deductions<sup>27</sup> and other tax-related services, approximately \$25,000 of which will come due and owing within the Interim Period.

168. As of the Petition Date, I believe certain U.S. Employees are owed prepetition amounts related to their compensation. Where such amounts are owed, the applicable U.S. Deductions have not yet been taken. I understand that the Debtors may not yet have forwarded to the various third parties noted above the payments that are attributable to the U.S. Deductions that have been withheld from the Workforces' paychecks and I am advised that, as of the Petition Date, accrued, but yet unremitted U.S. Deductions total approximately \$180,000, all of which will come due and owing within the Interim Period. By the Workforce Obligations Motion, the Debtors request authority to remit all amounts that are due and owing on account of U.S. Deduction in the ordinary course of business and to pay amounts owed to ADP in connection with the Workforce Deductions as they become due and owing in the ordinary course of course of business.

(f) U.S. Employee Benefits

169. The Debtors provide a wide array of benefits for their U.S. Employees under a variety of benefit programs (each of the programs in subsections (a)-(g) below, a "***U.S. Employee Benefit Program***" and such programs together, collectively, the "***U.S. Employee Benefit Programs***"). I understand that Full-time U.S. Employees and part-time U.S. Employees who work an average of 30 or more hours per week over a twelve month period (the "***Eligible U.S. Employees***") are eligible for all of the U.S. Employee Benefit Programs (unless otherwise specified), however, some of the U.S. Employee Benefit Programs are available to all U.S. Employees. In addition, I understand that, the Debtors are covering the full costs of certain

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<sup>27</sup> Includes both U.S. and Canadian Deductions.



Benefits Obligations relating to the Furloughed Employees while they remain on furlough, including certain obligations that would otherwise be deducted from such Employees' paychecks. By the Workforce Obligations Motion, the Debtors seek authority to, in their sole discretion, continue this practice postpetition.

170. The Debtors offer fully-insured health plans through an exchange sponsored by Aon Hewitt, known as the Aon Active Exchange ("**Aon**"), and administered by Alight Solutions LLC ("**Alight**"). Eligible U.S. Employees may enroll their dependents, including spouses, domestic partners, children up to age 26, and disabled children of any age in several of the U.S. Employee Benefit Programs, through Aon's exchange. The U.S. Employee Benefit Programs include, amongst other things, medical, dental, and vision insurance programs, the Debtors' prescription drug insurance program, and supplemental life insurance program.

(i) U.S. Medical Plan

171. The Debtors' medical coverage includes several plan options in which Eligible U.S. Employees may enroll that include medical and prescription drug coverage (the "**U.S. Medical Plans**"). The U.S. Medical Plans are provided through various insurance carriers throughout the United States, including, but not limited to, Aetna Inc. ("**Aetna**"), Cigna Corporation ("**Cigna**"),<sup>28</sup> Dean Health Plan, Inc. ("**Dean**"),<sup>29</sup> Geisinger Health System ("**Geisinger**"),<sup>30</sup> Health Net, LLC ("**Health Net**"),<sup>31</sup> Highmark Inc. ("**Highmark**"), Kaiser Foundation Health Plan, Inc. ("**Kaiser**"),<sup>32</sup> UnitedHealth Group Incorporated ("**UnitedHealthcare**"), and UPMC Health Plan, Inc.

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<sup>28</sup> Aetna and Cigna, Highmark, and UnitedHealthcare provide coverage to Employees located throughout the United States.

<sup>29</sup> Dean provides coverage to Employees located in Wisconsin.

<sup>30</sup> Geisinger and UPMC provide coverage to Employees located in Pennsylvania.

<sup>31</sup> Health Net provides coverage to Employees located in Arizona, California, Oregon, and Washington.

<sup>32</sup> Kaiser provides coverage to Employees located in California, Colorado, Washington D.C., Georgia, Maryland, Virginia, Oregon and southwest Washington.

(“*UPMC*”), Blue Cross Blue Shield of Hawaii (“*BCBS*”), Medical Mutual of Ohio (“*MMOH*”), Priority Health, and Triple—S Salud (“*TSS*” and together with Aetna, Cigna, Dean, Geisinger, Health Net, Highmark, Kaiser, UnitedHealthcare, UPMC, BCBS, MMOH, Priority Health and TSS, collectively, the “*Medical Plan Providers*”).

172. Through Aon’s exchange, I understand the Debtors generally offer four different levels of medical coverage: (i) a high-deductible plan that includes a health savings account (the “*HSA*”) and prescription drug coinsurance and has a family-level deductible and out-of-pocket maximums, (ii) two preferred provider organization (“*PPO*”) plan options with prescription drug copays, and (iii) a PPO option with prescription drug copays that covers in-network care and offers limited benefits for out-of-network care.<sup>33</sup> For some insurance providers through which the Debtors offer a U.S. Medical Plan, a health maintenance organization (“*HMO*”) plan option with prescription drug copays that covers in-network care only is offered.

173. I understand the HSA is administered by Alight, on Alight’s Your Savings Account platform (such platform “*YSA*”) and that the Debtors remit to Alight, on behalf of participating Employees, an average of approximately \$14,000 on a weekly basis, which amounts are withheld from Employee paychecks. I understand these amounts vary week to week depending on Employees’ elected deductions.

174. I understand the Debtors also offer several additional health coverage programs as part of the U.S. Medical Plans into which U.S. Employees may enroll at the Employee’s expense, including, critical illness insurance, hospital indemnity insurance, and accident insurance (the “*Additional Medical Benefits*”) through Allstate Insurance Company (“*Allstate*”).

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<sup>33</sup> In California, the Debtors offer an additional level of medical coverage, “Gold II”, which is similar to Gold Medical except it only covers in-network care. Additionally, in Hawaii the Debtors only offer two types of medical coverage: (i) Gold Medical and (ii) Platinum Medical.

175. I understand that the Debtors also offer Employees who are U.S. citizen expatriates health insurance (the “*ExPat Health Insurance Program*”) through GeoBlue Health (“*GeoBlue*”). The ExPat Health Insurance Program provides medical coverage for the covered Employee and his or her family members and that such coverage includes preventative care, primary care, hospitalization coverage and emergency care. I understand that only one Employee is covered under the ExPat Health Insurance Program and that the Debtors pay GeoBlue approximately \$5,000 per Fiscal Quarter to administer the ExPat Health Insurance Program.

176. I understand that approximately 57% of the cost of the U.S. Medical Plans is borne by the Debtors,<sup>34</sup> and Employees contribute to the U.S. Medical Plans through payroll deductions to pay for the balance. The Debtors’ total annual cost related to the U.S. Medical Plans, based on the Debtors’ most current enrollment data, is approximately \$19.7 million. Alight invoices the Debtors for premiums and fees in connection with the U.S. Medical Plans, in the beginning of each month, for the benefits to be provided for such month. Alight invoices the Debtors for premiums and fees in connection with the U.S. Medical Plans, in the beginning of each month, for the benefits to be provided for such month. Alight, in turn, then pays the Medical Plan Providers for the benefits it actually provides to the U.S. Employees for the relevant benefits period. Said different, the benefits to be provided for any given month are typically paid in full within the first two weeks of such month. Occasionally, this results in the Debtors incurring monthly and quarterly true up payments of about \$10,000-\$50,000 related to late-billed amounts under the U.S. Medical Plans, if the Debtors’ initial payment was more or less than the actual costs of the benefits provided for such period.

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<sup>34</sup> The Debtors are currently covering 100% of the costs of the U.S. Medical Plans for Furloughed Employees.

177. The Debtors also subsidize or continue to provide certain benefits to certain former U.S. Employees after their termination, retirement, or disability leave, including (without limitation) benefits provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“*COBRA*”) through Alight. I understand the Debtors fund premiums on account of *COBRA* coverage in advance, and that *COBRA* participants then pay Alight directly for their coverage and Alight then sends a monthly payment of approximately \$16,000 to the Debtors from the amounts it receives from *COBRA* participants.<sup>35</sup>

178. As of the Petition Date, I am advised that there are approximately \$580,000 in accrued and unpaid amounts owing on account of the U.S. Medical Benefits, all of which will become due within the Interim Period. By this Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the U.S. Medical Benefits, in the ordinary course of business and in their sole discretion and to continue the U.S. Medical Benefits, in the ordinary course of business postpetition.

(ii) U.S. Dental Plans

179. I understand that the Debtors also offer Eligible U.S. Employees dental care benefits through four different dental plan options: (i) a basic PPO option that covers both in- and out-of-network care but does not cover major services or orthodontic expenses, (ii) a PPO option that covers in- and out-of-network care as well as major services and orthodontic expenses for children up to age 19, (iii) an enhanced PPO option that covers in- and out-of-network care and major services and orthodontic expense for both children and adults, and (iv) a dental HMO option that covers in-network care only, including orthodontic expenses for children and adults. The U.S.

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<sup>35</sup> The costs of the *COBRA* coverage vary from month to month depending on how many Employees are currently receiving *COBRA* benefits.

Dental Plans are provided through various insurance carriers throughout the United States, including Aetna, Cigna, Delta Dental Insurance Company (“*Delta Dental*”), MetLife, Inc. (“*MetLife*”), and UnitedHealthcare (collectively, the “*Dental Plan Providers*”).<sup>36</sup>

180. I understand that approximately 19% of the cost of the U.S. Dental Plans is borne by the Debtors, and Employees contribute to the U.S. Dental Plans through payroll deductions to pay for the balance. The Debtors’ total annual cost related to the U.S. Dental Plans, based on the Debtors’ most current enrollment data, is approximately \$1.4 million. Alight invoices the Debtors for premiums and fees in connection with the U.S. Dental Plans, in the beginning of each month, for the benefits to be provided for such month. Alight, in turn, then pays the Dental Plan Providers for the benefits it actually provides to the U.S. Employees for the relevant benefits period. Said different, the benefits to be provided for any given month are typically paid in full within the first two weeks of such month. Occasionally, this results in the Debtors incurring *de minimis* true up payments related to late-billed amounts under the U.S. Dental Plans for prior periods, if the Debtors’ initial payment was more or less than the actual costs of the benefits provided for such period.

181. As of the Petition Date, I believe that there are approximately \$45,000 in accrued and unpaid amounts owing on account of the U.S. Dental Plans, approximately all of which will become due within the Interim Period. By the Workforce Obligations Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the U.S. Dental Plans, in the ordinary course of business and in their sole discretion. The Debtors also request authority to continue the U.S. Dental Plans in the postpetition in the ordinary course of business.

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<sup>36</sup> All the Dental Plan Administrators provide coverage for Employees working throughout the United States.

(iii) U.S. Vision Plans

182. I understand the Debtors also offer several vision care benefits to Eligible U.S. Employees (the “*U.S. Vision Plans*”), including (i) an exam-only option that provides in-network discounts for certain services, (ii) a PPO option that covers in- and out-of-network care and (iii) an enhanced PPO option that also covers in- and out-of-network care. The U.S. Vision Plans are provided through various insurance carriers throughout the United States, including EyeMed Vision Care, LLC (“*EyeMed*”), MetLife, UnitedHealthcare, and Vision Service Plan Inc. (“*VSP*”) and together with EyeMed, MetLife and UnitedHealthcare, collectively, the “*Vison Plan Providers*”).<sup>37</sup>

183. I understand that the U.S. Vision Plans are entirely funded through Employee contributions.<sup>38</sup> As of the Petition Date, I believe that there are approximately \$16,000 in accrued and unpaid amounts owing on account of the U.S. Dental Plans, approximately all of which will become due within the Interim Period. By the Workforce Obligations Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the U.S. Vision Plans, in the ordinary course of business and in their sole discretion. The Debtors also request authority to continue the U.S. Vision Plans in the postpetition in the ordinary course of business.

(iv) U.S. Miscellaneous Health and Wellness Benefits

184. I understand the Debtors pay for flu vaccinations for Employees at Rite Aid and Walmart two to three times per year on a seasonal basis depending on the spread of the flu (the “*Flu Vaccine Program*”). The Debtors pay Rite Aid and Walmart based on the actual costs

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<sup>37</sup> Each of the Vison Plan Administrators provides coverage for Employees throughout the United States.

<sup>38</sup> The Debtors are currently covering 100% of the costs of the U.S. Vision Plans for Furloughed Employees.

incurred in connection with the Flu Vaccine Program and as of the Petition Date, the Debtors do not believe that there are any amounts due and outstanding on account of the Flu Vaccine Program.

185. I understand the Debtors also offer an employee assistance program (the “*Employee Assistance Program*”) to assist Employees with their personal, family, and work/life concerns through confidential, 24/7 short-term counseling. The Debtors pay Health Advocate, Inc. approximately \$7,500 per month to administer the Employee Assistance Program and that as of the Petition Date, I estimate that there is approximately \$7,500 due and outstanding to Health Advocate on account of the Employee Assistance Program, all of which will come due during the Interim Period.

186. I understand the Debtors offer support to Employees raising children with learning and behavior challenges (the “*Autism Support Program*”). The Debtors pay Rethink Autism approximately \$4,300 per month to administer the Autism Support Program. As of the Petition Date, I estimate that there is approximately \$4,300 due and outstanding to Rethink on account of the Autism Support Program, all of which will come due during the Interim Period.

187. By the Workforce Obligations Motion, the Debtors request authority to continue to make payments and remittances of prepetition amounts due and owing under the Employee Assistance Program and Autism Support Program as they come due in the ordinary course of business, and to continue the Flu Vaccine Program, Employee Assistance Program, and Autism Support Program in the ordinary course of business postpetition.

(v) U.S. Life Insurance, Disability Insurance and AD&D Insurance

188. I understand the Debtors provide, or in certain cases offer the option of purchasing, certain types of life and disability insurance, including basic life, supplemental life, dependent and spousal life insurance, short-term disability insurance, salary continuation benefits, long-term

disability insurance, accidental death and dismemberment insurance, dependent accidental death and dismemberment insurance, and related programs (collectively, the “*U.S. Disability Benefits*”), to all full-time U.S. Employees. All of the Debtors’ U.S. Disability Benefits are administered by Allstate and MetLife, Inc. (“*MetLife*” and together with Allstate, collectively, the “*U.S. Disability Providers*”).

189. The Debtors provide basic life insurance coverage (the “**U.S. Basic Life Insurance**”) to all full-time U.S. Employees through a fully insured plan, administered by MetLife. U.S. Employees are entitled to an amount equal to such Employee’s annual earnings, rounded to the nearest one thousand dollars under the U.S. Basic Life Insurance. In addition, the Debtors offer all full-time U.S. Employees supplemental life insurance coverage (the “*Supplemental Life Insurance*”). Finally, the Debtors offer dependent life insurance coverage, which allows all full-time U.S. Employees to purchase life insurance for their spouse and/or dependent children (the “*Dependent Life Insurance*”).

190. The Debtors historically offered a life insurance policy that covers certain U.S. Employees who were hired prior to January 1, 1988 (the “*Grandfathered Life Insurance Policy*”). Under the Grandfathered Life Insurance Policy, covered Employees receive a death benefit equal to two times such Employee’s annual salary. The Grandfathered Life Insurance Policy is fully funded by the Debtors and costs the Debtors approximately \$4,500 per year.

191. The Debtors provide short-term disability coverage for all full-time U.S. Employees (“*U.S. Short-Term Disability*”) in an the amount equal to 50% of the U.S. Employee’s base weekly salary up to a weekly maximum of \$500. The duration of the U.S. Short-Term Disability is based on the U.S. Employee’s length of full-time employment with the Debtors. In addition to the U.S. Short-Term Disability, the Debtors offer salary continuation to U.S.



Employees receiving U.S. Short-Term Disability who are not receiving payments under state disability programs that, together with their U.S. Short-Term Disability, total an amount greater than 80% of the U.S. Employee's base salary ("*U.S. Salary Continuation*"). U.S. Salary Continuation provides up to an additional 30% of the U.S. Employee's base salary for up to 12 weeks.

192. The Debtors also provide each full-time U.S. Employee with long-term disability coverage ("*U.S. Long-Term Disability*") and an optional buy-up plan for additional long-term disability benefits (the "*Additional U.S. Long-Term Disability*"). The U.S. Long-Term Disability provides 40% of the Employee's pre-disability salary, while the Additional U.S. Long-Term Disability provides an additional 20% of the Employee's pre-disability salary, beyond what the U.S. Long-Term Disability provides. The total annual cost to the Debtors related to U.S. Long-Term Disability, based on the Debtors' most current data, is approximately \$518,000 (inclusive of administrative fees).

193. The Debtors also offer accidental death and dismemberment insurance ("*AD&D Insurance*") to all full-time U.S. Employees. U.S. Employees must elect to receive the AD&D Insurance and select a benefit amount. The Debtors also offer accidental death and dismemberment insurance for an Employee's spouse and/or dependent children (the "*Dependent AD&D Insurance*").

194. I understand the costs of the U.S. Short-Term Disability benefits, U.S. Salary Continuation, U.S. Long-Term Disability benefits and U.S. Basic Life Insurance are borne entirely by the Debtors. The remainder of the U.S. Disability Benefits are fully funded through Employee contributions. The Debtors pay approximately \$18,000 per month to MetLife to administer the U.S. Disability Benefits. As of the Petition Date, I estimate that there are approximately \$518,000

in obligations outstanding on account of the U.S. Disability Benefits, inclusive of amounts withheld from Employees and of fees paid to MetLife, approximately all of which will become due within the Interim Period. By the Workforce Obligations Motion, the Debtors seek authority to make all payments and remittances for amounts attributable to the prepetition period and relating to the U.S. Disability Benefits, in the ordinary course of business and in their sole discretion.

(vi) U.S. Flexible Benefits.

195. I understand that in addition to the HSA noted above, the Debtors also offer Eligible U.S. Employees the opportunity to establish flexible spending accounts which allow such U.S. Employees to set aside pre-tax wages, subject to minimum and maximum annual contributions, to pay for eligible out-of-pocket expenses (the “*FSAs*”) using YSA. There are two types of FSAs offered to Eligible U.S. Employees: health care FSAs (the “*HCFASs*”) and dependent care FSAs (the “*DCFASs*”). The Debtors remit to Alight on behalf of participating Employees an average of approximately \$7,000 on a weekly basis, which amounts are withheld from Employee paychecks. I understand that remittances to Alight on account of the FSAs are based upon actual usage of the FSAs and vary week-to-week.

196. In addition, the Debtors offer U.S. Employees commuter accounts, which allow participating Employees to set aside pre-tax wages, to pay for public transit and qualified parking (the “*Commuter Accounts*”). The Commuter Accounts are administered by Alight through YSA. The Debtors remit to Alight on behalf of participating Employees an average of approximately \$7,000 on a monthly basis, which amounts are withheld from Employee paychecks.

197. Additionally, the Debtors are subject to an ordinance issued by the San Francisco Department of Public Health (“*SFDPH*”) that requires the Debtors to provide a commuter benefits program that supports and encourages Employees to bike, take public transit, and carpool to work

(the “*SFDPH Program*”). The Debtors pay the SFDPH approximately \$29,000 per Fiscal Quarter on behalf of participating Employees.

198. The Debtors withhold Employee contributions to the FSAs, HSA, SFDPH Program, and Commuter Accounts each pay period. In addition, the Debtors pay Alight on average approximately, \$5,050 to administer the FSAs, HSA, SFDPH, and Commuter Accounts. As of the Petition Date, I believe that there are approximately \$57,000 in accrued amounts to be remitted on account of the FSAs, SFDPH Program, and Commuter Accounts to their respective administrators and that the Debtors owe approximately \$5,800 to Alight to administer the FSAs, HSA, SFDPH Program, and Commuter Accounts. By the Workforce Obligations Motion, the Debtors request authority to (i) make all payments and remittances for amounts attributable to the prepetition period and related to the FSAs, SFDPH Program, and Commuter Accounts, in the ordinary course of business and in their sole discretion and (ii) continue the FSAs, SFDPH Program, and Commuter Accounts postpetition in the ordinary course of business.

(vii) U.S. Savings and Retirement Benefits

199. I understand that the Debtors sponsor a 401(k) Plan in which, full-time U.S. Employees and part-time U.S. Employees who work 1,000 or more hours within a calendar year, are eligible to participate. Eligible U.S. Employee may contribute a portion of his or her eligible earnings each year through pre-tax contributions to the 401(k) Plan, subject to limits imposed by federal law and I understand the Debtors match 50% of the first 5% of participating U.S. Employee contributions to their 401(k) Plan. Fidelity Investments Inc. administers the 401(k) Plan and Aon provides certain consulting services through Aon, in order to ensure the 401(k) Plan complies with applicable law and regulations and acts as the fiduciary under the 401(k) Plan. Further, the Debtors pay Louis Plung & Company approximately \$13,250 per year from 401(k) forfeitures for 401(k) auditing services.

200. I understand that in 2019, the Debtors withheld approximately \$739,000 per month from U.S. Employees participating in the 401(k) Plan, and contributed approximately \$265,000 per month in 2019 on account of matching contributions. By the Workforce Obligations Motion the Debtors request authority to continue sponsoring the 401(k) Plan and to remit all amounts withheld from Employees' paychecks as contributions to the 401(k) Plan, and to pay any outstanding prepetition 401(k) matching contributions and related administrative fees.

201. The Debtors also sponsor a non-qualified deferred compensation plan (the "*NQDC Plan*") for U.S. Employees with a job title of "director" or above. I understand that under the NQDC Plan, eligible Employees may defer up to 80% of their eligible salary and commissions and 100% of their earned bonuses, pre-tax and that the Debtors match up to 3% of the participating U.S. Employee's base salary deferred. I understand that there are 45 current Employees (three of whom are Insiders) and 13 former Employees who have deferred compensation pursuant to the NQDC Plan and that as of the Petition Date, there are approximately \$4.1 million in total deferred compensation obligations under the NQDC Plan. I understand that not all of this amount is a current cash payment obligation as a participating Employee is only entitled to cash payment distributions in the event such Employee leaves the Debtors' employment or otherwise has a pre-elected scheduled distribution.<sup>39</sup> The obligations under the NQDC Plan are backed by Debtor-owned life insurance policies (the "*COLI Policies*"), purchased on the lives of NQDC Plan participants from Nationwide Insurance ("*Nationwide*"), MetLife, General American Life Insurance Company ("*General American*"), and New England Life Insurance Co. ("*New England Life*"). I understand that the COLI Policies are held in a rabbi trust (the "*Rabbi Trust*") for which Bank of America Merrill Lynch ("*BAML*") serves as trustee and Prudential Financial Company

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<sup>39</sup> Of the current Employees who have pre-elected scheduled distributions, one such Employee is an Insider.

(“*Prudential*”) serves as the recordkeeper for the NQDC Plan. As of the Petition Date, the cash value of the COLI Policies is approximately \$4.6 million. I understand that as the COLI obligations become payable under the terms of the NQDC Plan, the Debtors have historically paid the NQDC Plan liabilities from a general liability account through payroll and that from time to time, but not more frequently than quarterly, the Debtors are reimbursed from the Rabbi Trust by accessing the cash value of the COLI Policies. As of the Petition Date, there are approximately \$650,000 in deferred compensation payments scheduled to be made pursuant to the NQDC Plan through January, 2027, including approximately \$23,000 due to be paid to one former Employee during the Interim Period. By the Workforce Obligations Motion, the Debtors request the authority to maintain to the NQDC Plan but do not seek authority to make payments under the NQDC Plan.

202. The Debtors pay BAML approximately \$2,000 annually for its services as trustee of the Rabbi Trust, Prudential approximately \$7,500 annually for its services as recordkeeper, General American approximately \$375 annually, and New England Life approximately \$ 3,174 annually in premiums on account of the COLI Policies. As of the Petition Date, the Debtors do not owe any amounts to BAML, Prudential, General American, or New England Life on account of the Rabbi Trust or the related COLI Policies but nevertheless the Debtors request the authority to continue making payments to BAML and to Prudential, MetLife, General American, and New England Life on a postpetition basis to maintain the Rabbi Trust, NQDC Plan and COLI Policies, respectively.

(viii) Non-Insider Severance

203. I understand the Debtors sponsor and administer an executive severance plan (the “*Executive Severance Plan*”) and a non-executive severance plan (the “*Non-Executive Severance*”).

*Plan,*” and together with the Executive Severance Plan, the “*Severance Plans*”) <sup>40</sup> that provide severance pay to certain Employees upon a qualifying termination of employment or other qualifying event. <sup>41</sup>

204. The Non-Executive Severance Plan accrues severance pay of one week for full-time Field Employees, with the title of “Store Manager,” upon one full year of employment with the Debtors. For each subsequent year of employment, such Field Employees accrue an additional week of severance pay up to a maximum of four weeks of severance pay.

205. The Executive Severance Plan provides severance pay for six months for Vice Presidents and twelve months for positions senior to Vice President. Additionally, the Executive Severance Plan provides for the continuation of healthcare coverage through the U.S. Medical Plans and/or U.S. Dental Plans and/or U.S. Vision Plans and the reimbursement of health insurance premiums in excess of the U.S. Employee’s premium payable immediately prior to the U.S. Employee’s termination.

206. Severance benefits under the Severance Plans are typically provided in exchange for a release in liability for the Debtors. I believe it is important that the Debtors have the flexibility to maintain their current practice of honoring the Severance Plans for Employee retention and morale.

207. I understand that approximately 90 U.S. Employees have received severance under the Severance Plans and the Debtors have paid approximately \$2 million in severance benefits to

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<sup>40</sup> By the Workforce Obligations Motion, the Debtors do not seek authority to pay any severance benefits to Insiders, but reserve the right to do so in the future by separate motion.

<sup>41</sup> Separate and apart from the Severance Plans, certain Employees have employment contracts with the Debtors providing for severance. If an Employee’s employment contract contains severance benefits, such Employee typically may choose between the severance benefits under his or her employment agreement or the severance benefits under the applicable Severance Plan. By the Workforce Compensation Motion, the Debtors do not seek authority to pay severance benefits under any employment contract. The Debtors reserve the right to seek authority to pay such severance in the future by separate motion.

U.S. Employees in the twelve month period prior to the Petition Date but that, as of the Petition Date, the Debtors have no accrued but unpaid liability to U.S. Employees. As such, by the Workforce Obligations Motion, the Debtors seek authority to continue providing benefits under the Severance Plans in the ordinary course of business to eligible non-Insider U.S. Employees, subject to section 503(c) of the Bankruptcy Code, provided that the Debtors do not seek authority to make payments to Senior Employees under the Severance Plans pursuant to the Interim Order.<sup>42</sup>

(ix) U.S. Miscellaneous Employee Benefit Programs

208. I understand the Debtors offer a number of additional voluntary benefits for Eligible U.S. Employees (the “*Miscellaneous Employee Benefit Programs*”). I understand these benefits include access to discounted legal services, identity theft protection, international vacation medical insurance, bill negotiation services, group auto and home insurance, and pet insurance. The Debtors incur no costs on account of the benefits described above, and the U.S. Employees are responsible for all payments in connection therewith.

209. In addition, I understand the Debtors provide certain U.S. Employees, with the title of Vice President or above, with (i) parking spaces at the Debtors’ headquarters (the “*Leased Parking Spaces*”) for use in connection with their commute to work and (ii) a monthly stipend to go towards parking-related expenses in the city of Pittsburgh, Pennsylvania to further encourage such Employees, to work from the Debtors’ headquarters (the “*Parking Stipend*” and together with the Leased Parking Spaces, collective, the “*Parking Expenses*”). I understand the average monthly cost on account of the Parking Expenses is approximately \$34,000 per month and that as

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<sup>42</sup> For Field Employees who are Store Managers and associates in charge of a store undergoing GOB Sales, the Debtors are requesting authorization pursuant to the GOB Motion to make store closing bonus payments (the “*GOB Store Closing Bonuses*”) to such Field Employees. For the avoidance of doubt the Debtors are not seeking authorization to make GOB Store Closing Bonus payments pursuant to the Workforce Compensation Motion.

of the Petition Date, the Debtors' owe approximately \$10,000 on account of the Parking Expenses, all of which will become payable during the Interim Period.

210. I understand the Debtors also provide car allowances (the "*Car Allowances*") for two field leaders to be for them to have a car to cover the regions which they oversee. I understand the Car Allowances cost the Debtors approximately \$2,000 per month and that as of the Petition Date I am advised that the Debtors owe approximately \$1,000 on account of the Car Allowances, all of which will be payable during the Interim Period.

211. By the Workforce Obligations Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the Miscellaneous Employee Benefit Programs, Parking Expenses, and Car Allowances, in the ordinary course of business and in their sole discretion and to continue the Miscellaneous Employee Benefit Programs, in the ordinary course of business postpetition.

(g) U.S. Other Compensation: PTO Obligations

212. The Debtors offer their U.S. Employees other forms of compensation, including paid holidays, sick leave or other paid and unpaid leave, vacation time, and other earned time off (collectively, "*PTO*"), which give rise to the Debtors' PTO Obligations. Such forms of compensation are customary and necessary in order for maintaining the morale and stability of the Debtors' workforce.

213. I understand the Debtors provide paid holidays for several dates annually which vary by the business segment in which the U.S. Employees work. Generally, all U.S. Employees are entitled to six paid holidays per year, based on scheduled holidays, with certain other U.S. Employee receiving additional holidays based on the business segment in which they work.



214. The Debtors also provide paid sick leave to U.S. Employees. Generally, U.S. Employees are provided with 40 hours of sick leave per calendar year, with the accrual differing based upon the business segment in which the U.S. Employee work.

215. The Debtors also provide U.S. Employees with paid vacation time. Vacation time offered to U.S. Employees varies depending on which segment of the Debtors' business the U.S. Employee works in. In general, vacation time accrues based on an Employee's length of service to the Debtors.

216. The Debtors also offer bereavement leave to U.S. Employees following the death of a family member. U.S. Employees are granted three days of paid leave following the death of an immediate family member and one day of paid leave following the death of other family members.

217. In addition to the above, the Debtors provide certain other paid and unpaid leave, as required by the various state laws in which the Debtors operate. The type of leave provided differ based on the applicable law, but in each case, the Debtors provide the minimum amount of leave required by such law.

218. I am advised that, as of the Petition Date, the aggregate accrued but unpaid PTO Obligations for all U.S. Employees total approximately \$9.02 million. This accrued amount, however, does not represent a true "cash" liability for the Debtors, as the Debtors anticipate that U.S. Employees will use most of their PTO in the ordinary course of business, and eligible U.S. Employees only receive cash payments on account of unused PTO upon termination or resignation, if at all.

219. I believe PTO is an essential feature of the employment package provided to the Debtors' U.S. Employees, and failure to provide this benefit would harm Employee morale and

encourage the premature departure of valuable Employees, and therefore by the Workforce Obligations Motion, the Debtors request authority to honor all of their PTO Obligations as and when they come due in the ordinary course of business.

(h) U.S. Workers' Compensation

220. I understand that under the laws of the various U.S. states in which the Debtors operate, the Debtors are required to maintain workers' compensation policies and programs, or participate in workers' compensation programs administered by state governments, to provide their U.S. Employees with workers' compensation coverage for claims arising from or related to their employment with the Debtors. The Debtors' U.S. Employees are covered under workers' compensation policies (the "***U.S. Workers' Compensation Policies***") that are either "monopolistic" (i.e. provided by a government-operated insurance provider) or "non-monopolistic" (i.e. provided by a private sector insurance providers. The Debtors pay monthly premiums in the amount of approximately \$52,000 with respect to their current U.S. Workers' Compensation Policies. As part of the Workers' Compensation Policies, the Debtors have stop loss coverage (the "***Stop Loss Coverage***"). The Stop Loss Coverage effectively caps the Debtors' potential liability under the Non-Monopolistic Workers' Compensation Policies at \$250,000 per claim. With regards to the Monopolistic Workers' Compensation Policies, the Debtors' only out of pocket expense is the premiums associated with such policies, with all other costs associated with such policies covered by the applicable state agency. In addition, the Debtors have certain letters of credit outstanding in connection with their U.S. Workers' Compensation Policies in the amount of approximately \$4.5 million with JPMorgan Chase & Co. ("***Chase***").

221. I understand that under the U.S. Workers' Compensation Policies, upon the filing of a verified claim ("***U.S. Workers' Compensation Claim***") by an eligible U.S. Employee, the

U.S. Workers' Compensation Provider pays the U.S. Workers' Compensation Claim amount directly to the U.S. Employee.

222. As of the Petition Date, the Debtors have approximately \$731,500 accrued but unpaid liability on account of the U.S. Workers' Compensation Policies, \$473,000 of which will become due during the Interim Period. By the Workforce Obligations Motion, the Debtors request authority to continue their workers' compensation program and pay any amounts due and owing in connection therewith.

223. I believe it is critical that the Debtors be permitted to continue their workers' compensation program and to make payments in connection with outstanding prepetition claims, taxes, charges, assessments, premiums, and third party administrator fees in the ordinary course of business because alternative arrangements for workers' compensation coverage would most certainly be more costly, and the failure to provide coverage may subject the Debtors and/or their officers to severe penalties. In order to facilitate the ordinary course handling of U.S. Workers' Compensation Claims, by the Workforce Obligations Motion, the Debtors further request authority, in their sole discretion, to lift the automatic stay of section 362 of the Bankruptcy Code to allow U.S. Workers' Compensation Claims to proceed under the U.S. Workers' Compensation Policies and to allow the Debtors, their affiliates, the U.S. Workers' Compensation Provider and/or their third party administrators to negotiate, settle and/or litigate U.S. Workers' Compensation Claims, and pay resulting amounts, whether such claims arose before or after the Petition Date.

(i) Canadian Wages Obligations

224. I understand the Debtors' Canadian Field and Corporate Employees are paid wages and salaries on a bi-weekly basis. The average gross payroll on account of Canadian Employees for each pay period is approximately \$670,000. The Debtors currently process payroll for the Canadian Employees' wages and salaries internally utilizing Lawson, and solely for Employees in

the province of Quebec, CGI Payroll Services Centre Inc.'s Nethris payroll services ("*Nethris*"). The Debtors pay their Canadian Employees in arrears for work on a bi-weekly schedule. I estimate that, as of the Petition Date, they owe approximately \$850,000 in Wage Obligations to Canadian Employees, all of which will become payable during the Interim Period.

(j) Canadian Incentive Programs

225. I understand that Canadian Employees with the job titles of Store Manager and District Manager are eligible to earn bonuses through two separate incentive programs described in subsections (a) and (b) below (respectively, the "*Store Manager Incentive Program*" and the "*District Manager Incentive Program*" and together, collectively, the "*Canadian Incentive Programs*" and together with the U.S. Incentive Programs, collectively, the "*Incentive Programs*"). Below is my understanding of the Canadian Incentive Programs:

- a) Store Manager Incentive Program. Approximately 169 Canadian Employees with a job title of "Canada Store Manager" are eligible to receive incentive payouts under the Store Manager Incentive Program basis based on the performance of their respective stores and management of wages relative to sales.
- b) District Manager Incentive Program. Approximately 11 Canadian Employees with a job title of "Canada District Manager" are eligible to receive incentive payouts under the District Manager Incentive Program based on the performance of their business units and wages relative to sales.

226. I understand that in addition to the Canadian Incentive Programs, Canadian Employees who meet the applicable requirements are eligible to participate in certain U.S. Incentive Programs, including the Corporate Incentive Plan, Loss Prevention Incentive Plan, the GOB Bonuses and the LTI Plan on the same basis as U.S. Employees.

227. As of the Petition Date, I am advised that Canadian Employees have earned approximately \$197,583 under the Canadian Incentive Programs, and applicable U.S. Incentive Programs, \$44,000 of which will become due and payable during the Interim Period. By the Workforce Obligations Motion, the Debtors request authorization to continue the Canadian Incentive Programs in the ordinary course of business and to make payments to non-Insider Canadian Employees as they come due. However, for the avoidance of doubt, the Debtors are not seeking to make any payments to Insiders under any of the Canadian Incentive Programs or U.S. Incentive Programs. Further, the Debtors do not seek authority to pay any amounts to Senior Employees under any of the Canadian or U.S. Incentive Programs pursuant to the Interim Order, but do request such authority pursuant to the Final Order.

(k) Canadian Deductions.

228. In the ordinary course of their businesses, the Debtors make deductions from the Workforce's paychecks for payments to third parties on behalf of members of the Workforce employed in Canada, for various federal, provincial, local, and employment insurance and other taxes, as well as for court ordered garnishments, savings programs, repayments for loans taken against the savings programs, benefit plans, insurance and other similar programs (collectively, the "*Canadian Deductions*"). The Debtors' average monthly Canadian Deductions is approximately \$51,000 and ADP provides the Debtors with services related to the management of the Canadian Deductions and certain other tax-related obligations.

229. I understand that as of the Petition Date, certain Canadian Employees are owed prepetition amounts related to their compensation and that where such amounts are owed, the applicable Canadian Deductions have not yet been taken or the Debtors may not yet have forwarded to the various third parties noted above the payments that are attributable to the Canadian Deductions that have been withheld from the Workforces' paychecks. I estimate that,

as of the Petition Date, accrued Canadian Deductions to be remitted total approximately \$51,000, all of which will become due and payable during the Interim Period. By the Workforce Obligations Motion, the Debtors request authority to make all payments and remittances that are due and owing on account of Canadian Deductions in the ordinary course of business including amounts owed to ADP on account of Canadian Deductions as they become due and owing in the ordinary course.

(1) Canadian Other Compensation: PTO Obligations

230. I understand the Debtors offer their Canadian Employees other forms of compensations, including PTO. I believe such forms of compensation are customary and necessary in order for the Debtors to retain qualified employees.

231. The Debtors provide paid holidays for several dates annually which vary by the business segment in which the Canadian Employees work. All Canadian Employees are entitled to five paid scheduled holidays per year and additional paid holidays are provided in accordance with recognized holidays of the Canadian province in which the Canadian Employee is employed.

232. The Debtors also provide paid sick leave to Canadian Employees. Generally, Canadian Employees are provided with 40 hours of sick leave per calendar year. Canadian Employees may carry over unused sick leave into subsequent years.

233. The Debtors also provide Canadian Employees with paid vacation time. Vacation time offered to Canadian Employees varies depending on which segment of the Debtors' business the Canadian Employee works in. In general, vacation time accrues based on an Employee's length of service to the Debtors.

234. The Debtors also offer bereavement leave to Canadian Employees following the death of a family member. Canadian Employees are granted three days of paid leave following the death of an immediate family member and one day of paid leave following the death of other family members.

235. I estimate that, as of the Petition Date, the aggregate accrued but unpaid PTO Obligations for all Canadian Employees total approximately \$1,080,000. I believe this accrued amount, however, does not represent a true “cash” liability for the Debtors, as the Debtors anticipate that Canadian Employees will use most of their PTO in the ordinary course of business, and eligible Canadian Employees only receive cash payments on account of unused PTO upon termination or resignation, if at all.

236. I believe PTO is an essential feature of the employment package provided to the Debtors’ Canadian Employees, and failure to provide this benefit would harm Employee morale and encourage the premature departure of valuable Employees, the Debtors request authority to honor all of their PTO Obligations as and when they come due in the ordinary course of business.

(m) Canadian Employee Benefits

237. I understand the Debtors provide a wide array of benefits for their Employees located in Canada under a variety of benefit programs (each, a “*Canadian Employee Benefit Program*” and such programs together, collectively “*Canadian Employee Benefit Programs*”). Full-time Canadian Employees are eligible for the Canadian Employee Benefit Programs (the “Eligible Canadian Employees”), however, some of the Canadian Employee Benefit Programs are available to all Canadian Employees, such as the Canadian Long-Term Disability and the Canadian Company Life Insurance (each as defined below).

238. Eligible Canadian Employees may enroll their dependents, including spouses, domestic partners, children in the Canadian Employee Benefit Programs.<sup>43</sup> Children under age 21 that are not full-time students are not covered if they are working more than 30 hours per week.

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<sup>43</sup> Eligible Canadian Employees may enroll children in that are (i) full-time student and 25 years old or younger; (ii) 26 or younger and a resident of Quebec; or (iii) disabled, regardless of age in the Canadian Benefits Programs.

The Canadian Employee Benefit Programs include, amongst other things, medical, dental, and vision insurance programs, the Debtors' prescription drug insurance program, and supplemental life insurance program.

(i) Canadian Health Insurance Programs

239. The Debtors offer Canadian Employees health insurance (the "**Canadian Health Insurance Program**") through the Canada Life Assurance Company ("**Canada Life**"). The Canadian Health Insurance Program provides Eligible Canadian Employees with medical care, prescription drug, vision and dental coverage, and related benefits (the "**Canadian Health Benefits**"). I understand the Canadian Health Insurance Program is fully insured and approximately 67% of the cost of the Canadian Health Benefits is borne by the Debtors, and Employees contribute to the Canadian Health Benefits through payroll deductions to pay for the balance.<sup>44</sup> The Debtors' total cost related to the Canadian Health Benefits, based on the Debtors' most current enrollment data, is approximately \$42,000 per month and as of the Petition Date, I estimate that approximately \$42,000 in obligations are accrued and outstanding under the Canadian Health Benefits, all of which will come due during the Interim Period.

240. By the Workforce Obligations Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the Canadian Health Benefits, in the ordinary course of business and in their sole discretion and to continue the Canadian Health Benefits, in the ordinary course of business postpetition.

(ii) Life Insurance and Disability Insurance

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<sup>44</sup> The Debtors are currently covering 100% of the costs of the Canadian Health Benefits for Furloughed Employees.



241. I understand the Debtors provide, or in certain cases offer the option of purchasing, certain types of life and disability insurance, including basic life and long-term disability insurance (collectively, the “*Canadian Disability Benefits*”), to all full-time Canadian Employees.

242. The Debtors offer each full-time Canadian Employee long-term disability coverage (“*Canadian Long-Term Disability*”) through Canada Life, which provides 60% of the Employee’s pre-disability salary, up to a maximum of \$6,000 per month. I understand the Debtors provide 67% of the premiums for the Canadian Long-Term Disability, with the remaining 33% paid by the Employee and that the Debtors’ total annual cost related to the Canadian Long-Term Disability, based on the Debtors’ most current data, is approximately \$162,000. As of the Petition Date, I estimate that there are approximately \$9,000 in obligations outstanding on account of the Canadian Long-Term Disability.

243. The Debtors provide basic life insurance coverage (“*Canadian Company Life Insurance*”) through Canada Life to all full time Canadian Employees. I understand the Debtors fund 67% of the premiums under the Canadian Company Life Insurance and that as of the Petition Date, I am advised that there are approximately \$3,000 in obligations outstanding on account of the Canadian Company Life Insurance, approximately all of which will become due within the Interim Period.

244. By the Workforce Obligations Motion, the Debtors seek authority to make all payments or remittances for amounts attributable to the prepetition period and relating to the Canadian Disability Benefits, in the ordinary course of business and in their sole discretion and to continue the Canadian Disability Benefits postpetition in the ordinary course of business.

(iii) Canadian Savings and Retirement Benefits

245. The Debtors offer Canadian Employees the option of enrolling in a registered retirement savings plan (the “*RRSP*”) administered by Canada Life. Generally, only full-time

Canadian Employees, after three months of service to the Debtors are eligible to enroll in the RRSP. However, part-time Canadian Employees who work in Quebec are eligible to enroll in the RRSP after three months of employment with the Debtors. I understand that under the RRSP, an eligible Canadian Employee may contribute a portion of his or her eligible earnings each year through pre-tax contributions to the RRSP, subject to certain limits and the Debtors match 100% of the first 3% of participating Canadian Employee contributions to the RRSP. In addition under the RRSP, an eligible Canadian Employee can establish an RRSP for his or her spouse or common law partner, to which such Canadian Employee can make contributions.

246. Under the RRSP, Employees are entitled to distributions at any time in the form of lump sum payments, annuities, or can transfer the balance of their RRSP to different retirement savings accounts.

247. The Debtors remit to Canada Life approximately \$20,000 on a bi-weekly basis through Employee payroll deferrals and contribute approximately \$15,000 per month on account thereof. As of the Petition Date, no amounts are outstanding in obligations related to the RRSP on account of Canadian Employees. By the Workforce Obligations Motion the Debtors seek authorization to continue the RRSP in the ordinary course of business.

(iv) Non-Insider Severance

248. I understand that Canadian Employees are eligible to participate in the Severance Plans to the same extent as the U.S. Employees and that approximately 118 Canadian Employees have received severance under the Severance Plans. The Debtors have paid approximately \$1,030,000 in severance benefits to Canadian Employees in the twelve month period prior to the Petition Date, but as of the Petition Date, the Debtors have no accrued but unpaid liability to Canadian Employees on account of the Severance Plans. By the Workforce Obligations Motion, the Debtors seek to continue providing benefits under the Severance Plans in the ordinary course

of business to eligible non-Insider Canadian Employees, subject to section 503(c) of the Bankruptcy Code, provided that the Debtors do not seek authority to make payments to Senior Employees under the Severance Plans pursuant to the Interim Order.<sup>45</sup>

(v) Canadian Miscellaneous Employee Benefits

249. I understand the Debtors lease 11 vehicles for Canadian Employees to use for their commutes and travel between stores (the “*Canadian Car Leases*”). The Debtors pay approximately \$8,000 per month on account of the Canadian Car Leases and as of the Petition Date the Debtors owe approximately \$4,000 on account of the Canadian Car Leases, all of which will become payable during the Interim Period. The Debtors request the authority to continue to make postpetition payments related to the Canadian Car Leases as they come due in the ordinary course of business.

(n) Canadian Workers’ Compensation

250. I understand that under the laws of the government of Canada as well as the various Canadian provinces in which they operate, the Debtors are required to maintain workers’ compensation policies administered by insurance boards set up by the applicable Canadian provinces (the “*Canadian Insurance Boards*”) to provide Canadian Employees with workers’ compensation coverage for claims arising from and related to their employment with the Debtors (the “*Canadian Workers’ Compensation Program*”). I understand that injured workers residing in Canada are statutorily barred from suing their employers for work related injuries or diseases, and instead must file for workers’ compensation benefits with the applicable Canadian Insurance Boards. I understand the Debtors pay monthly non-negotiable premiums calculated based on gross

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<sup>45</sup> For Field Employees who are Store Managers and associates in charge of a store undergoing GOB Sales, the Debtors are requesting authorization pursuant to the GOB Motion to pay GOB Store Closing Bonus payments to such Field Employees. For the avoidance of doubt the Debtors are not seeking authorization to make GOB Store Closing Bonus payments pursuant to the Workforce Obligations Motion.

payroll, and can either receive a rebate or be required to pay an adjustment based on expected versus actual claim costs, at the end of the year after filing a reconciliation form. I understand the Debtors' only costs associated with the Canadian Workers' Compensation Program are the non-negotiable premiums and that the Debtors pay approximately \$7,000 per month in arrears to the Canadian Insurance Boards on account of non-negotiable premiums. As of the Petition Date, approximately \$25,600 is owed to the Canadian Insurance Boards, consisting of accrued and unpaid workers' compensation premiums. I estimate that approximately \$16,000 will become due and owing on account of the Canadian Workers' Compensation Program during the Interim Period. By this Motion, the Debtors request authority to continue their Canadian Workers' Compensation Program and pay any amounts due and owing in connection therewith. It is critical that the Debtors be permitted to continue the Canadian Workers' Compensation Program and to pay outstanding premiums because the failure to provide coverage may subject the Debtors and/or their officers to severe penalties.

(o) Universal Employee Benefits

251. In the ordinary course of business, the Debtors reimburse certain Employees in connection with: (i) business expenses, (ii) relocation expenses and (iii) certain educational expenses, incurred by such Employees, which give rise to the Debtors' Reimbursable Expenses Obligations. By this Motion, the Debtors seek authority to pay all prepetition Reimbursable Expense Obligations (as described below) accrued and unpaid as of the Petition Date and to continue such practices on a postpetition basis in the ordinary course of business.

252. I estimate that, as of the Petition Date, approximately \$20,000 of out-of-pocket Business Expenses, not including amounts outstanding on the Corporate Credit Cards, are accrued

and unpaid on account of Employee Business Expenses, \$6,000 of which will become due and owing within the Interim Period.<sup>46</sup>

253. I estimate that as of the Petition Date no amounts accrued prior to the Petition Date are owed to Employees on account of Relocation Expenses. By the Workforce Obligations Motion, the Debtors request authority to continue the Relocation Policies in the ordinary course of business on a postpetition basis and reimburse Employees for any Relocation Expenses that become due and owing pursuant to the Relocation Policies during these Chapter 11 Cases.

254. I understand as of the Petition Date, there is approximately \$14,000 in approved but unpaid Tuition Reimbursable Expenses, that Employees may be entitled to, subject to such Employees satisfying the requirements noted above. By the Workforce Obligations Motion, the Debtors request authority to pay any amounts owed on account of the Tuition Reimbursable Expenses as they come due in the ordinary course of business.

(p) Retirement Bonuses

255. In addition, the Debtors offer bonuses to All full-time Employees who have worked at least 20 years for the Debtors are entitled to a Retirement Bonus upon retirement. Employees who retire after 20 years of service may be entitled to \$500 and Employees with over 20 years of service may be entitled to \$1,000 upon retirement (the “**Retirement Bonuses**”) As of the Petition Date, the Debtors do not owe any amounts to Employees on account of the Retirement Bonuses.

(q) Discount Policy

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<sup>46</sup> The Debtors are separately seeking to continue to maintain the Corporate Credit Card program and to pay prepetition amounts owing related to the Corporate Credit Cards pursuant to the *Motion of Debtors for Orders (A) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (B) Authorizing Continuation of Existing Deposit Practices, (C) Authorizing Continuation of Intercompany Transactions, and (D) Granting Administrative Claim Status to Postpetition Intercompany Claims.*

256. The Debtors offer two discount policies: (i) an Employee discount policy (the “*Employee Discount Policy*”) and (ii) a retiree discount policy (the “*Retiree Discount Policy*”) and together with the Employee Discount Policy, the “*Discount Policies*”) in order to incentivize all active and former Employees of the Debtors to use the Debtors’ products. In general, the Discount Policies provide a 20% discount on any merchandise purchases in any of the Debtors’ retail stores and are of no out of pocket costs to the Debtors.

(r) The Debtors’ ICs and Temporary Employees Obligations

257. I understand the Debtors incur Wage Obligations on account of their ICs and Temporary Employees whom are employed in the United States and Canada and that the Debtors pay certain of the Staffing Agencies monthly and others weekly on account of the ICs and Temporary Employees provided by such Staffing Agency. On average, the Debtors spend approximately \$637,000 per month on account of the ICs and Temporary Employees. I estimate that, as of the Petition Date, they owe approximately \$637,000 to the Staffing Agencies on account of the ICs and Temporary Employees, of which all will become due and owing within the Interim Period. By the Workforce Obligations Motion, the Debtors seek authority to pay all amounts owed on account of the ICs and Temporary Employees in the ordinary course of business.

(s) Honoring Of Prepetition Workforce Obligations

258. By the Workforce Obligations Motion, the Debtors request authority to pay or provide, as they become due, all prepetition Workforce Obligations that are described in the motion and herein. I believe that the continuity and competence of their Workforce would be jeopardized if the relief requested in the Workforce Obligations Motion is not granted. Specifically, I believe if the Debtors fail to honor and pay prepetition Wage Obligations, Reimbursable Expenses Obligations and Benefits Obligations, in the ordinary course of business, the Debtors’ Workforce will suffer extreme personal hardship and, in some cases, may be unable

to pay their basic living expenses. I believe this hardship would have a highly negative impact on Workforce morale and productivity, thereby resulting in immediate and irreparable harm to the Debtors' continuing operations and their estates. Accordingly, it is my belief that payment of these amounts is vital to preventing the loss of key members of the Workforce during the pendency of the Chapter 11 Cases and to maintaining the continuity and stability of the Debtors' operations.

(t) Postpetition Continuation Of Workforce Programs

259. In addition I believe the Workforce Programs are essential to the Debtors' efforts to maintain Workforce morale, reward performance through certain incentives, minimize attrition, and preserve the continuity and stability of the Debtors' operations and that the expenses associated with the Workforce Programs are reasonable and cost-efficient in light of the potential attrition, loss of morale, loss of productivity, and disruption of business operations that would occur if the Workforce Programs were discontinued.

(u) Payments To Non-Employee Directors

260. In the ordinary course of business, the Debtors pay fees (the "***Non-Employee Director Fees***") for the services of ten non-Employee directors of Debtor, GNC Holdings, Inc. (the "***Non-Employee Directors***"). The Non-Employee Directors are paid in cash and restricted stock awards on a quarterly basis for services conducted during the prospective Fiscal Quarter on account of their board service and service on any board committees. I understand the Debtors also reimburse the Non-Employee Directors for all properly documented expense claims for out-of-pocket expenses wholly, exclusively, and necessarily incurred to attend orientation, board, committee, or shareholder meetings and fulfill related duties, in accordance with the Debtors' overall corporate travel and expense policy (the "***Non-Employee Director Expenses***"). The Debtors pay approximately \$270,000 in the aggregate per Fiscal Quarter to the Non-Employee Directors on account of Non-Employee Director Fees and Non-Employee Director Expenses.

261. I believe the Non-Employee Directors' service is necessary for the continued management of the Debtors and, accordingly, it is essential that the Debtors be authorized to pay all Non-Employee Director Fees and any Non-Employee Director Expenses incurred by the Non-Employee Directors that have accrued as of the Petition Date. I am not aware of any accrued and unpaid amounts owed to the Non-Employee Directors. Nonetheless, the Debtors request the authority to reimburse any unpaid Non-Employee Director Expenses incurred by the Non-Employee Directors prior to the Petition Date and to continue to pay the Non-Employee Director Fees and Non-Employee Director Expenses in the ordinary course of business on a postpetition basis.

(v) Payments To Administrators

262. I understand that with respect to the Workforce Programs, the Debtors contract with several vendors, as described in more detail above, to administer and deliver payments or other benefits to their Workforce (the "*Administrators*"). The Debtors' Administrators include but are not limited to, ADP, GeoBlue, Alight, Rethink, MetLife, Allstate, the U.S. Disability Providers, Fidelity, Aon, Louis Plung, BAML, Prudential, General American, New England Life, the Workers' Compensation Providers, and Canada Life. I understand the Debtors pay these Administrators fees and expenses incurred in connection with providing such services. As of the Petition Date, I estimate that the Debtors owe approximately \$252,800 to the Administrators, approximately \$230,800 of which will come due during the Interim Period.

263. In conjunction with the Debtors' payment of the Workforce Obligations and continued performance under the Workforce Programs, I believe that it is necessary to obtain specific authorization to pay any claims of the Administrators on a postpetition basis, including prepetition claims to the extent necessary, to ensure uninterrupted delivery of certain benefits to the Workforce. I believe that the Administrators may fail to adequately and timely perform or may



terminate their services to the Debtors unless the Debtors pay the Administrators' prepetition claims for administrative services rendered and expenses incurred. A need to engage replacement Administrators postpetition likely would cause significant disruption to the payment of benefits and other obligations to the Workforce. Accordingly, I believe that the payment of claims owed to the Administrators is in the best interest of the Debtors' estates.

#### **4. Critical Vendors Motion<sup>47</sup>**

264. By the Critical Vendors Motion, the Debtors request entry of interim and final orders authorizing the Debtors to pay certain prepetition claims (the "**Critical Vendor Claims**") owing to certain suppliers of goods and services, with whom the Debtors continue to do business and whose goods and services are critical and essential to the Debtors' operations (the "**Critical Vendors**") and which include certain claims arising from the value of goods actually received by the Debtors within twenty (20) days prior to the Petition Date and are therefore entitled to administrative expense treatment under section 503(b)(9) of the Bankruptcy Code, in an amount not to exceed \$25 million on an interim basis (the "**Interim Critical Vendor Claims Cap**") and \$40 million (inclusive of any amounts paid under the Interim Critical Vendor Claims Cap) on a final basis (the "**Final Critical Vendor Claims Cap**") absent further order of the Court, as more particularly described and on the terms set forth in the Critical Vendors Motion.

265. The Debtors' ability to operate their business without interruptions is dependent upon the Debtors' Critical Vendors, which include (i) suppliers of products that the Debtors sell as their own branded products, (ii) suppliers of third-party products that the Debtors sell to their customers, (iii) suppliers of packaging and labeling materials the Debtors utilize to ship and deliver

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<sup>47</sup> "**Critical Vendors Motion**" means the *Motion of Debtors for Orders Authorizing Payment of Certain Prepetition Critical Vendor Claims*.

products directly to customers, (iv) providers information technology services, and (v) providers of advertising and other critical services. These goods and services are critical for several reasons. Certain of the Critical Vendors are highly specialized and are irreplaceable, due to, among other things, demand created by branding and marketing for their products, the technical supply and manufacturing process, and the perishability and geographic location of raw materials. Moreover, the Debtors rely on timely and frequent delivery of these critical goods and services, and any interruption in this supply—however brief—would disrupt the Debtors’ operations and could potentially cause irreparable harm to their business, goodwill, customer base, and market share. The harm to the Debtors’ estates of not having products or services provided by the Critical Vendors would far outweigh the cost of payment of the Critical Vendor Claims.

266. Due to the specialized nature of the supply chain, replacing certain existing Critical Vendors would be extremely time consuming and disruptive. Many of the Critical Vendors are invaluable as they are sole- or limited-source or high-volume suppliers for certain products. Onboarding a Branded Products Supplier can take 12 to 15 weeks of sampling and testing, an additional 8 to 12 weeks of lead times, 12 weeks of stability testing, and a minimum of two weeks of consumer testing. In the case of both Third-Party Products Suppliers and Branded Products Suppliers, products supplied to and sold by the Debtors and the Debtors’ non-debtor affiliates outside the United States usually must be registered with applicable government authorities. This registration process historically has taken between 12-18 months before such products were approved for sale in such locations. If the Debtors are unable to pay the Third-Party Products Suppliers and Branded Products Suppliers, any replacement products sold outside the United States in locations where product registration is required would not be able to be sold until such

products are successfully registered. This would cause a significant reduction in the Debtors' product offerings and would likely result in significant lost revenue.

267. The Debtors' rely on a number of Packaging Suppliers to provide packaging and labelling used to ship products directly to customers who purchase products via the Debtors' e-commerce channels. If the Debtors' supply of packaging and labelling provided by the Packaging Suppliers were interrupted, the Debtors would be unable to provide their products to customers, until relationships with alternative suppliers are established, which could take some time and would be a significant disruption in the Debtors' business. Additionally, the products provided by the Packaging Suppliers are especially integral to the Debtors' e-commerce operation (which is the fastest growing sales channel for the Debtors), and any disruption in the Debtors' relationship with the Packaging Suppliers could have a detrimental effect on this essential part of the Debtors' business.

268. The Debtors' largest supplier by dollar value is Nutra Manufacturing, LLC ("**Nutra**"), and Nutra is the Debtors' most important Critical Vendor. Payment to Nutra as a Critical Vendor is essential for several reasons. First, since the Debtors are not party to a supply agreement with Nutra, and they do not have control of Nutra, they cannot compel Nutra to continue supplying them product. Second, the disruption and loss of revenue from Nutra's failure to supply products would be significant. Nutra's products are unique GNC branded products, and are sold throughout all of the Debtors' channels, including domestic, Canada, international, and wholesale. In addition, Nutra's products are some of the Debtors' highest margin products, and represent a disproportionate share of the Debtors' revenue and profit. Third, the three remaining installment payments from IVC for the purchase of Nutra are subject to adjustment based on the magnitude of product acquired. Accordingly, a halt in the purchase of goods from Nutra would result in a

significant reduction of the amount the Debtors will receive from IVC for the Debtors' remaining interest in Nutra. Fourth, GNC Newco Parent's interest in Nutra is pledged to IVC, such that in the event of a breach of the Product Supply Agreement, IVC may foreclose on GNC Newco Parent's remaining interests in Nutra.

269. The Debtors' business requires a global software platform in order to meet the needs of their customers. The Debtors rely on a number of Information Technology Service Providers to provide services which include marketing customer relationship management, a cloud-based system, data management, a semi-integrated payment support system, and a system that allows consumers to make online purchases, receive shipments from the Debtors' stores, and place orders for store pickup. The Information Technology Service Providers are instrumental in the Debtors' ability to manage their customers, and the services they provide are essential for the Debtors to maintain their physical and digital commerce channels. Disruptions to these services would result in significant damage to the Debtors' commercial platform.

270. A significant portion of the Debtors' business is derived from consistent customers who have come to expect quality customer service from the Debtors for their products. Certain Advertising and Other Service Providers allow customers to access chat and phone services where they are able to inquire about products, place orders, report any issues, and provide any other information which allows the Debtors to better meet consumer needs. Additionally, the Debtors rely on advertising support services to reach shoppers on desktops, tablets, and mobile devices, create relevant campaigns, and access transparent campaign metrics. The ability to maintain this platform is essential for the Debtors to continue operations and generate sales. The services provided by the Advertising and Other Service Providers allow the Debtors to support and maintain their customer base, and are responsible for a significant amount of the Debtors' sales.

Without this, the Debtors would face significant loss to their revenue and be unable to maintain their current business operations.

271. In order to continue the operation of their business uninterrupted postpetition and to protect the Debtors' assets and operations and preserve value for the Debtors' estates and creditors, the Debtors seek authority to pay prepetition amounts owed to their Critical Vendors, in amounts not to exceed the Interim and Final Critical Vendor Claims Caps.

**5. *Lien and Import Claimants Motion***<sup>48</sup>

272. By the Lien and Import Claimants Motion, the Debtors request entry of interim and final orders (a) authorizing payment of prepetition and postpetition amounts owing on account of (i) claims held by shippers, warehousemen, and other non-merchant lienholders, and (ii) claims held by import claimants, in an amount not to exceed \$6,212,000 on an interim basis (the "***Interim Lien and Import Claims Cap***") and \$6,251,000 (inclusive of the Interim Lien and Import Claims Cap) on a final basis (the "***Final Lien and Import Claims Cap***"), absent further order of the Court; (b) confirming the administrative expense priority status of Outstanding Orders (as defined herein) and authorizing the Debtors to satisfy such obligations in the ordinary course of business.

273. I believe that the Debtors' ability to operate their business without interruptions is dependent upon the Debtors' vendors, suppliers, contractors, shippers and warehousemen (collectively, the "***Lien Claimants***"), each of which provides the Debtors with the services or supplies necessary to ensure the uninterrupted flow of inventory, inputs and other goods through the Debtors' supply chain and distribution network at every state, from manufacture to end sale. The Debtors utilize the services of a number of Lien Claimants who, by the nature of their business

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<sup>48</sup> "***Lien and Import Claimants Motion***" means the *Motion of Debtors for Orders (A) Authorizing Payment of Prepetition Lien Claims and Import Claims and (B) Confirming Administrative Expense Priority of Outstanding Orders*.

and the work that they perform for the Debtors, may be able to assert that prepetition amounts owed to them are secured by statutory liens on property of the Debtors that is either in the possession of the service provider or that has been improved upon by the provider, including, but not limited to, non-merchant liens for services such as on-site construction and repair at the Debtors' corporate headquarters, distribution centers and retail stores. In addition, the claims of certain Lien Claimants are administrative expense priority claims under section 503(b)(1) of the Bankruptcy Code because they benefit the estate postpetition.

274. Additionally, the Debtors' rely on the timely receipt or transmittal, as applicable, of certain imported goods. In connection with the import and export of goods, the Debtors may be required to pay various charges (the "*Import Claims*"), including customs duties, tariffs and excise taxes, and various fees and import-related charges. Absent such payment, parties to whom the Debtors owe Import Claims may interfere with the transportation of the Imported Goods. If the flow of Imported Goods were to be interrupted, the Debtors may be deprived of the inventory necessary to stock the shelves in their stores, which means the Debtors would not have inventory to sell to their customers.

275. Finally, prior to the Petition Date, in the ordinary course of business, the Debtors may have ordered goods that will not be delivered until after the Petition Date (the "*Outstanding Orders*"). To avoid becoming general unsecured creditors of the Debtors' estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition.

## 6. *Customer Programs Motion*<sup>49</sup>

### (a) The Customer Programs and Related Obligations

276. The Debtors maintain a number of programs and policies for the benefit of their customers that promote loyalty and encourage repeat shopping at their stores and online (collectively, the “*Customer Programs*”). These Customer Programs include, without limitation, loyalty and subscription programs, special pricing and other incentives, return and exchange policies, gift cards, charitable fundraising, and third party retailer relationships. Because the Customer Programs encourage both new and long-term customers alike to shop with the Debtors instead of their competitors, continuing to honor the Customer Programs described below—including prepetition obligations arising under them—will maximize the value of the Debtors’ estates and benefit all creditors and stakeholders in the Chapter 11 Cases.

### (b) Loyalty Programs

277. The Debtors maintain two customer loyalty programs that have been highly successful since their introduction with the launch of “One New GNC” in December 2016. Approximately 81% of the Debtors’ sales are to members of the customer loyalty programs.<sup>50</sup> The first loyalty program, called “*myGNC Rewards*,” is free to all customers. Once signed up for myGNC Rewards, a member begins accruing points with each purchase—one point for each dollar spent—which may be redeemed for cash discounts on any product that the Debtors sell. Specifically, for every 150 points earned, the member is entitled to a \$5 discount, which is either credited automatically to the member’s next purchase once earned, or accumulated on the member’s account until voluntarily redeemed (based on the member’s election). The points are

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<sup>49</sup> “*Customer Programs Motion*” means the *Motion of Debtors for Orders Authorizing the Debtors to (I) Maintain and Administer Prepetition Customer Programs and (II) Pay Prepetition Obligations Related Thereto*

<sup>50</sup> Approximately 56% of sales made by the Debtor are to members of the myGNC Rewards program and approximately 25% of sales made by the Debtors are to members of the PRO Access program.

valid for one year from the date they are earned and expire thereafter. The myGNC Rewards program includes more than 20 million members and approximately \$79 million in monthly sales revenue is generated by sales to my GNC Rewards members.

278. In addition to myGNC Rewards, the Debtors maintain a paid-membership loyalty program called “**PRO Access**.” To become a PRO Access member, a customer pays \$39.99 per year, which entitles them to certain benefits not available to basic myGNC Rewards members. PRO Access members receive two shipments from the Debtors each year (each, a “**PRO Box**”). Every PRO Box includes sample merchandise and other materials tailored specifically to each member. In addition, each PRO Access member is entitled to a full week of savings four times a year, during which he or she receives three rewards points per dollar spent on the Debtors’ products. Beyond these benefits, PRO Access members also earn one point per dollar on all purchases from the Debtors. Points for PRO Access members are redeemable for cash discounts just like they are for myGNC Rewards members—150 points equates to a \$5 discount. The PRO Access program has approximately 829,795 current members and approximately \$35 million in monthly sales<sup>51</sup> revenue is generated by sales to PRO Access members.

279. I am advised that approximately \$4.3 million to \$6.2 million in potential cash discounts have accrued on account of unexpired points earned by myGNC Rewards and PRO Access members. The Debtors accrue approximately \$4.2 million to \$4.5 million in liabilities per month on account of their loyalty programs. Further, the average rate of points redemptions over the twelve months before the Petition Date equates to approximately \$2.1 million in cash discounts honored per month. The Debtors cannot predict to what extent the commencement of the

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<sup>51</sup> Due to the COVID-19 pandemic, the recent monthly sales revenue generated by PRO Access members may be lower than previous months.



Chapter 11 Cases may affect the redemption rate but request authority to honor all myGNC Rewards and PRO Access point redemptions, regardless of whether the points were accrued before or after the Petition Date. Due to the COVID-19 pandemic, the Debtors have not made shipments of PRO Boxes the second quarter of 2020, but instead provided PRO Access members with a coupon for a 30% discount on an entire purchase. As of the Petition Date, I am advised that the approximate cost of shipping PRO Boxes to PRO Access members on account of membership fees paid prepetition is approximately \$8.4 million.

(c) Gift Cards

280. Like many other businesses, the Debtors have available for purchase in their stores and certain third-party locations prepaid, non-expiring gift cards (the “*Gift Cards*”) in various denominations. In addition, the Debtors issue Gift Cards in connection with certain returns of products, as described further below. The Gift Cards can be redeemed in stores for products at a later date. Further, the Debtors are currently implementing changes to their online platform that will allow customers to redeem Gift Cards for online purchases.

281. I am advised that the Debtors have gifts cards with an aggregate value of approximately \$10.1 million outstanding which have not yet been redeemed by customers. While I do not believe that all of the Gift Cards outstanding will be redeemed, the Debtors seek authority to honor all Gift Cards, including those purchased or issued prepetition, consistent with their prior practices and to continue the sale, issuance, and honoring of Gift Cards postpetition.

(d) Refunds And Exchanges

282. As is customary in the retail industry, the Debtors accept returns or exchanges from their customers within 30 days of the date of purchase if the customer is not satisfied with his or her purchase for any reason, except that purchases will not be refunded unless accompanied by a sales receipt, packing slip, or other approved proof of purchase (the “*Refund and Exchange*”).

**Policy**”). Under the Refund and Exchange Policy, a customer is entitled to: (a) a refund of the full purchase price of the product in the original form of payment, if the return is accompanied by an original sales receipt or packing slip (for online orders); (b) an exchange for new products (i) up to the full purchase price, if accompanied by an original sales receipt or packing slip, or (ii) otherwise up to the lowest sale price in the preceding 60 days; or (c) a Gift Card, if the customer returns a product, does not want to complete an exchange, and does not want or is not entitled to a refund, in an amount (i) up to the full purchase price, if accompanied by an original sales receipt or packing slip, or (ii) otherwise up to the lowest sale price in the preceding 60 days. On average, the Debtors processed approximately \$3.6 million per month of refunds and exchanges under the Refund and Exchange Policy during the twelve months before the Petition Date.

(e) Pricing And Sales Promotions

283. The Debtors regularly conduct sales promotions in their stores and on their website (collectively, the “**Promotions**”), including pricing discounts (by dollars or percentage off of sales), “buy one get one” offers, coupons printed on sales receipts (subject to expiration), online offers through the customer rewards program, and similar Promotions. Often, Promotions are offered only in individual stores or on individual products or brands. Thus, at any one time, including as of the Petition Date, different Promotions may be available to different customers across the country and online. The Promotions are an important part of the Debtors’ overall marketing strategy, as they help attract new customers and retain existing ones by encouraging purchases of the Debtors’ products.

(f) Subscription Program

284. The Debtors maintain a subscription-based program in which a customer pays a monthly fee and receives a monthly shipment of products the customer selects. As of the Petition Date, Debtors have approximately 400,722 active subscriptions which have provided

approximately \$1.2 million in weekly total sales. Customers enrolled in the subscription program receive a 10% discount on re-occurring orders. The program, since its initial launch in 2018, has provided a consistent basis for future business.

(g) Charitable Fundraising

285. In the ordinary course of business, the Debtors' accept charitable donations from customers at stores and online on behalf of various charitable organizations (the "***Charitable Fundraising Programs***") including, for example, Fit Ops, American Red Cross, Operation Homefront, Feeding America, and St. Jude Children's Research Hospital. The Debtors then contribute these collected customer donations to the applicable charity. During the twelve months before the Petition Date, the Debtors' collected and disbursed approximately \$478,281 in customer donations. As of the Petition Date, I do not believe that the Debtors hold any customer donations which have not been contributed to the Debtors' partnership charities.

286. As part of the Charitable Fundraising Program, the Debtors raise money for charities through contests and raffles, during which prizes are given. As of the Petition Date, the Debtors owe a prize to a winner of a contest held to raise money for a charity, the value of which is approximately \$5,750.

(h) Relationships with Third Party Retailers

287. The Debtors maintain relationships with third party retailers (the "***Third Party Retailers***") that benefit both the Debtors and their customers. As an example, the Debtors have developed a beneficial relationship with Amazon in which the Debtors are a "Prime supplier"—that is, certain of the Debtors' products are available through Amazon's Prime membership program, which generally promises fast delivery windows at no extra charge to members. To facilitate the expedited delivery schedules that underpin the Prime membership program, the Debtors must permit Amazon to hold certain of the Debtors' inventory in Amazon's distribution

centers. More specifically, approximately half of the Debtors' products that are sold through Amazon are shipped from Amazon distribution centers, and the other half are shipped from the Debtors' distribution centers once an Amazon-based order is routed to the Debtors for fulfillment.

288. The Debtors have benefitted greatly from their relationships with Amazon and other Third Party Retailers, and such relationships also benefit the Debtors' customers through quick (and low- or no-cost) deliveries of online orders. In exchange for the ability to use the Third Party Retailers' platforms to sell their goods, the Debtors pay commissions and fees which are taken out of total revenue from the goods sold. The Debtors separately pay Third Party Retailers for marketing expenses. In 2019, the revenue of the Debtors' goods sold through Third Party Retailers was approximately \$49.7 million, and approximately \$20.0 million was paid to Third Party Retailers for commissions, marketing expenses, and fulfillment fees. I am advised that as of the Petition Date, the Debtors estimate that Third Party Retailers have received approximately \$1.4 million on account of commissions, marketing expenses, and fulfillment fees in connection with sales for which the Debtors have yet to receive revenues from the applicable Third Party Retailers.

## 7. *Franchise Motion*<sup>52</sup>

### (a) The Debtors' Franchise Stores

289. The Debtors have approximately, 7,062 store locations globally, and rely on a network of approximately 2,803 franchise stores (the "*Franchises*") to sell their products. Approximately 917 Franchises are based in the United States, while the remaining approximately 1,886 Franchises are located in 50 countries across the world.

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<sup>52</sup> "*Franchise Motion*" means the *Motion of Debtors for Orders Authorizing (A) Payment of Certain Prepetition Franchise Claims and (B) Continued Performance Under Franchise Agreements in the Ordinary Course of Business*.

290. The Franchises are operated by approximately 400 different franchisees (the “*Franchisees*”). Some of the Franchisees operate a single store, while the largest Franchisee operates approximately 75 stores. Approximately 25% of the Franchisees have operated Franchises for longer than 25 years, and approximately 25% have operated Franchises for less than five years. Certain of the Franchisees have diverse businesses, while other Franchisees’ businesses are entirely dependent on their operation of a Franchise.

291. In 2019, the Debtors’ Franchise operations generated approximately 20.3% of the Debtors’ consolidated revenue.<sup>53</sup> With the impact from the COVID-19 pandemic, and the closing of many of the Debtors’ corporate stores, the Debtors now rely even more on the Franchise operations which in the weeks prior to the Petition Date have accounted for an even more significant portion of the Debtors’ revenue.

292. The Franchises are independently owned, and pursuant to standard franchise agreements with the Debtors (the “*Franchise Agreements*”), operate their businesses under the Debtors’ names in accordance with certain standards and obligations contained in the Franchise Agreements. Franchises use the proprietary marks of the Debtors, including trademarks and other commercial symbols in exchange for royalty payments made to the Debtors. Franchises also make payments to the Debtors for rent, CAM, utilities, taxes, inventory, NSF fees, and credit card processing fees, which the Debtors use to pay third party vendors.

293. Franchises pay the Debtors fees for advertising and operational services. In return, Franchises have access to the Debtors’ distribution network and product volume discounts for third party products, as well as the ability to purchase products manufactured by the Debtors’ in

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<sup>53</sup> In 2019, the Debtors’ Franchises generated approximately 82.1% of the total international revenue, excluding Canada.

accordance with an agreed upon inventory plan detailing the categories of such products and minimum quantities. Some Franchises are also granted geographic exclusivity rights, allowing them the sole right, even to the exclusion of the Debtors, to expand the Debtors' "brick-and-mortar" business in certain geographic areas. Typically, Franchises in the United States are given limited geographical exclusivity while international Franchises may receive exclusive franchising rights to an entire country (excluding United States military bases). All Franchises, however, must meet certain uniform standards and duties required by the Debtor. Each month, Franchises receive a price kit with base price changes, monthly promotional inserts, and off shelf signs.

294. The Debtors have certain franchise programs designed to improve the overall performance of Franchises, including training programs and multi-unit owner programs. The initial training program consists of three phases: phase (I) training at a Debtor operated store, phase (II) attendance at a five day training program, and phase (III) training with a Director of Franchise Operations during a grand opening event. The Debtors from time to time also hold subsequent trainings for Franchises following the initial training program.

(b) Franchise Claims

295. In the ordinary course of business, the Debtors' relationship with the Franchises results in the Debtors providing certain credits, reimbursements, and payments to the Franchisees in connection with the Franchise Agreements:

(a) **Volume Discounts/Reimbursements.** The Debtors credit the Franchisees for amounts saved as a result of the Debtors' volume purchase of goods.

(b) **Promotional and Coupon Credits.** The Debtors provide margin support to Franchisees to incentivize their participation in promotions for GNC branded items. For example, the Debtors may provide the full margin to the Franchisees for a buy one get one free promotion.

(c) **Auto-Ship Protection for Expiring Products.** Because Franchisees must order certain products through auto-shipment, the Debtors may credit the Franchisee for certain products which do not sell by their expiration date.

(d) **Damages and Returns.** The Debtors reimburse Franchisees for any products they receive which are damaged or subject to recall because of quality concerns.

(e) **Reimbursement of Start-up Costs and Franchise Fees.** From time to time, the Debtors may reimburse or prorate start-up costs and franchise fees for Franchises.

296. Claims for retail promotion credits and concealed damages and returns are paid to Franchisees on a weekly basis. Claims for auto-ship protection of expiring products are paid to Franchisees on a quarterly basis. I am advised that approximately \$670,000<sup>54</sup> is owed to the Franchises on account of prepetition obligations (the “*Franchise Claims*”), approximately \$484,500<sup>55</sup> of which is expected to come due in the 21 days following Petition Date. The Franchise Claims are incurred on various payment terms, and the Debtors do not intend to pay the prepetition Franchise Claims until they come due in the ordinary course of business.

(c) Franchise Operations

297. As part of the Franchise Agreements, the Debtors provide certain ongoing services to the Franchisees, including initial and ongoing training, advisory assistance and services, financial services, inventory and financial audits, advertising services, location and construction services, customer programs, and financing of inventory and required equipment (including guarantees for growth loans). The Debtors have assumed liability for the full amount of the growth

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<sup>54</sup> This amount includes approximately \$390,000 in retail promo credits, \$110,000 in damages and returns, and \$170,000 in auto-ship protection for expired products.

<sup>55</sup> This amount includes approximately \$363,000 in retail promo credits, \$99,000 in damages and returns, and \$22,500 in auto-ship protection for expired products.

loans in the event of default by the Franchisee. While each of these services are resource intensive and are an ongoing expense to the Debtors, the cost of these services is generally passed through to the applicable Franchisees. The Debtors provide these services to maintain quality control over the Franchisees and to ensure that their customers, products, and brand reputation are protected. The Debtors provide Franchises with a uniform method of operating retail nutrition, health and/or fitness stores which is supplemented and improved from time to time.

298. For regional and national media coverage, the Debtors direct all advertising, promotional, and marketing programs and make all decisions regarding concepts, materials, and media and the placement and allocation thereof. The Debtors also approve all local advertising that Franchisees wish to conduct. The Debtors create and conduct television, radio, and print advertising campaigns. The Debtors create and distribute the materials that the Franchises use for advertising, conducting market research, organizing public relations activities, and employing advertising agencies and consultants. In return for the services, the domestic Franchisees contribute to a national advertising and promotional fund (the “*National Advertising and Promotional Fund*”). The National Advertising and Promotional Fund is used by the Debtors, in addition to the Debtors’ own funds, and at the Debtors’ discretion, to produce advertising, pay for media placement, conduct other marketing activities, and for merchandising.

299. The National Advertising and Promotional Fund aids Franchisees in developing media, direct marketing, in-store marketing, events and promotions, and public relations. The National Advertising and Promotional Fund is also used for other marketing programs such as updating packaging and conducting market research studies. If the Debtors were forced to discontinue using the National Advertising and Promotional Fund, or if Franchisees stopped



committing funds, the Debtors' business, as well as the Franchisees', would greatly suffer and would directly impact the Debtors' ability to successfully reorganize.

300. The Debtors billed Franchisees for contributions to the National Advertising and Promotional Fund for the second quarter of 2020, and the Debtors committed to crediting the Franchisees for amounts not spent. The Debtors did not spend all the Franchisees' contributions to the National Advertising and Promotional Fund for the second quarter of 2020, and accordingly seek to credit the Franchisees the approximately \$1.2 million that was contributed by the Franchisees but not spent by the Debtors (the "*Ad Fund Credit*").

301. In sum, the Debtors' business is dependent on delivering the very best in health, wellness, and performance products to their loyal customer base, and the Franchises, which constitute almost 40% of the Debtors' stores globally, are a critical element of the Debtors' broad reach and position within the marketplace. If the Debtors fail to perform their obligations under the Franchise Agreements in the ordinary course of business, including honoring any prepetition obligations thereunder, the Franchises and the Franchisees could be severely harmed, potentially leading to shut-down of stores and loss of corresponding revenues. Moreover, deterioration of the relationship between the Debtors and the Franchisees could have negative repercussions for the Debtors' relationship with their customers who shop at the Franchise Stores. A healthy Franchisee is more likely to buy products from the Debtors, resulting in additional revenue. In addition, many Franchisees reinvest the money returned to them back into their business. In contrast, the shutdown of a Franchise causes a loss of two major revenue streams for the Debtors—(i) a loss of revenue from the Franchisee's purchase of product from the Debtors, and (ii) a loss of royalty revenue from the Franchisee's sale of products.

8. **Tax Motion**<sup>56</sup>

302. By the Tax Motion the Debtors request authority to pay prepetition Taxes and Fees.

Prior to the Petition Date, the Debtors incurred obligations related to the Taxes and Fees, which include:<sup>57</sup>

- (a) **Sales and Use Taxes.** The Debtors incur, collect, and remit sales taxes to the Taxing Authorities, in connection with the sale and distribution of products in their stores and through online orders. Additionally, the Debtors purchase a variety of products and materials necessary for the operation of their business from vendors who may not operate in the state where the property is to be delivered and, therefore, do not charge the Debtors sales tax in connection with such purchases. In these cases, applicable law generally requires the Debtors to subsequently pay use taxes on such purchases to the applicable Taxing Authorities. Accordingly, the Debtors seek authority to pay and remit any such prepetition sales and use taxes to the relevant Taxing Authorities.
- (b) **Income Taxes.** In the ordinary course of operating their businesses, the Debtors incur international, federal, state and local income taxes. I believe that the Debtors are current with respect to payment of income taxes, but out of an abundance of caution seek authority to pay any prepetition income taxes.
- (c) **Franchise Taxes / Business Fees.** The Debtors are required to pay various franchise taxes, business licensing and related fees required to conduct business in jurisdictions in which the Debtors operate.
- (d) **Property Taxes.** State and local laws in the jurisdictions where the Debtors operate generally grant Taxing Authorities the power to levy property taxes against the Debtors' real and personal property. To avoid the imposition of statutory liens on their real and personal property, the Debtors typically pay property taxes in the ordinary course of business.
- (e) **Rent Taxes.** The Debtors incur commercial rent taxes related to their store locations in the borough of Manhattan, New York, NY.
- (g) **Other Taxes.** The Debtors incur additional taxes and fees including bag taxes, sugar taxes, and miscellaneous taxes not accounted for in the above categories which the Debtors are required to pay to Taxing Authorities.

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<sup>56</sup> "**Tax Motion**" means the *Motion of Debtors for Orders Authorizing Payment of Prepetition Taxes Fees*.

<sup>57</sup> The Debtors incur various taxes related to their employees which are separately addressed in the *Motion of Debtors for Interim and Final Orders (A) Authorizing Payment of Certain Prepetition Workforce Obligations, (B) Authorizing Continuance of Workforce Programs, (C) Authorizing Payment of Withholding and Payroll-Related Taxes, and (D) Authorizing Payment of Prepetition Claims Owing to Workforce Program Administrators or Providers*, filed contemporaneously herewith.

303. Although, as of the Petition Date, the Debtors are substantially current in the payment of assessed and undisputed Taxes and Fees, certain Taxes and Fees attributable to the prepetition period may not yet have become due and owing or may be or become subject to audit by the applicable Taxing Authority. The Debtors' estimate of Taxes and Fees accrued prior to the Petition Date is as follows:<sup>58</sup>

<b>Category</b>	<b>Approximate Amount Accrued as of Petition Date</b>	<b>Approximate Amount Due Within 21 Days</b>
Sales and Use Taxes	\$ 7,080,000	\$ 3,981,000
Income Taxes	\$ 1,190,000	\$ 969,000
Franchise Taxes / Business Fees	\$ 700,000	\$ 494,000
Property Taxes	\$ 1,170,000	\$ 302,000
Rent Taxes	\$ 30,000	\$ 22,000
Other Taxes	\$ 110,000	\$ 31,000
<b>Total</b>	<b>\$ 10,280,000</b>	<b>\$ 5,799,000</b>

304. By paying the Taxes and Fees in the ordinary course of business, as and when due, the Debtors will avoid unnecessary disputes with the Taxing Authorities—and expenditures of time and money resulting from such disputes—over myriad issues that are typically raised by the Taxing Authorities as they attempt to enforce their rights to collect Taxes and Fees. Nonpayment or delayed payment of the Taxes and Fees may also subject the Debtors to efforts by certain Taxing Authorities, whether or not permissible under the Bankruptcy Code, to revoke the Debtors'

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<sup>58</sup> Due to the COVID-19 pandemic, certain jurisdictions where the Debtors operate have granted extensions on tax obligations including income tax payments. As a result, it is unclear when and in what amount certain Taxes and Fees payable by the Debtors may come due. The Debtors request authorization to pay all Taxes and Fees as they come due in the ordinary course of business.

licenses and other privileges either on a postpetition or postconfirmation basis. Moreover, certain of the Taxes and Fees may be considered to be obligations as to which the Debtors' officers and directors may be held directly or personally liable in the event of nonpayment. These collection efforts by the Taxing Authorities would create obvious distractions for the Debtors and their officers and directors in their efforts to bring the Chapter 11 Cases to a successful conclusion.

### **9. Insurance and Bonding Motion<sup>59</sup>**

305. By the Insurance and Bonding Motion, the Debtors request entry of interim and final orders authorizing them to: (a) pay prepetition claims arising under their ordinary course insurance program and bonding program; and (b) maintain their insurance program and bonding program in the ordinary course postpetition.

#### **(a) The Debtors' Insurance Obligations**

306. In the ordinary course of business, the Debtors maintain certain insurance policies that are administered by multiple third-party insurance carriers (the "**Insurance Carriers**"), which provide coverage for, among other things, general liability, products liability, worker's compensation,<sup>60</sup> fiduciary liability, executive risk liability, employment practices liability, business auto liability, crime liability, directors' and officers' liability, umbrella liability, international liability, property liability, stock through put, cyber liability, and aviation liability (collectively, the "**Insurance Policies**"). A detailed list of the Insurance Policies that are currently

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<sup>59</sup> "**Insurance and Bonding Motion**" means the *Motion of Debtors for Orders Authorizing the Debtors to (A) Prepetition Insurance Obligations and Prepetition Bonding Obligations, and (B) Maintain Their Postpetition Insurance Coverage and Bonding Program.*

<sup>60</sup> The Debtors have separately sought authorization to honor their obligations under their workers' compensation programs as part of the contemporaneously filed *Motion of Debtors for Orders (A) Authorizing Payment of Certain Prepetition Workforce Obligations, (B) Authorizing Continuance of Workforce Programs, (C) Authorizing Payment of Withholding and Payroll-Related Taxes, and (D) Authorizing Payment of Prepetition Claims Owing to Workforce Program Administrators.* The Debtors, however, have additionally included hereunder reference to workers' compensation insurance and the attendant premiums associated with that coverage out of an abundance of caution.

held by the Debtors is attached to the Insurance and Bonding Motion as Exhibit C.<sup>61</sup> I believe that the Insurance Policies are essential to the preservation of the Debtors' businesses, property, and assets, and, in some cases, the coverage may be required by various laws and regulations, as well as the terms of the Debtors' various commercial contracts. In addition, I believe that the Insurance Policies provide coverage that is typical in scope and amount for businesses within the Debtors' industry.

307. Certain of the Debtors' Insurance Carriers permit the Debtors to defer payment of certain premiums, deductibles, and fees by providing the Insurance Carrier with security in the form of an irrevocable letter of credit. The Debtors have outstanding eight (8) letters of credit totaling approximately \$5.1 million. A list of the Debtors' irrevocable letters of credit issued by JPMorgan Chase Bank, N.A. for the benefit of certain Insurance Carriers is attached to the Insurance and Bonding Motion as Exhibit D.

308. The Debtors typically obtain their Insurance Policies through Willis of Pennsylvania, Inc. (the "**Broker**"), pursuant to that certain Service Agreement covering the period through August 7, 2022 (the "**Broker Contract**").<sup>62</sup> The Broker assists the Debtors in obtaining comprehensive insurance coverage and providing related services. The Broker also assists with procuring and negotiating the Insurance Policies, enabling the Debtors to obtain the Insurance Policies on advantageous terms and at competitive rates. The Broker Contract provides for an annual fee to the Broker of \$365,000. These fees are in addition to the premium paid for the insurance policies purchased through the Broker and are payable in quarterly installments that

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<sup>61</sup> The Debtors request authority to honor obligations and renew all insurance policies, as applicable, notwithstanding any failure of the Debtors to include a particular insurance policy on Exhibit C to the Insurance and Bonding Motion.

<sup>62</sup> Prior to the Petition Date, the Debtors obtained renewals of certain Insurance Policies set to expire shortly after the Petition Date. The Debtors engaged CAC Specialty as a broker to obtain such extensions, and CAC Specialty was paid from the premiums for the policy extensions, and is not owed any prepetition claims.

commenced on August 7, 2019 – with net 60 day payments terms. For the August 2019 to August 2020 service year, the Debtors have paid to the Broker \$273,750, and have one quarterly payment of \$91,250 remaining as of the Petition Date, which is due by July 6, 2020.

309. Should the Broker terminate the Broker Contract, the Debtors would have to seek out their own insurance policies or find a new broker, potentially at greater expense, to assist the Debtors in obtaining comprehensive insurance coverage and providing related services. Accordingly, I believe that maintaining their relationship with the Broker allows the Debtors to obtain the insurance coverage necessary to operate their businesses in a reasonable and prudent manner and to realize savings in the procurement of the policies. Therefore, I believe that it is in the best interests of the Debtors’ creditors and estates to continue their business relationship with the Broker.

310. The Debtors pay premiums for certain of their Insurance Policies through a premium financing agreement with BankDirect Capital Finance (“*Premium Financing Agreement*”). The Premium Financing Agreement was effective as of April 1, 2020, and the Debtors made a down payment of \$84,124.25. The Debtors’ remaining payment obligations under the Premium Financing Agreement, including interest, total \$106,451.22, which are to be paid in two quarterly installments of \$53,225.61.

311. The total amount paid in annual premiums and payments associated with all of the Insurance Policies is approximately \$6.2 million. The Debtors’ Insurance Policies renew at various times throughout each year. The majority of the Insurance Policies are paid in full, but certain policies are paid in monthly installments, and others are paid in installments under the Premium Financing Agreement. The Debtors are not aware of any pending requests for payment under the Insurance Policies. However, in the event that a request for payment of amounts

attributable to the period prior to the Petition Date is outstanding or is received by the Debtors in connection with the Insurance Policies, including under the Premium Financing Agreement, the Debtors request authority to pay the prepetition amounts (the “*Prepetition Insurance Obligations*”). The Debtors further request authority to renew, revise, or extend the existing Insurance Policies or to obtain new insurance policies postpetition.

(b) The Debtors’ Bonding Program

312. In the ordinary course of business, the Debtors are required by certain applicable statutes, rules, and regulations to maintain bonds in favor of certain third parties to secure the Debtors’ payment or performance of certain obligations, often to governmental units or other public agencies (the “*Bonding Program*”). The Bonding Program covers a range of obligations, including, among other things, obligations related to state programs, taxes, and utilities (the “*Covered Obligations*”). A detailed list of the bonds that are currently maintained by the Debtors is attached to the Insurance and Bonding Motion as Exhibit E.<sup>63</sup> I believe that the Bonding Program provides coverage that is typical in scope and amount for businesses within the Debtors’ industry.

313. As of the Petition Date, the Debtors have outstanding twenty-one (21) surety bonds (the “*Surety Bonds*”) totaling approximately \$666,427. The Surety Bonds renew on a yearly basis at various points throughout the year, and the Surety Bond premium is paid on renewal. The total amount paid in annual premiums and payments associated with all of the surety bonds is approximately \$13,020.

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<sup>63</sup> The Debtors request authority to honor obligations and renew all bonds, as applicable, notwithstanding any failure of the Debtors to include a particular bond on Exhibit E to the Insurance and Bonding Motion.

314. Willis also serves as the Debtors' Broker for Surety Bonds and manages the Debtors' relationships with the Sureties. Among other things, the Broker assists the Debtors in selecting the appropriate Sureties (subject to the Debtors' approval) and represents the Debtors in negotiations with the Sureties. The Broker has allowed the Debtors to obtain the bonding coverage necessary to operate their businesses in a reasonable and prudent manner, and to realize savings in the procurement of such policies. The Broker is paid by commission for Surety Bond placements, and such commissions are paid from the premium payments the Debtors make under the Bonding Program.

315. The issuance of a Surety Bond shifts the risk of the Debtors' nonperformance or nonpayment of their obligations covered by the Surety Bond from the beneficiary of the surety to the surety (each a "***Surety***"). If the Debtors fail to pay Covered Obligations, the applicable Surety will pay the Debtors' obligations up to a specified amount. Unlike an insurance policy, if a surety incurs a loss on a Surety Bond, the surety is entitled to recover the full amount of that loss from the Debtors.

316. To continue their business operations, the Debtors must be able to provide financial assurances to federal and state governments, regulatory agencies, and other third parties. This in turn requires the Debtors to maintain the existing Bonding Program, including paying the premiums and any related fees as they come due, as well as renewing or potentially acquiring additional bonding capacity as needed in the ordinary course of their businesses, requesting releases from obsolete bonding obligations, and executing other agreements in connection with the Bonding Program. I believe that the success of the Debtors' efforts to operate effectively and efficiently will depend on the maintenance of the Bonding Program on an uninterrupted basis. As such, I believe that no feasible alternative to maintaining the Bonding Program exists.



317. As of the Petition Date, I understand that all premium payments due and owing under the Bonding Program have been paid in full and the Debtors are not aware of any pending requests for payment by the Sureties. However, the Debtors request that they be authorized to maintain the Bonding Program in the same manner as they did prepetition and to pay any prepetition claims arising under the Bonding Program (the “*Prepetition Bonding Obligations*”). The Debtors further request authority to honor the current bonds in place and to revise, extend, supplement, or change the Bonding Program as needed, including through the issuance of new surety bonds, postpetition.

#### **10. Utilities Motion<sup>64</sup>**

318. By the Utilities Motion, the Debtors request entry of interim and final orders (a) approving the Debtors’ proposed assurance of postpetition payment to the Utility Companies (as defined below), (b) approving the additional assurance procedures described below as the method for resolving disputes regarding adequate assurance of payment to Utility Companies, (c) prohibiting the Utility Companies from altering, refusing, or discontinuing services to or discriminating against the Debtors except as may be permitted by the proposed procedures, and (d) authorizing payment of any prepetition Service Fees.

319. The Debtors use utility services such as electricity, water, telephone, internet, and other similar products and services (the “*Utility Services*”) across the United States and Canada in their headquarters, manufacturing and distribution centers, and thousands of retail locations. The Utility Services are provided by a number of different providers who provide services to the Debtors directly or indirectly through a landlord (each a “*Utility Company*,” and, collectively, the

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<sup>64</sup> “*Utilities Motion*” means the *Motion of Debtors for Orders (A) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (B) Approving Deposit as Adequate Assurance of Payment, (C) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment, and (D) Authorizing Payment of Any Prepetition Service Fees.*

“*Utility Companies*”). A list of the Utility Companies and the Utility Services they provide is attached to the Utility Motion as Exhibit C.<sup>65</sup>

320. I believe that uninterrupted Utility Services are essential to the Debtors’ ongoing business operations and the overall success of the Chapter 11 Cases. Without Utility Services at any of their operating locations, the Debtors’ businesses could be negatively affected and value could be lost to their estates, whether in the form of lost sales in their stores, supply chain problems leading to increased costs, or management disruptions causing any number of problems in the Debtors’ complex, multinational operations.

321. I understand that in general, the Debtors have established satisfactory payment histories with the Utility Companies and payments have been made on a regular and timely basis. To the best of my knowledge, there are no material defaults or arrearages with respect to invoices for prepetition Utility Services as of the Petition Date. To facilitate timely and efficient processing and payment of invoices with respect to the Utility Services, the Debtors contract, in the ordinary course of business, with CASS Information Systems, Inc. (the “Payment Processor”) to process and remit payments to certain Utility Companies on the Debtors’ behalf. The Payment Processor receives, processes, and reviews applicable utility bills and submits to the Debtors a master invoice on account of unpaid and processed utility bills in exchange for a fee of \$1.45 per invoice (the “Service Fees”). Following a review of each such invoice, the Debtors remit payment to the Payment Processor and the Payment Processor arranges for payment to the applicable Utility Companies. The Debtors remit Service Fees related to Utility Services provided in the United States each business day and remit Service Fees related to Utility Services provided in Canada on

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<sup>65</sup> For the avoidance of doubt, the presence or absence of the name of any party in Exhibit C to the Utility Motion shall not constitute an admission or stipulation of any kind by the Debtors, including that any party is or is not a “utility” within the meaning of section 366 of the Bankruptcy Code.

a monthly basis. During the twelve months preceding the Petition Date, the Debtors remitted approximately \$9,000 per month in Service Fees to the Service Provider. I am advised that as of the Petition Date, approximately \$2,915 in Service Fees remain outstanding and payable, all of which will come due and owing during the first 21 days following the Petition Date.

322. I understand that the Debtors intend to pay all postpetition obligations owed to the Utility Companies in the ordinary course of business and in a timely manner. Nevertheless, to provide additional assurance of payment for future services to the Utility Companies, the Debtors will deposit approximately \$947,000, which is an amount equal to approximately fifty percent (50%) of the Debtors' historical average monthly costs of Utility Services provided by the Utility Companies based on the twelve months before the Petition Date (the "Adequate Assurance Deposit"),<sup>66</sup> into an existing, segregated, interest-bearing account at JPMorgan Chase Bank, N.A. in the name of Debtor GNC Holdings, Inc., with last four digits 7167,<sup>67</sup> within twenty (20) days of the Petition Date.<sup>68</sup> The balance of the Adequate Assurance Deposit will be maintained during the Chapter 11 Cases, subject to adjustment by the Debtors to account for the termination or beginning of new Utility Services or entry into other arrangements with respect to adequate assurance of payment reached with individual Utility Companies.

323. The Debtors propose that the Adequate Assurance Deposit may be adjusted and/or reduced by the Debtors to account for any of the following: (i) the extent to which the Adequate

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<sup>66</sup> For the avoidance of doubt, the Debtors are not providing any adequate assurance deposits on account any party who Debtors pay indirectly for Utility Services through rent payments.

<sup>67</sup> More information on the Debtors' bank accounts and cash management system are set forth in the *Motion of Debtors for Orders (A) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (B) Authorizing Continuation of Existing Deposit Practices, (C) Authorizing Continuation of Intercompany Transactions, and (D) Granting Administrative Claim Status to Postpetition Intercompany Claims* filed contemporaneously herewith.

<sup>68</sup> Three Utility Companies (Constellation NewEnergy, Inc., Engie Resources, and Southern California Edison) previously received deposits totaling approximately \$288,000. Nonetheless, the proposed Adequate Assurance Deposit includes amounts relating to such Utility Companies.

Assurance Deposit includes any amount on account of a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, (ii) the termination of a Utility Service by a Debtor regardless of any Additional Adequate Assurance Request (as defined below), (iii) the closure of a utility account with a Utility Company for which funds have been contributed for the Adequate Assurance Deposit, or (iv) any other arrangements with respect to adequate assurance of payment reached by a Debtor with individual Utility Companies; provided, that, with respect to the Debtors’ termination of a Utility Service or closure of a utility account with a Utility Company, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon reconciliation and payment by the Debtors of such Utility Company’s final invoice in accordance with applicable nonbankruptcy law, to the extent that there are no outstanding disputes related to postpetition payments due.

## ***II. Store Closing Motion<sup>69</sup>***

324. By the Store Closing Motion, the Debtors request entry of interim and final orders (a) authorizing and approving Store Closing sales in accordance with the terms of the Store Closing Procedures, with such sales to be free and clear of all liens, claims, and encumbrances; (b) authorizing the Debtors to pay customary bonuses to non-insider managers of the stores where Store Closing sales will occur; and (c) authorizing the Debtors to assume the Consulting Agreements with a joint venture comprised of Tiger Capital Group, LLC and Great American Group, LLC (the “***U.S. Consultant***”) for the U.S. store closings and a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (the “***Canada Consultant***” and together with the U.S. Consultant, the “***Consultant***”) for the Canada store closings.

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<sup>69</sup> “***Store Closing Motion***” means the *Motion of Debtors for Orders (A) Approving Procedures for Store Closing Sales, (B) Authorizing Customary Bonuses to Managers of Stores, (C) Authorizing Assumption of the Consulting Agreements and (D) Granting Related Relief.*

325. In the wake of extreme market conditions and faced with limited liquidity, the Debtors seek through the Store Closing Motion to wind down approximately 726 store locations throughout the U.S. and Canada through a going-out-of-business sales process. I understand that given continuously declining profitability and operational challenges, and despite the best efforts of the Debtors and their advisors to secure the capital necessary to preserve the entire business as a going concern, the Debtors are simply unable to meet their financial obligations. Thus, the Debtors have worked in concert with their secured lenders to facilitate an expedited sale and orderly wind-down process for certain stores that will maximize value and recoveries for stakeholders. Additionally, the Debtors, with the assistance of A&G Realty Partners, LLC and MPA Inc., are negotiating lease modifications with many of the Debtors' landlords in the U.S. and Canada, respectively, for certain rent concessions and early termination rights, which I believe should help the Debtors with their goal of improving the financial performance of the Debtors' remaining store base.

326. In order to facilitate the Store Closings, the Debtors seek approval of the Store Closing Procedures. The Store Closing Procedures will provide the best, most efficient, and most organized means of selling Merchandise and FF&E to maximize the value of the Debtors' estates. The Debtors intend to facilitate the Store Closings using current personnel at no increased cost.

327. I believe that approving the Store Closings pursuant to the Store Closing Procedures represents the best alternative to maximize recoveries to the Debtors' estates with respect to Merchandise and FF&E and provide the Debtors with much-needed liquidity. There are meaningful amounts of Merchandise, in the aggregate, that will be monetized most efficiently and quickly through an orderly process conducted in consultation with an experienced liquidation firm. Further, delay in commencing the Store Closings would diminish the recovery tied to monetization

of the Merchandise and FF&E for several important reasons. I understand that many of the Closing Stores fail to generate positive cash flow currently, or will fail to do so in the short term, and therefore will become a significant drain on liquidity. As such, the Debtors will realize an immediate benefit in terms of financial liquidity upon the sale of the Merchandise and FF&E and the termination of operations at the Closing Stores. Further, uninterrupted and orderly Store Closings will allow the Debtors to timely reject leases associated with the Closing Stores and, therefore, avoid the accrual of unnecessary administrative expenses for rent and related costs.

328. The Debtors selected the Consultant to (a) manage the Store Closings; (b) sell their Merchandise and FF&E under the Consulting Agreements, and solely with respect to the U.S. Consulting Agreement, the Additional Consultant Goods, and (c) surrender the stores to the Debtors on the terms set forth in the Consulting Agreements. I understand that the Debtors selected the Consultant in part because they have a historical relationship with the Consultant, who has helped the Debtors with annual appraisals of inventory and accounts receivable, making the Consultant familiar with the Debtors' businesses. In addition, in early 2020, the Consultant was retained for a store closing test, at which time the Consultant was subject to an extensive evaluation process.

329. I believe that allowing the Debtors to assume the Consulting Agreements so that the Consultant may continue in its role as Consultant for the Store Closings on a postpetition basis without interruption will allow the Debtors to conduct the Store Closings in an efficient, controlled manner that will maximize value for the Debtors' estates. The continuation of services by the Consultant is necessary for efficient large-scale execution of the Store Closings, and to maximize the value of the assets being sold. And any change in or elimination of the Consultant would significantly disrupt the Store Closing process and impair the value of the remaining assets in the

stores. Entering into the Consulting Agreements, after engaging in extensive negotiations with the Consultant, will provide the greatest return to the Debtors' estates for the Merchandise and FF&E. I believe that the terms set forth in the Consulting Agreements constitute the best available alternative for the conduct of the Store Closings in both the U.S. and Canada.

330. Finally, pursuant to the Store Closing Motion, the Debtors are requesting the authority, but not the obligation, to pay a one thousand dollar (\$1,000) incentive payment to non-insider store managers (and in some cases associates in charge of a store, if the store does not have a store manager) at the stores where Store Closings will occur in the U.S. and Canada who remain in the employ of the Debtors during the Store Closings. None of the individuals entitled to receive bonus payments under this program are "insiders" as that term is defined in section 101(31) of the Bankruptcy Code. The total aggregate cost of the Store Closing Bonus Plan will vary depending on how many stores ultimately conduct Store Closings. I believe that the Store Closing Bonus Plan will motivate managers during the Store Closings and will enable the Debtors to retain those managers necessary to successfully complete the Store Closings. Further, providing such non-insider bonus benefits is critical to ensuring that key employees that will be affected by the reduction in the Debtors' workforce due to the Store Closings will continue to provide critical services to the Debtors during the ongoing Store Closing process. For the avoidance of doubt, the Debtors do not propose to make any payment on account of Store Closing Bonuses to any insiders.

## 12. *Omnibus Rejection Motions*<sup>70</sup>

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<sup>70</sup> "**First Omnibus Rejection Motion**" means the Debtors' First (1<sup>st</sup>) Omnibus Motion for Entry of an Order (A) Authorizing Rejection of Certain Unexpired Leases Effective as of the Petition Date and (B) Granting Related Relief; "**Second Omnibus Rejection Motion**" means the Debtors' Second (2<sup>nd</sup>) Omnibus Motion for Entry of an Order (A) Authorizing Rejection of Certain Unexpired Leases Effective as of the Petition Date and (B) Granting Related Relief; "**Third Omnibus Rejection Motion**" means the Debtors' Third (3<sup>rd</sup>) Omnibus Motion for Entry of an Order (A) Authorizing Rejection of Certain Unexpired Leases Effective as of the Petition Date and (B) Granting Related Relief;

331. By the First, Second and Third Omnibus Rejection Motions (collectively, the “*Omnibus Rejection Motions*”), the Debtors request entry of orders (a) authorizing the rejection of certain Rejection Leases, effective as of the Petition Date and (b) authorizing the Debtors to abandon the personal property located at the Premises as of the Petition Date.

332. The Debtors filed the Omnibus Rejection Motions amid an unprecedented health crisis with difficult social, political and economic implications. While the Debtors would have preferred to wait out the current instabilities of the financial markets and retail industry, they simply could not afford to do so. I believe the relief sought in the Omnibus Rejection Motions is critical to preserve liquidity and maintain the Debtors’ viability as a going concern.

333. I understand that as of the Petition Date, the Debtors are parties to approximately 3,616 real property leases in the United States, Canada and Puerto Rico, 772 of which are subleased to 330 franchisees. As part of their ongoing restructuring efforts, the Debtors are engaging in a comprehensive review and analysis of their lease portfolio. After careful evaluation, the Debtors identified 248 stores to be rejected pursuant to the Omnibus Rejection Motions. I believe that rejecting the Rejection Leases will allow the Debtors to avoid the accrual of unnecessary administrative expenses with no foreseeable benefits to the Debtors’ estates. Moreover, given the obligations under the Rejection Leases and current market conditions, the Debtors have concluded, in consultation with their advisors, that the Rejection Leases are not marketable and are unlikely to generate material value for the Debtors’ estates.

334. I am aware that on June 18, 2020, the Debtors sent letters to each landlord counterparty to the Rejection Leases, which were delivered no later than the Petition Date, notifying them that the Debtors were unequivocally surrendering possession of the Premises and abandoning any Debtor-owned personal property in conjunction therewith as of such time. The



Debtors also turned over the keys to the Premises to the applicable landlord counterparties to the Rejection Leases.

335. The Debtors have concluded that the cost of maintaining the stores to be rejected pursuant to the Omnibus Rejection Motions outweighs any revenues that such stores currently generate or are likely to generate in the future, and that there is no net benefit that is likely to be realized from the Debtors' continued efforts to retain and potentially market the Rejection Leases. In an effort to reduce postpetition administrative costs, I believe that the rejection of the Rejection Leases effective as of the Petition Date is in the best interests of the Debtors, their estates and their creditors.

336. Certain stores to be rejected pursuant to the Omnibus Rejection Motions contain property that belongs to the Debtors, including, but not limited to, inventory, books and records, equipment, fixtures, furniture and other personal property. Before the Debtors vacated the Premises, the Debtors evaluated the Remaining Property located at the Premises and determined that (a) the Remaining Property is of inconsequential value or (b) the cost of removing and storing the Remaining Property for future use, marketing, or sale exceeded its value to the Debtors' estates. I believe that any efforts by the Debtors to move or market the Remaining Property would have unnecessarily delayed the Debtors' rejection of the Rejection Leases. Because the Debtors have no intent to operate the stores at the Premises, I believe the Remaining Property will no longer be necessary for the administration of the Debtors' estates. Therefore, I believe that the abandonment of the Remaining Property is appropriate and in the best interests of the Debtors, their estates, and their creditors.

### 13. *NOL Motion*<sup>71</sup>

337. By the NOL Motion the Debtors seek entry of interim and final orders establishing certain notice and hearing procedures that must be satisfied before certain shareholders may make transfers of, or worthlessness deductions with respect to, common stock and Series A convertible preferred stock in Debtor GNC Holdings, Inc. (respectively, the “*Common Stock*” and the “*Convertible Preferred Stock*”).

338. The relief sought by the NOL Motion will allow the Debtors to monitor certain transfers of, and certain worthlessness deductions with respect to, Common Stock and Convertible Preferred Stock so that the Debtors can act expeditiously to prevent such transfers or deductions, if necessary, and preserve the potential value of potential net operating losses (“*NOLs*”), disallowed business interest expense under Section 163(j) of the Internal Revenue Code of 1986, as amended (the “*Tax Code*”) (“*Excess Interest Expense*”), potential built-in losses with respect to the Debtors’ assets and certain other built-in items (“*Built-in-Losses*”),<sup>72</sup> and certain other tax attributes (the potential NOLs, collectively with the potential Built-in Losses, Excess Interest Expense and certain other tax attributes, the “*Tax Attributes*”). This will allow the Debtors the flexibility to develop a chapter 11 plan of reorganization that will maximize the use and value of their Tax Attributes. I believe that entry of the Proposed Interim Order approving the NOL Motion is necessary to preserve the status quo in this regard.

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<sup>71</sup> “*NOL Motion*” means the *Motion of Debtors for an Order Establishing Certain Notice and Hearing Procedures for Transfers of, or Worthlessness Deductions With Respect to, Common Stock and Convertible Preferred Stock of GNC Holdings, Inc.*

<sup>72</sup> The amount of the Debtors’ potential Built-in Losses will depend, among other things, on the extent to which the Debtors’ assets have an aggregate tax basis in excess of their aggregate fair market value.

339. I am advised that the Debtors' Tax Attributes are valuable assets of the Debtors' estates because the Tax Code generally permits a corporation to carry forward such corporation's NOLs, Excess Interest Expense and certain other Tax Attributes to offset future taxable income or directly offset federal income tax liability in future periods. I am further advised that depending upon future operating results of the Debtors and absent any intervening limitations prior to the effective date of the Debtors' chapter 11 plan of reorganization, the Debtors' Tax Attributes could allow the Debtors to significantly reduce their future U.S. federal income tax liability, including by offsetting any taxable income that may result from transactions completed in connection with the Debtors' chapter 11 plan of reorganization. I believe that these savings could substantially enhance the Debtors' value and contribute to the Debtors' efforts toward a successful reorganization.

340. I believe that it is in the best interests of the Debtors and their estates to preserve the Tax Attributes by restricting certain acquisitions of equity interests and taking of worthless stock deductions by certain shareholders that could result in a detrimental "ownership change" (within the meaning of Section 382 of the Tax Code) occurring before the effective date of a chapter 11 plan or other disposition of the Debtors' assets. Preventing such an ownership change would protect the Debtors' ability to use the Tax Attributes during the pendency of the chapter 11 cases or, potentially, in the event of a future transaction.

341. To that end the Debtors seek to establish procedures for continuously monitoring the transfers of Common Stock and Convertible Preferred Stock as follows:

- a. Any person or entity (as defined in Treasury Regulations section 1.382-3(a)) who currently is or hereafter becomes a Substantial Shareholder (as such term is defined in paragraph (e) below) must file with the Court, and serve upon (i) the Debtors and counsel for the Debtors and (ii) counsel to the Ad Hoc Group of Crossover Lenders, a notice of such status, in substantially the form attached to the NOL Motion as Exhibit C, on or

before the later of (i) twenty (20) calendar days after entry of the Proposed Interim Order or (ii) ten (10) days after becoming a Substantial Shareholder.

- b. At least twenty (20) calendar days prior to effectuating any transfer<sup>73</sup> of Common Stock (including options to acquire Common Stock, as defined in paragraph (e) below) or Convertible Preferred Stock that would result in an increase in the amount of Common Stock or Convertible Preferred Stock beneficially owned by a Substantial Shareholder, or would result in a person or entity becoming a Substantial Shareholder, such Substantial Shareholder, person or entity must file with the Court, and serve upon the Debtors and counsel for the Debtors, an advance written notice of the intended transfer of Common Stock or Convertible Preferred Stock, in substantially the form attached to the NOL Motion as Exhibit D (each a “***Notice of Intent to Purchase, Acquire, or Otherwise Accumulate***”).
- c. At least twenty (20) calendar days prior to effectuating any transfer of Common Stock (including options to acquire Common Stock) or Convertible Preferred Stock that would result in a decrease in the amount of Common Stock or Convertible Preferred Stock beneficially owned by a Substantial Shareholder, or would result in a person or entity ceasing to be a Substantial Shareholder, such Substantial Shareholder, person or entity must file with the Court, and serve upon the Debtors and counsel for the Debtors, an advance written notice of the intended transfer of Common Stock or Convertible Preferred Stock, in substantially the form attached to the NOL Motion as Exhibit E (each a “***Notice of Intent to Sell, Trade, or Otherwise Transfer***” and, collectively with each Notice of Intent to Purchase, Acquire, or Otherwise Accumulate, a “***Notice of Proposed Transfer***”).
- d. The Debtors shall have fifteen (15) calendar days after receipt of a Notice of Proposed Transfer, and after consultation with the Ad Hoc Group of Crossover Lenders, to file with the Court and serve upon such Substantial Shareholder, person or entity an objection to any proposed transfer of Common Stock or Convertible Preferred Stock described in the Notice of Proposed Transfer on the grounds that such transfer might adversely affect the Debtors’ ability to utilize their Tax Attributes. If the Debtors file an objection, such transfer would not be effective unless approved by a final and non-appealable order of the Court. If the Debtors do not object within such 30-day period, such transfer shall be permitted to proceed solely as set forth in the Notice of Proposed Transfer. Further transfers within the scope of this paragraph (d) shall be the subject of additional notices as set forth herein, with additional 30-day waiting periods.
- e. For purposes of these procedures: (i) a “***Substantial Shareholder***” is any

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<sup>73</sup> For purposes of this Motion, a “***transfer***” includes any conversion of shares of Convertible Preferred Stock into shares of Common Stock.

person or entity that beneficially owns in excess of: (A) 4,018,926 shares of Common Stock (representing approximately 4.75%<sup>74</sup> of all issued and outstanding shares of Common Stock); or (B) 14,247 shares of Convertible Preferred Stock (representing approximately 4.75% of all issued and outstanding shares of Convertible Preferred Stock),<sup>75</sup> (ii) “**beneficial ownership**” of equity interests means beneficial ownership for U.S. federal income tax purposes as determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (A) direct and indirect, actual and constructive, beneficial ownership (for example, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (B) ownership by such holder’s family members and other related persons and persons acting in concert with such holder to make a coordinated acquisition of stock, and (C) ownership of shares which such holder has an option to acquire, and (iii) an “**option**” to acquire stock includes any option, contingent purchase, warrant, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

- f. Effective as of the Petition Date and until further order of the Court to the contrary, any purchase, sale, or other transfer of beneficial ownership of Common Stock, including options to acquire Common Stock, or Convertible Preferred Stock in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under Bankruptcy Code Sections 362 and 105(a).

342. The Debtors also request that the Court enter an order establishing similar notice and hearing procedures restricting the ability of shareholders that beneficially own or have beneficially owned 50% or more, by value, of Common Stock or Convertible Preferred Stock to

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<sup>74</sup> In general, under Section 382(g)(4)(A) of the Tax Code, all shareholders who, individually, beneficially own less than 5% of the stock of a corporation are deemed to be a single 5-percent shareholder throughout the Testing Period, and transfers between such shareholders are disregarded for purposes of determining whether an ownership change has occurred (the “**public group rule**”). Thus, so long as 50% or more of the stock of such corporation is beneficially owned by less than 5-percent shareholders throughout the Testing Period, there generally will be no change of ownership due to the public group rule. Accordingly, the Debtors do not seek to impose the notice and hearing procedures on transfers by shareholders beneficially owning less than 4.75% of Common Stock or Convertible Preferred Stock; *provided, however*, that such shareholders do not intend to accumulate a 4.75% or greater block of such stock or add or sell shares to or from such a block. Using 4.75% instead of 5% to calculate the threshold amount allows for a prudent margin of error.

<sup>75</sup> Based on approximately 84,608,976 shares of Common Stock or 299,950 shares of Convertible Preferred Stock outstanding as of the Petition Date.

take worthless stock deductions on their income tax returns for a tax year ending before the Debtors' emergence from chapter 11 protection. I am advised that under Section 382(g)(4)(D) of the Tax Code, any stock held by such a shareholder would be treated as being transferred if such shareholder takes a worthlessness deduction with respect to such stock. I understand that it is therefore essential that shareholders that beneficially own or have beneficially owned 50% or more of Common Stock or Convertible Preferred Stock defer taking such worthlessness deductions until a tax year ending after the Debtors have emerged from bankruptcy.

343. By restricting 50-percent Shareholders from taking worthless stock deductions for any tax year ending prior to the Debtors' emergence from chapter 11 protection, the Debtors can preserve their ability to seek substantive relief at the appropriate time. Accordingly, the Debtors request that the Court enter an order establishing the following procedures (the “***Worthless Stock Deduction Procedures***”):

- (a) Any person or entity that currently is or becomes a 50-percent Shareholder (as such term is defined in paragraph (d) below) must file with the Court, and serve upon (i) the Debtors and counsel for the Debtors and (ii) counsel to the Ad Hoc Group of Crossover Lenders, a notice of such status, in substantially the form attached to the NOL Motion as Exhibit F, on or before the later of (i) twenty (20) calendar days after entry of the Proposed Interim Order or (ii) ten (10) days after becoming a 50-percent Shareholder.
- (b) At least twenty (20) calendar days prior to filing any income tax return, or any amendment to such a return, taking any worthlessness deduction with respect to Common Stock or Convertible Preferred Stock for a tax year ending before the Debtors' emergence from chapter 11 protection, such 50-percent Shareholder must file with the Court, and serve upon the Debtors and counsel for the Debtors, an advance written notice of the intended worthlessness deduction, in substantially the form attached to the NOL Motion as Exhibit G (each a “***Notice of Intent to Take a Worthless Stock Deduction***”).
- (c) The Debtors shall have fifteen (15) calendar days after receipt of a Notice of Intent to Take a Worthless Stock Deduction, and after consultation with the Ad Hoc Group of Crossover Lenders, to file with the Court and serve upon such 50-percent Shareholder an objection to any proposed worthlessness deduction described in the Notice of Intent to Take a

Worthless Stock Deduction on the grounds that such deduction might adversely affect the Debtors' ability to utilize their Tax Attributes. If the Debtors file an objection, the filing of the income tax return with such deduction would not be permitted or effective unless approved by a final and non-appealable order of the Court. If the Debtors do not object within such 30-day period, the filing of the income tax return with such deduction shall be permitted as set forth in the Notice of Intent to Take a Worthless Stock Deduction. Additional income tax returns within the scope of this paragraph (c) shall be the subject of additional notices as set forth herein, with additional 30-day waiting periods.

- (d) For purposes of these procedures: (i) a “**50-percent Shareholder**” is any person or entity that at any time during the three-year period ending on the Petition Date has had beneficial ownership of 50% or more of Common Stock or Convertible Preferred Stock or is otherwise considered a 50-percent shareholder of GNC within the meaning of Section 382(g)(4)(D) of the Tax Code,<sup>76</sup> (ii) “**beneficial ownership**” of equity interests means beneficial ownership for U.S. federal income tax purposes as determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (A) direct and indirect, actual and constructive, beneficial ownership (for example, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (B) ownership by such holder's family members and other related persons and persons acting in concert with such holder to make a coordinated acquisition of stock, and (C) ownership of shares which such holder has an option to acquire, and (iii) an “**option**” to acquire stock includes any option, contingent purchase, warrant, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.
- (e) In the event that a 50-percent Shareholder takes a worthlessness deduction with respect to Common Stock or Convertible Preferred Stock in violation of the procedures set forth herein, such worthlessness deduction shall be null and void *ab initio* as an act in violation of the automatic stay under Bankruptcy Code Sections 362 and 105(a), and such 50-percent Shareholder shall be required to file an amended income tax return, as applicable, revoking such worthlessness deduction.

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<sup>76</sup> Beneficial ownership of 50% or more of (i) Common Stock currently is equivalent to owning approximately 42,304,488 or more shares based on 84,608,976 shares of Common Stock outstanding as of the Petition Date or (ii) Convertible Preferred Stock currently is equivalent to approximately 149,975 or more shares based on 299,950 shares of Convertible Preferred Stock outstanding as of the Petition Date.

344. I believe that the Court's authorization of the relief sought in the NOL Motion will provide a material benefit to the Debtors' estates.

**Conclusion**

345. The Debtors' ultimate goal in these Chapter 11 Cases is the maximization of estate value through a sale or plan process contemplating a comprehensive restructuring of their capital structure and their operations. In the near term, however, to minimize any loss of value of their businesses during these Chapter 11 Cases, the Debtors' immediate objective is to maintain a business-as-usual atmosphere during the early stages of these Chapter 11 Cases, with as little interruption or disruption to the Debtors' operations as possible. I believe that if the Court grants the relief requested in each of the First Day Pleadings, the prospect for achieving these objectives and confirmation of a Chapter 11 plan will be substantially enhanced.

346. I hereby certify that the foregoing statements are true and correct to the best of my knowledge, information, and belief, and respectfully request that all of the relief requested in the First Day Pleadings be granted, together with such other and further relief as is just.

*[Remainder of page intentionally left blank.]*



I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of June 2020.

Dated: June 24, 2020  
Pittsburgh, Pennsylvania

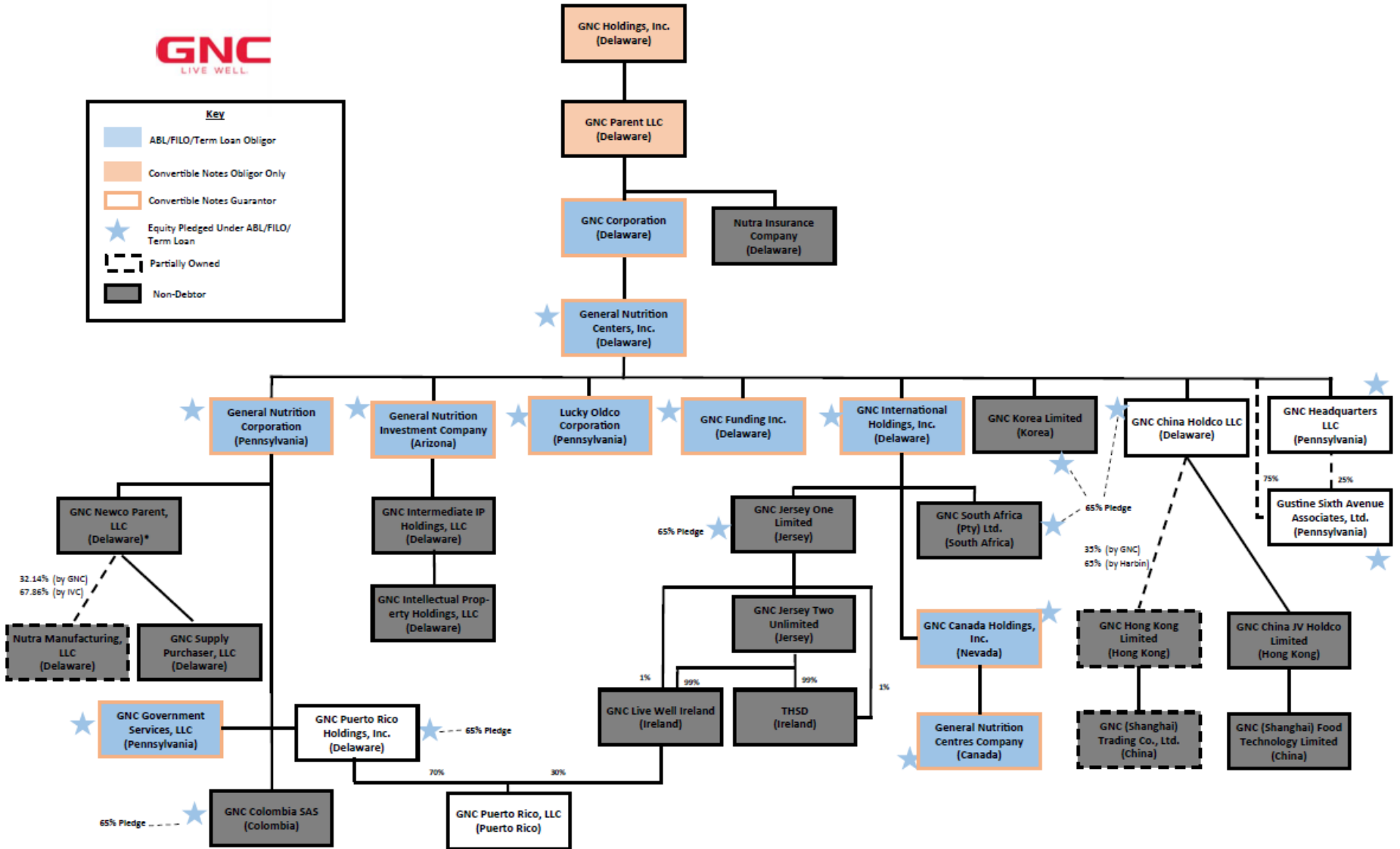
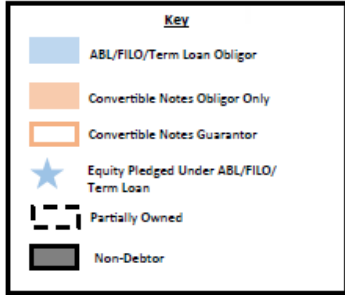
*/s/ Tricia Tolivar*

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Tricia Tolivar  
Executive Vice President, Chief Financial Officer  
GNC HOLDINGS, INC.

**EXHIBIT A**

**General Nutrition Centers, Inc. Organizational Chart**



**EXHIBIT B**

**Restructuring Support Agreement**

*THIS RESTRUCTURING SUPPORT AGREEMENT IS NOT AN OFFER OR ACCEPTANCE WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN WITHIN THE MEANING OF SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE. NOTHING CONTAINED IN THIS RESTRUCTURING SUPPORT AGREEMENT SHALL BE AN ADMISSION OF FACT OR LIABILITY OR, UNTIL THE OCCURRENCE OF THE AGREEMENT EFFECTIVE DATE ON THE TERMS DESCRIBED HEREIN, DEEMED BINDING ON ANY OF THE PARTIES HERETO.*

### **RESTRUCTURING SUPPORT AGREEMENT**

This RESTRUCTURING SUPPORT AGREEMENT (as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof, this “**RSA**” and, together with the Exhibits hereto, this “**Agreement**”), dated as of June 23, 2020, is entered into by and among the following parties:

(i) GNC Holdings, Inc. (“**GNC**”), GNC Parent LLC, GNC Corporation, General Nutrition Centers, Inc., General Nutrition Corporation, General Nutrition Investment Company, Lucky Oldco Corporation, GNC Funding Inc., GNC International Holdings Inc., GNC Headquarters LLC, Gustine Sixth Avenue Associates, Ltd., General Nutrition Centres Company, GNC Government Services, LLC, GNC Canada Holdings, Inc., GNC Puerto Rico Holdings, Inc., GNC Puerto Rico, LLC, and GNC China Holdco, LLC (each, together with GNC, a “**Company Entity**,” and collectively, together with GNC, the “**Company**”);

(ii) the undersigned holders, or the undersigned managers, beneficial holders, general partners or investment advisors of holders (but only in their respective capacities as the managers, beneficial holders, general partners or investment advisors of such holders), of Claims under the Tranche B-2 Term Loan (as defined below) that have executed and delivered counterpart signature pages to this Agreement or a Joinder Agreement to counsel to the Company (the “**Consenting Term Lenders**”);

(iii) the undersigned holders, or the undersigned managers, beneficial holders, general partners or investment advisors of holders (but only in their respective capacities as the managers, beneficial holders, general partners or investment advisors of such holders), of Claims under the ABL FILO Term Loan (as defined below) that have executed and delivered counterpart signature pages to this Agreement or a Joinder Agreement to counsel to the Company (the “**Consenting FILO Lenders**”, and together with the Consenting Term Lenders, the “**Consenting Creditors**”); and

The Company Entities and the Consenting Creditors are referred to as the “**Parties**” and individually as a “**Party**.”

**WHEREAS**, the Parties have in good faith and at arm’s length negotiated and agreed to the terms of a financial restructuring as set forth in the term sheet attached hereto as Exhibit A (the “**Restructuring Term Sheet**”) and a chapter 11 plan of reorganization (together with all exhibits, annexes, and schedules thereto, as each may be amended, restated, amended and

restated, supplemented, or otherwise modified in accordance with its terms and this Agreement, the “**Plan**”, and the transactions as described herein, in the Restructuring Term Sheet and in the Plan, the “**Restructuring**”) intended to be consummated through voluntary reorganization cases (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the Bankruptcy Code (defined below) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on the terms set forth in this Agreement (including the Restructuring Term Sheet);

**WHEREAS**, the Parties intend GNC Holdings, Inc. to act as foreign representative of the Company Entities and to commence a recognition proceeding under Part IV of the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) to recognize in Canada the Chapter 11 Cases as foreign main proceedings (the “**Recognition Proceedings**”);

**WHEREAS**, certain of the Consenting Term Lenders, Consenting FILO Lenders and/or their affiliates have further agreed to provide the Company with debtor-in-possession financing (the “**DIP Facility**”) pursuant to a credit agreement substantially in the form attached hereto as Exhibit B (the “**DIP Credit Agreement**”);

**WHEREAS**, as of the date hereof, the Consenting Creditors hold, in the aggregate, approximately (a) 92 percent of the aggregate outstanding principal amount of the Tranche B-2 Term Loan; and (b) 87 percent of the aggregate outstanding principal amount of the ABL FILO Term Loan; and

**WHEREAS**, the Parties desire to express to each other their mutual support and commitment in respect of the matters discussed in this Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

**1. Certain Definitions.**

Capitalized terms used but not defined in this Agreement have the meanings ascribed to them in the Restructuring Term Sheet. As used in this Agreement, the following terms have the following meanings:

a. “**ABL Credit Agreement**” means that certain Credit Agreement, dated as of February 28, 2018 (as amended by that certain First Amendment, dated as of March 20, 2018, and that certain Second Amendment, dated as of May 15, 2020, and as may be further amended, amended and restated, supplemented or otherwise modified from time to time), among GNC Corporation, General Nutrition Centers, Inc., as administrative borrower, certain of the Company Entities, as subsidiary borrowers, the lenders and agents parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent.

b. “**ABL FILO Term Loan**” means the FILO Term Loans (as defined in the ABL Credit Agreement) under the ABL Credit Agreement.

c. “**ABL FILO Term Loan Claim**” means any Claim arising under or based upon the ABL FILO Term Loan including any roll-up Claims under the DIP ABL FILO Credit Agreement related thereto.

d. “**Ad Hoc Groups**” means the Crossover Ad Hoc Group and the FILO Ad Hoc Group.

e. “**Agreement**” has the meaning set forth in the preamble hereto.

f. “**Agreement Effective Date**” means the date on which counterpart signature pages to this Agreement shall have been executed and delivered by (i) each Company Entity, and (ii) Consenting Creditors holding (A) at least 66 2/3% in aggregate principal amount outstanding of the Tranche B-2 Term Loan, and (B) at least 66 2/3% in aggregate principal amount outstanding of the ABL FILO Term Loan.

g. “**Alternative Transaction**” means any dissolution, winding up, liquidation, reorganization, recapitalization, assignment for the benefit of creditors, merger, transaction, consolidation, business combination, joint venture, partnership, sale of assets, financing (debt or equity), restructuring, repurchase, refinancing, extension or repayment of a material portion of the Company’s funded debt or similar transaction of or by any of the Company Entities, other than the transactions contemplated by and in accordance with this Agreement.

h. “**Avoidance Actions**” means any and all avoidance, recovery, subordination, or other claims, actions, or remedies that may be brought by or on behalf of the Debtors or their estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under sections 502, 510, 542, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws.

i. “**Bankruptcy Code**” means title 11 of the United States Code.

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

k. “**Business Day**” means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state of New York.

l. “**beneficial ownership**” means the direct or indirect economic ownership of, and/or the power, whether by contract or otherwise, to direct the exercise of the voting rights and the disposition of, the applicable Claims or Interests or the right to acquire such Claims or Interests.

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

n. “**Causes of Action**” means any action, claim, cross-claim, third-party claim, cause of action, controversy, dispute, demand, right, lien, indemnity, contribution, guaranty, suit, obligation, liability, loss, debt, fee or expense, damage, interest, judgment, cost, account, defense, remedy, offset, power, privilege, proceeding, license, and franchise of any kind or

character whatsoever, known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively (including any alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law (including under any state or federal securities laws). For the avoidance of doubt, Cause of Action also includes (i) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity, (ii) the right to object to Claims or Interests, (iii) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code, (iv) any claim or defense including fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code, and (v) any Avoidance Action or state law fraudulent transfer claim.

- o. “*CCAA*” has the meaning set forth in the recitals to this Agreement.
- p. “*Chapter 11 Cases*” has the meaning set forth in the recitals to this Agreement.
- q. “*Claim*” has the meaning ascribed to such term under section 101(5) of the Bankruptcy Code.
- r. “*Company*” has the meaning set forth in the recitals to this Agreement.
- s. “*Company Entity*” has the meaning set forth in the recitals to this Agreement.
- t. “*Company Termination Event*” has the meaning set forth in Section 7.b of this Agreement.
- u. “*Confidentiality Agreement*” has the meaning set forth in Section 4.b(iv) of this Agreement.
- v. “*Confirmation Date*” means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.
- w. “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan in the Chapter 11 Cases, which remains in full force and effect and is not subject to a stay.
- x. “*Confirmation Recognition Order*” means an order of the Canadian Court in the Recognition Proceedings recognizing and enforcing in Canada the Confirmation Order in full force and effect
- y. “*Consenting Creditors*” has the meaning set forth in the recitals to this Agreement.
- z. “*Consenting Creditors Group*” means any of the group of Consenting FILO Lenders or the group of Consenting Term Lenders.



- aa. “**Consenting Creditor Termination Event**” has the meaning set forth in Section 7.a of this Agreement.
- bb. “**Consenting FILO Lenders**” has the meaning set forth in the recitals to this Agreement.
- cc. “**Consenting Term Lenders**” has the meaning set forth in the recitals to this Agreement.
- dd. “**Consenting Term Lender Termination Event**” has the meaning set forth in Section 7.a of this Agreement.
- ee. “**Crossover Ad Hoc Group**” means the ad hoc group of holders of the Tranche B-2 Term Loan and ABL FILO Term Loan represented by Milbank LLP.
- ff. “**Debtors**” means the Company Entities that commence Chapter 11 Cases.
- gg. “**Definitive Documents**” has the meaning set forth in Section 2 of this Agreement.
- hh. “**DIP ABL FILO Credit Agreement**” means the Amended and Restated ABL Credit Agreement in substantially the form attached hereto as Exhibit C.
- ii. “**DIP Credit Agreement**” has the meaning set forth in the recitals to this Agreement.
- jj. “**DIP Facility**” has the meaning set forth in the recitals to this Agreement.
- kk. “**DIP Motion**” has the meaning set forth in Section 2 of this Agreement.
- ll. “**DIP Orders**” means the Interim DIP Order and the Final DIP Order.
- mm. “**Disclosure Statement**” means the disclosure statement in respect of the Plan, including all exhibits and schedules thereto, as approved or ratified by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code..
- nn. “**Disclosure Statement Motion**” means the motion of the Debtors seeking approval of the Disclosure Statement and the Solicitation Materials and allowing the solicitation of votes on the Plan to commence.
- oo. “**Disclosure Statement Order**” means the order of the Bankruptcy Court approving the Disclosure Statement in the Chapter 11 Cases, which remains in full force and effect and is not subject to a stay.
- pp. “**Effective Date**” means the date on which the Plan becomes effective in accordance with its terms.
- qq. “**Executory Contracts and Leases Information**” has the meaning set forth in Section 6.a(xiv).

rr. “**Exit Term Loan Facilities**” means the term loan facilities on substantially the terms set forth in the Exit Term Loan Facilities Term Sheet.

ss. “**Exit Term Loan Facilities Documents**” has the meaning set forth in Section 2 of this Agreement.

tt. “**Exit Term Loan Facilities Term Sheet**” means the Exit Term Loan Facilities Term Sheet attached as Exhibit I to the DIP Credit Agreement.

uu. “**Exit Revolver/FILO Facility**” means the revolver and term loan facility on substantially the terms set forth in the Exit Revolver/FILO Facility Term Sheet.

vv. “**Exit Revolver/FILO Facility Documents**” has the meaning set forth in Section 2 of this Agreement.

ww. “**Exit Revolver/FILO Facility Term Sheet**” means the Exit Revolver/FILO Facility Term Sheet attached as Exhibit B to the DIP Credit Agreement.

xx. “**Exit Term Sheets**” means the Exit Term Loan Facilities Term Sheet and the Exit Revolver/FILO Facility Term Sheet.

yy. “**FILO Ad Hoc Group**” means the ad hoc group of holders of the ABL FILO Term Loan represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP.

zz. “**FILO Ad Hoc Group Termination Event**” has the meaning set forth in Section 7.b.

aaa. “**FILO Lenders**” means the holders of the ABL FILO Term Loan and/or any roll-up Claims under the DIP ABL FILO Credit Agreement related thereto.

bbb. “**Final DIP Order**” means the final order of the Bankruptcy Court authorizing, among other things, the Debtors to enter into and make borrowings under the DIP Facility on a final basis and granting certain rights, protections, and liens to and for the benefit of the DIP Lenders.

ccc. “**Final DIP Recognition Order**” means an order of the Canadian Court in the Recognition Proceedings recognizing and enforcing in Canada the Final DIP Order in full force and effect.

ddd. “**First and Second Day Pleadings**” means the “first-day” and “second-day” pleadings, motions and applications (excluding retention applications) that the Company determines are necessary to file in the Chapter 11 Cases.

eee. “**GNC**” has the meaning set forth in the recitals to this Agreement.

fff. “**Initial Recognition Order**” means an order of the Canadian Court, among other things, recognizing the Chapter 11 Cases as foreign main proceedings under Part IV of the CCAA.

- ggg. “**Interest**” means an equity interest.
- hhh. “**Interim CCAA Order**” means the order issued by the Canadian Court which provides, among other things, an interim stay against the Company Entities in Canada and have been entered before the “first day” hearing in the Chapter 11 Cases.
- iii. “**Interim DIP Order**” means the interim order of the Bankruptcy Court authorizing, among other things, the Debtors to (i) enter into and make borrowings under the DIP Facility on an interim basis and granting certain rights, protections, and liens to and for the benefit of the DIP Lenders, and (ii) enter into the DIP ABL FILO Credit Agreement and granting certain rights, protections, and liens to and for the benefit of the FILO Lenders as provided in the DIP ABL FILO Credit Agreement.
- jjj. “**Interim DIP Recognition Order**” means the order issued by the Canadian Court recognizing and enforcing in Canada the Interim DIP Order in full force and effect.
- kkk. “**Joinder Agreement**” means the form of joinder agreement attached hereto as Exhibit D.
- lll. “**Lenders**” means the lenders party from time to time to the ABL Credit Agreement or the Tranche B-2 Term Loan Credit Agreement.
- mmm. “**MIP**” has the meaning set forth in Section 2 of this Agreement.
- nnn. “**Mutual Termination Event**” has the meaning set forth in Section 7.d of this Agreement.
- ooo. “**New ABL/FILO Facility**” has the meaning set forth in the Restructuring Term Sheet.
- ppp. “**New Common Shares**” has the meaning ascribed to such term in the Restructuring Term Sheet.
- qqq. “**New Corporate Governance Documents**” means the form of certificate or articles of incorporation, bylaws, limited liability company agreement, partnership agreement, and such other applicable formation, organizational and governance documents (if any) of the Reorganized Company Entities, the material terms of each of which shall be included in the Plan Supplement.
- rrr. “**New Stockholders Agreement**” means that certain shareholders agreement that will govern certain matters related to the governance of the Reorganized Company and the New Common Shares, the material terms of which shall be included in the Plan Supplement.
- sss. “**Outside Date**” has the meaning set forth in Section 3 of this Agreement.
- ttt. “**Party(ies)**” has the meaning set forth in the recitals to this Agreement.
- uuu. “**Permitted Transfer**” has the meaning set forth in Section 4.b of this Agreement.

vvv. “**Permitted Transferee**” has the meaning set forth in Section 4.b of this Agreement.

www. “**Person**” means an individual, firm, corporation (including any non-profit corporation), partnership, limited partnership, limited liability company, joint venture, association, trust, governmental entity, or other entity or organization.

xxx. “**Petition Date**” has the meaning set forth in Section 3.a of this Agreement.

yyy. “**Plan**” has the meaning set forth in the recitals to this Agreement.

zzz. “**Plan Supplement**” means a supplement or supplements to the Plan containing certain documents and forms of documents, schedules, and exhibits, in each case subject to the terms and provisions of the RSA (including any consent rights in favor of the Consenting Creditors) relevant to the implementation of the Plan, to be filed with the Bankruptcy Court, as amended, modified or supplemented from time to time in accordance with the terms hereof and in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the RSA (including any consent rights in favor of the Consenting Creditors), which shall include, but not be limited to (i) the New Corporate Governance Documents, (ii) the number and slate of directors to be appointed to the board of directors of the Reorganized Company to the extent known and determined, including the information required to be disclosed in accordance with section 1129(a)(5) of the Bankruptcy Code, (iii) the MIP, (iv) the Exit Term Loan Facilities Documents, (v) the Exit Revolver/FILO Facility Documents, (vi) a schedule of retained Causes of Action, and (viii) the Schedule of Rejected Contracts.

aaaa. “**Qualified Marketmaker**” has the meaning set forth in Section 4.b(ii) of this Agreement.

bbbb. “**Recognition Proceedings**” has the meaning set forth in the recitals to this Agreement.

cccc. “**Reorganized Company**” means the Company as reorganized on the Effective Date in accordance with the Plan.

dddd. “**Representatives**” means, with respect to any Person, such Person’s directors, officers, members, partners, managers, employees, agents, investment bankers, attorneys, accountants, advisors, and other representatives.

eeee. “**Required Consenting Term Lenders**” means those Consenting Term Lenders holding at least 50.1% in aggregate principal amount of the Tranche B-2 Term Loan held by Consenting Term Lenders, the approval of which, in the case of a Consenting Term Lender that is part of the Crossover Ad Hoc Group, may be communicated to the Debtors by email from counsel to the Crossover Ad Hoc Group and the Debtors shall be entitled to rely on such email.

ffff. “**Required FILO Ad Hoc Group Members**” means those Consenting FILO Lenders that are members of the FILO Ad Hoc Group holding at least 50.1% in aggregate principal amount of the ABL FILO Term Loans held by Consenting FILO Lenders that are members of the FILO Ad Hoc Group, the approval of which may be communicated to the

Debtors by email from counsel to the FILO Ad Hoc Group, and the Debtors shall be entitled to rely on such email.

gggg. “**Required Consenting Sale Parties**” has the meaning set forth in Section 8.b.

hhhh. “**Restructuring**” has the meaning set forth in the recitals to this Agreement.

iiii. “**Restructuring Term Sheet**” has the meaning set forth in the recitals to this Agreement.

jjjj. “**Revolving Loans**” means advances and all other outstanding Obligations (as defined in the ABL Credit Agreement) under the Revolving Credit Facility (as defined in the ABL Credit Agreement).

kkkk. “**RSA**” has the meaning set forth in the preamble to this Agreement.

llll. “**Schedule of Rejected Contracts**” means the schedule of executory contracts and unexpired leases to be rejected by the Debtors pursuant to the Plan, if any, as the same may be amended, modified, or supplemented from time to time.

mmmm. “**Solicitation Materials**” means the Disclosure Statement and the related ballots and solicitation materials.

nnnn. “**Supplemental Order**” means an order of the Canadian Court, among other things, granting customary additional relief in the Recognition Proceedings.

oooo. “**Support Period**” means, with respect to any Party, the period commencing on the Agreement Effective Date and ending on the earlier of (i) the date on which this Agreement is terminated by or with respect to such Party in accordance with Section 7 hereof and (ii) the Effective Date.

pppp. “**Termination Events**” has the meaning set forth in Section 7.d of this Agreement.

qqqq. “**Term Lenders**” means the holders of the Tranche B-2 Term Loans.

rrrr. “**Tranche B-2 Term Loan**” means the Tranche B-2 Term Loans (as defined in the Tranche B-2 Term Loan Credit Agreement).

ssss. “**Tranche B-2 Term Loan Claim**” means any Claim on account of the Tranche B-2 Term Loan.

tttt. “**Tranche B-2 Term Loan Credit Agreement**” means that certain Amended and Restated Term Loan Credit Agreement, dated as of February 28, 2018 (as amended by that certain First Amendment, dated as of May 15, 2020, and as may be further amended, amended and restated, supplemented or otherwise modified from time to time), among GNC Corporation, General Nutrition Centers, Inc., as borrower, the lenders and agents parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent.

uuuu. “**Transfer**” has the meaning set forth in Section 4.b of this Agreement.

vvvv. “**Unsecured Notes**” means the convertible notes issued pursuant to that certain Indenture, dated as of August 10, 2015, among GNC Holdings, the other subsidiaries party thereto and The Bank of New York Mellon Trust Company, N.A. as trustee.

## 2. **Definitive Documents.**

The definitive documents, including any amendments, supplements or modifications thereof approved in accordance with the terms of this Agreement, (the “**Definitive Documents**”) with respect to the Restructuring are (as applicable): (a) the Plan; (b) the Plan Supplement; (c) the Disclosure Statement; (d) the Disclosure Statement Motion, the Solicitation Materials and the Disclosure Statement Order; (e) the Confirmation Order and Confirmation Recognition Order; (f) the motion seeking approval of the Company’s incurrence of postpetition debt financing (the “**DIP Motion**”), the DIP Credit Agreement, and the DIP ABL FILO Credit Agreement; (g) the DIP Orders; (h) the definitive documentation with respect to the management incentive plan of the Company (the “**MIP**”) and any other documents or agreements related to any management incentive or retention programs, including any management employment agreements; (i) the agreements with respect to the Exit Term Loan Facilities, and any agreements, commitment letters, documents, or instruments related thereto (the “**Exit Term Loan Facilities Documents**”); (j) the agreements with respect to the Exit Revolver/FILO Facility, and any agreements, commitment letters, documents, or instruments related thereto (the “**Exit Revolver/FILO Loan Facility Documents**”); (k) the New Corporate Governance Documents and the New Stockholders Agreement; (l) the First and Second Day Pleadings, all interim and final orders sought pursuant thereto, the Interim Recognition Order, the Supplemental Order and the Interim CAA Order; (m) to the extent not provided for in the business plan provided to the Consenting Creditors prior to the Agreement Effective Date, any and all material motions filed on or after the Petition Date to assume, reject or assume and assign an executory contract or unexpired lease of the Company and the order or orders of the Bankruptcy Court approving such motions (except for such motions already included in the First and Second Day Pleadings, which have already been approved, and any order of the Bankruptcy Court approving the same), (n) any and all other material agreements, documents, motions, pleadings and orders reasonably necessary or desirable to effectuate the Restructuring or that is contemplated by the Plan, including without limitation any materials, motions, orders or reports filed or sought, as applicable, in the Recognition Proceedings with respect to the foregoing, and (o) in the case of each of the foregoing clauses (a) through (n), all material exhibits, appendices, and supplements thereto. Each Definitive Document, including all exhibits, annexes, schedules, amendments and supplements relating to such Definitive Documents, shall be consistent with this Agreement and otherwise in form and substance acceptable to the Company and the Required Consenting Term Lenders; *provided*, that the following shall also be subject to the approval of the Required FILO Ad Hoc Group Members, such approval not to be unreasonably withheld, delayed or conditioned: (1) the terms of the Exit Revolver/FILO Loan Facility Documents except for terms set forth in the Exit Revolver/FILO Facility Term Sheet; (2) the terms of the Interim DIP Order and Interim DIP Recognition Order (in each case to the extent relating to the DIP ABL FILO Credit Agreement), the Final DIP Order and Final DIP Recognition Order (in each case to the extent relating to the DIP ABL FILO Credit Agreement), and the DIP ABL FILO Credit Agreement, including any amendment, modification, waiver, forbearance, or supplement thereto,

in each case except for (x) terms set forth in the DIP ABL FILO Credit Agreement exhibit to the RSA and (y) terms that are not adverse to the FILO Lenders; and (3) each of the material terms of all other Definitive Documents (other than the Definitive Documents referred to in clauses (h) and (k) of his Section 2), including any amendment, modification, or supplement thereto, that both (x) is not expressly set forth in this Agreement and (y) would reasonably be expected to adversely affect the recoveries, rights, or obligations of the holders of ABL FILO Term Loan Claims.

### 3. Milestones.

During the Support Period, the Company shall use commercially reasonable efforts to implement the Restructuring in accordance with the following milestones (the “*Milestones*”), as applicable:

a. no later than 11:59 p.m. (prevailing Eastern Time) on June 21, 2020, the Company Entities shall have commenced the Chapter 11 Cases in the Bankruptcy Court (the “*Petition Date*”);

b. as soon as reasonably practicable after the Petition Date, but in no event later than the date that is two (2) Business Days after the Petition Date, the Canadian Court shall have entered the Interim CCAA Order;

c. on the Petition Date, the Debtors shall file with the Bankruptcy Court the DIP Motion (including the proposed Interim DIP Order);

d. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after commencement of the “first day” hearing in the Chapter 11 Cases, the Canadian Court shall have entered the Initial Recognition Order and Supplemental Order;

e. as soon as reasonably practicable, but in no event later than the date that is seven (7) calendar days after the Petition Date, the Company shall file with the Bankruptcy Court the Plan and the Disclosure Statement;

f. as soon as reasonably practicable, but in no event later than the date that is ten (10) Business Days after the Petition Date, the Debtors shall file with the Bankruptcy Court the Disclosure Statement Motion;

g. as soon as reasonably practicable, but in no event later than the date that is seven (7) calendar days after the Petition Date, the Company shall have (i) repaid in full the Revolving Loans and (ii) executed and delivered the DIP ABL FILO Credit Agreement;

h. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order;

i. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after the entry of the Interim DIP Order, the Canadian Court shall have entered the Interim DIP Recognition Order;

j. as soon as reasonably practicable, but in no event later than the date that is thirty-five (35) calendar days after the Petition Date, the Bankruptcy Court shall have entered the Final DIP Order;

k. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after the entry of the Final DIP Order, the Canadian Court shall have entered the Final DIP Recognition Order;

l. as soon as reasonably practicable, but in no event later than the date that is forty-five (45) calendar days after the Petition Date, the Bankruptcy Court shall have entered a Disclosure Statement Order;

m. as soon as reasonably practicable, but in no event later than the date that is 120 calendar days after the Petition Date, the Bankruptcy Court shall have entered a Confirmation Order;

n. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after the entry of the Confirmation Order, the Canadian Court shall have entered a the Confirmation Recognition Order; and

o. as soon as reasonably practicable, but in no event later than the earlier of (i) twenty-one (21) calendar days after the Confirmation Date, and (ii) the date that is one-hundred and forty-one (141) calendar days after the Petition Date, the Effective Date shall occur (the “*Outside Date*”);

*provided, however*, in each case, the dates set forth above may be extended or waived (with email from counsel being sufficient to evidence the same) with the consent of the Required Consenting Term Lenders; provided, further, any amendment, modification, extension, or waiver of the dates set forth in Sections 3(c), 3(g) – (k), and 3(o) (but in the case of Section 3(n), with respect to a waiver of the Outside Date or an extension of the Outside Date beyond the date that is 170 calendar days after the Petition Date) shall also require the consent of the Required FILO Ad Hoc Group Members.

#### **4. Agreements of the Consenting Creditors.**

a. Restructuring Support. During the Support Period, subject to the terms and conditions hereof, each Consenting Creditor agrees, severally and not jointly, that it shall:

(i) negotiate in good faith with the Company, its Representatives, and other Consenting Creditors and their respective Representatives, and use commercially reasonable efforts to execute, perform its obligations under and consummate the transactions contemplated by, the Definitive Documents to which it is or will be a party or for which its approval or consent is required;

(ii) support and not object to the Plan, including the other transactions contemplated by this Agreement, the Restructuring Term Sheet, the DIP Credit Agreement, the Exit Term Sheets and the Definitive Documents, and use commercially reasonable efforts to take any reasonable action necessary or reasonably requested by the Company in a timely manner to



effectuate the Plan and the transactions contemplated by this Agreement, the Restructuring Term Sheet, the DIP Credit Agreement, the Exit Term Sheets, and the Definitive Documents, in a manner consistent with this Agreement, including the timelines set forth herein;

(iii) not, directly or indirectly, seek, solicit, support, encourage, propose, assist, consent to, vote for, or enter or participate in any discussions or any agreement with any non-Party regarding, any Alternative Transaction; *provided*, that nothing in this clause (iii) shall affect any rights, if any, of the Consenting Creditors set forth in Section 10;

(iv) support and not object to the DIP Motion and entry of the DIP Orders in accordance with this Agreement;

(v) support and not object to entry of the Disclosure Statement Order and the Confirmation Order in accordance with this Agreement;

(vi) not, directly or indirectly, or encourage any other Person to, directly or indirectly, (A) object to, delay, postpone, challenge, oppose, impede, or take any other action or any inaction to interfere with or delay the acceptance, implementation, or consummation of the Plan and the transactions contemplated in this Agreement (including the DIP Facility) on the terms set forth in this Agreement, the Restructuring Term Sheet, the DIP Term Sheet, and any applicable Definitive Document, including commencing or joining with any Person in commencing any litigation or involuntary case for relief under the Bankruptcy Code against any Company Entity or any subsidiary thereof; (B) solicit, negotiate, propose, file, support, enter into, consummate, file with the Bankruptcy Court, vote for, or otherwise knowingly take any other action in furtherance of any restructuring, workout, plan of arrangement, or plan of reorganization for the Company that is materially inconsistent with this Agreement; (C) exercise any right or remedy for the enforcement, collection, or recovery of any claim against the Company or any direct or indirect subsidiaries of the Company that do not file for chapter 11 relief under the Bankruptcy Code, except in a manner consistent with this Agreement or (D) object to or oppose, or support any other Person's efforts to object to or oppose, any motions filed by the Company that are consistent with this Agreement;

(vii) subject to the receipt of the Disclosure Statement (and the other Solicitation Materials) in accordance with the Disclosure Statement Order, (A) timely vote or cause to be voted any Claims it holds to accept the Plan (to the extent permitted to vote) by delivering its duly executed and completed ballot or ballots, as applicable, accepting the Plan on a timely basis following commencement of the solicitation of acceptances of the Plan in accordance with sections 1125(g) and 1126 of the Bankruptcy Code; (B) except as set forth in this Agreement, not change or withdraw such vote or the elections described below (or cause or direct such vote or elections to be changed or withdrawn) during the Support Period; *provided, however*, that nothing in this Agreement shall prevent any Party from changing, withholding, amending, or revoking (or causing the same) its timely election or vote with respect to the Plan if this Agreement has been duly terminated with respect to such Party; and (C) to the extent it is permitted to elect whether to opt into or opt out of the releases set forth in the Plan, elect to opt into or not elect to opt out of the releases, as applicable, set forth in the Plan by timely delivering its duly executed and completed ballot or ballots indicating such election;

(viii) not direct JPMorgan Chase Bank, N.A. (in its capacity as administrative agent under the ABL Credit Agreement and Tranche B-2 Term Loan Credit Agreement) to take any action inconsistent with such Consenting Creditor's obligations under this Agreement, and, if such administrative agent takes any action inconsistent with such Consenting Creditor's obligations under this Agreement, such Consenting Creditor shall use its commercially reasonable efforts (which shall exclude the provision of any indemnity) to request that such administrative agent cease and refrain from taking any such action;

(ix) to the extent any legal or structural impediment arises that would prevent, hinder or delay the consummation of the Plan, negotiate with the Consenting Creditors and the Debtors in good faith appropriate additional or alternative provisions to address any such impediment; and

(x) in the case of a holder of Claims under the ABL FILO Term Loan, effective as of the repayment in full the Revolving Loans, execute and deliver the DIP ABL FILO Credit Agreement.

b. Transfers.

(i) During the Support Period, each Consenting Creditor agrees, solely with respect to itself, that it shall not sell, resell, reallocate, use, pledge, assign, transfer, hypothecate, donate, permit the participation in, or otherwise encumber or dispose of, directly or indirectly (including through derivatives, options, swaps, pledges, forward sales or other transactions) (each, a "**Transfer**") any ownership (including any beneficial ownership) interest in its Claims against any Company Entity, or any option thereon or any right or interest therein (including by granting any proxies or depositing any interests in such Claims into a voting trust or by entering into a voting agreement with respect to such Claims), unless (1) the intended transferee is another Consenting Creditor, (2) as of the date of such Transfer, the Consenting Creditor controls such transferee, or (3) the intended transferee executes and delivers to counsel to the Company an executed Joinder Agreement before such Transfer is effective (it being understood that any Transfer shall not be effective as against the Company until notification of such Transfer and a copy of the executed Joinder Agreement (if applicable) is received by counsel to the Company) (each such transfer, a "**Permitted Transfer**" and such party to such Permitted Transfer, a "**Permitted Transferee**"). Upon satisfaction of the foregoing requirements in this Section 4.b and any transfer restrictions set forth in the DIP Credit Agreement, (i) the Permitted Transferee shall be deemed to be a Consenting Creditor hereunder to the same extent as such Permitted Transferee's transferor (it being understood that, for purposes of the foregoing, to the extent the Claims transferred to the Permitted Transferee were transferred by a Qualified Marketmaker (as defined below), the transferor shall be deemed to be the Consenting Party that last held such Claims prior to the Qualified Marketmaker), and, for the avoidance of doubt, a Permitted Transferee is bound as a Consenting Creditor under this Agreement with respect to any and all Claims against, in, any of the Company Entities, whether held at the time such Permitted Transferee becomes a Party or later acquired by such Permitted Transferee, and each Permitted Transferee is deemed to make all of the representations and warranties of a Consenting Creditor set forth in this Agreement, and (ii) the transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Agreement to the extent of such transferred rights and obligations.

(ii) Notwithstanding anything to the contrary herein, a Consenting Creditor may Transfer any ownership in its Claims against any Company Entity, or any option thereon or any right or interest therein, to a Qualified Marketmaker that acquires Claims against any Company Entity with the purpose and intent of acting as a Qualified Marketmaker for such Claims, and such Qualified Marketmaker shall not be required to execute and deliver to counsel to any Party a Joinder Agreement in respect of such Claims if (A) such Qualified Marketmaker subsequently Transfers such Claims within ten (10) Business Days of its acquisition to an entity that is not an affiliate, affiliated fund, or affiliated entity with a common investment advisor of such Qualified Marketmaker, (B) the transferee otherwise is a Permitted Transferee, and (C) the Transfer otherwise is a Permitted Transfer. To the extent that a Consenting Creditor is acting in its capacity as a Qualified Marketmaker, it may Transfer any right, title, or interest in any Claims against any Company Entity that such Consenting Creditor acquires in its capacity as a Qualified Marketmaker from a holder of such Claims who is not a Consenting Creditor without regard to the requirements set forth in Section 4.b hereof. As used herein, the term “**Qualified Marketmaker**” means an entity that (a) holds itself out to the public or the applicable private markets as standing ready in the ordinary course of business to purchase from customers and sell to customers claims against the Company Entities (or enter with customers into long and short positions in claims against the Company Entities), in its capacity as a dealer or market maker in claims against the Company and (b) is, in fact, regularly in the business of making a market in claims against issuers or borrowers (including debt securities or other debt).

(iii) This Agreement shall in no way be construed to preclude the Consenting Creditors from acquiring additional Claims against in any Company Entity; *provided*, that (A) if any Consenting Creditor acquires additional Claims against any Company Entity during the Support Period, such Consenting Creditor shall report its updated holdings to the legal advisor to the Ad Hoc Group of which it is part and the Company within five (5) Business Days of such acquisition, which notice may be deemed to be provided by the filing of a statement with the Bankruptcy Court as required by Rule 2019 of the Federal Rules of Bankruptcy Procedures, including revised holdings information for such Consenting Creditor, and (B) any acquired Claims shall automatically and immediately upon acquisition by a Consenting Creditor be deemed subject to the terms of this Agreement (regardless of when or whether notice of such acquisition is given).

(iv) This Section 4.b shall not impose any obligation on the Company to issue any “cleansing letter” or otherwise publicly disclose information for the purpose of enabling a Consenting Creditor to Transfer any Claims. Notwithstanding anything to the contrary herein, to the extent the Company and another Party have entered into a separate agreement with respect to the issuance of a “cleansing letter” or other public disclosure of information (each such executed agreement, a “**Confidentiality Agreement**”), the terms of such Confidentiality Agreement shall continue to apply and remain in full force and effect according to its terms, and this Agreement does not supersede any rights or obligations otherwise arising under such Confidentiality Agreement.

(v) Any Transfer made in violation of this Section 4.b shall be void *ab initio*.

(vi) Notwithstanding anything to the contrary in this Section 4, the restrictions on Transfer set forth in this Section 4.b shall not apply to the grant of any liens or encumbrances on any claims and interests in favor of a bank or broker-dealer holding custody of such claims and interests in the ordinary course of business and which lien or encumbrance is released upon the Transfer of such claims and interests.

c. Ad Hoc Group Composition. At the Company's request, which shall not be more frequent than once per month during the Support Period, counsel to each Ad Hoc Group shall provide counsel to the Company with a list of each member of such Ad Hoc Group and such member's holdings of Tranche B-2 Term Loans, ABL FILO Term Loans and Revolving Credit Facility Exposure (if any).

## **5. Additional Provisions Regarding Consenting Creditor Commitments.**

Notwithstanding anything to the contrary herein, nothing in this Agreement shall:

a. be construed to prohibit any Consenting Creditor from appearing as a party-in-interest in any matter arising in the Chapter 11 Cases;

b. be construed to prohibit any Consenting Creditor from enforcing any right, remedy, condition, consent, or approval requirement under this Agreement or any Definitive Documents;

c. affect the ability of any Consenting Creditor to consult with any other Consenting Creditor, the Company Entities, or any other party in interest in the Chapter 11 Cases (including any official committee or the United States Trustee) so as long as such consultation and any communications in connection therewith are not materially inconsistent with this Agreement and are not for the purpose of delaying, interfering, impeding, or taking any other action to delay, interfere, or impede, directly or indirectly, the Restructuring;

d. impair or waive the rights of any Consenting Creditor to assert or raise any objection permitted under this Agreement in connection with the Restructuring;

e. prevent any Consenting Creditor from enforcing this Agreement or any other Definitive Document (to the extent it has rights thereunder), or from contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, such documents;

f. prohibit any Consenting Creditor from withdrawing its vote to support the Plan from and after a Termination Event as to such Consenting Creditor (other than a Termination Event as a result of the occurrence of the Effective Date); or

g. prevent any Consenting Creditor from taking any customary perfection step or other action as is necessary to preserve or defend the validity or existence of its Claims in the Company (including the filing of proofs of claim);

*provided* that, in each case, any such action is not inconsistent with such Consenting Creditor's obligations hereunder. The Parties agree that upon a Termination Event as to a Consenting

Creditor (other than a Termination Event as a result of the occurrence of the Effective Date), such Consenting Creditor's vote on the Plan shall automatically be deemed void *ab initio*.

**6. Agreements of the Company.**

a. Restructuring Support. During the Support Period, subject to the terms and conditions hereof (including Section 10 hereof), the Company shall, and shall cause each of its direct and indirect subsidiaries to:

(i) implement the Restructuring in accordance with the terms and conditions set forth herein;

(ii) implement and consummate the Plan in a timely manner and take any and all commercially reasonable and appropriate actions in furtherance of the Plan, as contemplated under this Agreement;

(iii) upon reasonable request, inform the legal and financial advisors to the Crossover Ad Hoc Group as to: (A) the material business and financial (including liquidity) performance of the Company Entities; (B) the status and progress of the Restructuring, including the negotiations of the Definitive Documents; and (C) the status of obtaining any necessary or desirable authorizations (including consents) from each Consenting Creditor, any competent judicial body, governmental authority, banking, taxation, supervisory, or regulatory body or any stock exchange;

(iv) (A) support and take all commercially reasonable actions necessary and appropriate, including those actions reasonably requested by the Required Consenting Term Lenders and the Required FILO Ad Hoc Group Members to facilitate the solicitation, confirmation, and consummation of the Plan and the transactions contemplated thereby in accordance with this Agreement within the timeframes contemplated herein, (B) not take any action directly or indirectly that is materially inconsistent with, or is intended to, or that would reasonably be expected to prevent, interfere with, delay, or impede, the confirmation and consummation of the Plan, any Definitive Document or the Restructuring, (C) not, nor encourage any other person to, take any action which would, or would reasonably be expected to, breach or be inconsistent with this Agreement or delay, impede, appeal, or take any other negative action, directly or indirectly, to interfere with the acceptance or implementation of the Plan, any Definitive Document or the Restructuring, and (D) use commercially reasonable efforts to obtain orders of the Bankruptcy Court approving the Disclosure Statement and confirming the Plan within the timeframes contemplated herein;

(v) maintain good standing, to the extent such concept exists in the relevant jurisdiction, under the laws of the state or other jurisdiction in which each Company Entity or subsidiary is incorporated or organized;

(vi) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the Restructuring contemplated herein, support and take all steps reasonably necessary and desirable to address any such impediment;

(vii) to the extent feasible and reasonably practicable, provide to counsel to the Ad Hoc Groups draft copies of all Definitive Documents and all material other pleadings, motions, declarations, supporting exhibits and proposed orders and any other document that the Company intends to file with the Bankruptcy Court and Canadian Court at least three (3) calendar days prior to the date when the Company intends to file or execute such documents and consult in good faith with such counsel regarding the form and substance of such documents;

(viii) timely file a formal objection to any motion filed with the Bankruptcy Court by a third party seeking the entry of an order (A) directing the appointment of an examiner (other than an independent fee examiner) (with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code), (B) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, (C) dismissing the Chapter 11 Cases, (D) modifying or terminating the Company's exclusive right to file and/or solicit acceptances of a plan reorganization, or (E) that (1) is inconsistent with this Agreement in any material respect, or (2) would, or would reasonably be expected to, frustrate the purposes of this Agreement, including by preventing the consummation of the Restructuring;

(ix) support and take all actions as are reasonably necessary and appropriate to obtain any and all required regulatory and/or third-party approvals to consummate the Transactions; actively oppose and object to the efforts of any person seeking to object to, delay, impede, or take any other action to interfere with the acceptance, implementation, or consummation of the Restructuring (including, if applicable, the filing of timely filed objections or written responses) to the extent such opposition or objection is reasonably necessary to facilitate implementation of the Restructuring;

(x) consult and negotiate in good faith with the Consenting Creditors and the Representatives of Consenting Creditors regarding the execution of Definitive Documents and the implementation of the Restructuring;

(xi) provide prompt written notice to the counsel to the Ad Hoc Groups between the date hereof and the Effective Date (A) of the occurrence of a Termination Event; or (B) if any person has challenged the validity or priority of, or has sought to avoid, any lien securing the Tranche B-2 Term Loan or the ABL FILO Term Loan pursuant to a pleading filed with the Bankruptcy Court;

(xii) inform the Consenting Creditors reasonably promptly after becoming aware of: (i) any matter or circumstance which it knows, or believes is likely, to be a material impediment to the implementation or consummation of the Restructuring; (ii) any notice of any commencement of any material involuntary insolvency proceedings, legal suit for payment of debt or securement of security from or by any person in respect of any Company Entity; (iii) a material breach of this Agreement (including a breach by any Company Entity); and (iv) any representation or statement made or deemed to be made by them under this Agreement which is or proves to have been incorrect or misleading in any material respect when made or deemed to be made;

(xiii) use commercially reasonable efforts to seek additional support for the Restructuring from their other material stakeholders to the extent the Company deems reasonably prudent;

(xiv) (A) consult in good faith with the legal and financial advisors to the Ad Hoc Groups on the Debtors' lease assumption and rejection strategy, including with respect to negotiations on the rejection, modification, or assumption of leases, which strategy shall be reasonably acceptable to the Required Consenting Term Lenders and the Required FILO Ad Hoc Group Members; (B) consult in good faith with the legal and financial advisors to the Ad Hoc Groups prior to the Debtors' entry into or termination or modification of any material operational contracts or other arrangements (including, without limitation, franchise agreements and material supplier agreements), which entry into, termination or modification shall be reasonably acceptable to the Required Consenting Term Lenders and the Required FILO Ad Hoc Group Members; (C) identify in writing to the legal and financial advisors to the Ad Hoc Groups the contracts and leases proposed to be assumed, assumed and assigned, or rejected by motion to the Bankruptcy Court or pursuant to the Plan at least ten (10) Business Days prior to filing such motion or the Plan Supplement, as the case may be (the "*Executory Contracts and Leases Information*"), which Executory Contracts and Leases Information shall be reasonably acceptable to the Required Consenting Term Lenders and the Required FILO Ad Hoc Group Members; and (D) make relevant personnel or advisors reasonably available during business hours to provide assistance to the legal and financial advisors to the Ad Hoc Groups the review of any such executory contracts and leases identified in the Executory Contracts and Leases Information;

(xv) not adopt any new executive compensation or retention plans, approve or pay any executive bonuses, incentive payments, or retention payments, regardless of whether such executive bonuses, incentive payments, or retention payments have been approved by the Bankruptcy Court, or terminate any employees that would give rise to material contractual severance obligations, without prior consultation with the Required Consenting Term Lenders; and

(xvi) promptly after becoming aware thereof, notify counsel to the Ad Hoc Groups in writing of any breach of its obligations under this Agreement and any breach of this Agreement by any other Party;

b. Negative Covenants. The Company agrees that, for the duration of the Support Period, the Company shall not:

(i) take any action materially inconsistent with, or omit to take any action required by, this Agreement, the Plan (if applicable), or any of the other Definitive Documents;

(ii) object to, delay, impede, or take any other action or inaction that could reasonably be expected to interfere with or prevent acceptance, approval, implementation, or consummation of the Restructuring, including making, supporting, or not objecting to, any filings with the Bankruptcy Court, any agency, or any regulatory agency, including the Securities and Exchange Commission or the Internal Revenue Service, or by entering into any agreement or

making or supporting any filing, press release, press report, or comparable public statement, with respect to any proposal other than the Restructuring;

(iii) take any action that is inconsistent in any material respect with, or is intended or could reasonably be expected to frustrate or impede approval, implementation and consummation of the Restructuring;

(iv) modify the Plan, in whole or in part other than in accordance with Section 2;

(v) file any pleading, motion, declaration, supporting exhibit or Definitive Document with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement, the Plan, or other Definitive Documents, or that could reasonably be expected to frustrate or impede confirmation of the Plan or implementation and consummation of the Restructuring Transactions, is inconsistent with the Restructuring Term Sheet or DIP Term Sheet, or which is otherwise in substance not satisfactory to the Required Consenting Term Lenders and, to the extent such approval is required by Section 2, the Required FILO Ad Hoc Group Members;

(vi) take, or fail to take, any action that would cause a change to the tax status of any Company Entity; or

(vii) engage in any merger, consolidation, material disposition, material acquisition, investment, dividend, incurrence of indebtedness or other similar transaction outside of the ordinary course of business other than the transactions contemplated herein.

c. ABL Credit Agreement. Not later than seven (7) calendar days following the Petition Date, (i) repay in full the Revolving Loans and (ii) execute and deliver the DIP ABL FILO Credit Agreement.

## **7. Termination of Agreement.**

a. Consenting Term Lender Termination Events. This Agreement may be terminated with respect to the Consenting Term Lenders by the Required Consenting Term Lenders by the delivery to the Company and counsel to the FILO Ad Hoc Group of a written notice in accordance with Section 22 hereof upon the occurrence and continuation of any of the following events (each, a “*Consenting Term Lender Termination Event*”):

(i) the breach by any Company Entity of (A) any affirmative or negative covenant contained in this Agreement or (B) any other obligations of such breaching Company Entity set forth in this Agreement, in each case, in any material respect and which breach remains uncured (to the extent curable) for a period of five (5) Business Days following the Company’s receipt of notice from the Required Consenting Term Lenders, as applicable, pursuant to Section 22 hereof;

(ii) any representation or warranty in this Agreement made by any Company Entity shall have been untrue in any material respect when made, and such breach



remains uncured (to the extent curable) for a period of five (5) Business Days following the Company's receipt of notice from the Required Consenting Term Lenders, as applicable, pursuant to Section 22 hereof;

(iii) the breach in any material respect by any Consenting Creditor, of any of the representations, warranties, or covenants of any such parties set forth in any Definitive Document, which remains uncured for five (5) Business Days after the Company's receipt of notice from the Required Consenting Term Lenders, as applicable, pursuant to Section 22 hereof;

(iv) any Company Entity files any motion, pleading, or related document with the Bankruptcy Court or Canadian Court, or otherwise makes a public disclosure that is materially inconsistent with this Agreement, the Restructuring Term Sheet, the DIP Term Sheet, or the Definitive Documents and such motion, pleading, related document or public disclosure has not been withdrawn within five (5) Business Days after the Company receives written notice from the Required Consenting Term Lenders, as applicable, in accordance with Section 22 that such motion, pleading, related document or public disclosure is materially inconsistent with this Agreement;

(v) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any ruling, judgment, or order enjoining the consummation of any material portion of the Restructuring or rendering illegal the Plan or any material portion thereof, and either (A) such ruling, judgment, or order has been issued at the request of or with the acquiescence of any Company Entity, or (B) in all other circumstances, such ruling, judgment, or order has not been reversed or vacated within ten (10) calendar days after such issuance; *provided* that this termination right may not be exercised by any Consenting Creditors Group if a Consenting Creditor who is a member of such Consenting Creditors Group sought or requested such ruling or order in contravention of any obligation set forth in this Agreement;

(vi) the Bankruptcy Court (or other court of competent jurisdiction) enters an order (A) directing the appointment of an examiner (other than an independent fee examiner) with expanded powers or a trustee in any of the Chapter 11 Cases, (B) converting any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, (C) dismissing any of the Chapter 11 Cases, or (D) the effect of which would render the Plan incapable of consummation on the terms set forth in this Agreement;

(vii) any Company Entity files or supports (or fails to timely object to) another Person in filing (A) a motion or pleading challenging the amount, validity, or priority of any Claims held by any Consenting Term Lender against the Company, (B) any plan of reorganization, liquidation, dissolution, administration, moratorium, receivership, winding up, bankruptcy, or sale of all or substantially all of the Company's assets other than the Plan, (C) a motion or pleading asserting (or seeking standing to assert) any purported claims or causes of action against any of the Consenting Term Lenders, or (D) takes any corporate action for the purpose of authorizing any of the foregoing, which event remains uncured for a period of five (5) Business Days following the Company's receipt of notice from the Required Consenting Term Lenders or counsel to the Crossover Ad Hoc Group pursuant to Section 22 hereof;

(viii) any Company Entity (A) applies for or consents to the appointment of a receiver, monitor, administrator, administrative receiver, trustee, custodian, sequestrator, conservator or similar official with respect to any Company Entity or for a substantial part of such Company Entity's assets, (B) makes a general assignment or arrangement for the benefit of creditors, or (C) takes any corporate action for the purpose of authorizing any of the foregoing;

(ix) the Bankruptcy Court enters an order providing relief against any Consenting Term Lender with respect to any of the causes of action or proceedings specified in Section 7.a(vii)(A) or (C);

(x) (A) any Definitive Document filed by the Company or any Consenting Creditor, or any related order entered by the Bankruptcy Court, in the Chapter 11 Cases, or by the Canadian Court in the Recognition Proceeding, is inconsistent with the terms and conditions set forth in this Agreement or is otherwise not in accordance with this Agreement in any material respect, or (B) any of the terms or conditions of any of the Definitive Documents is waived, amended, supplemented, or otherwise modified without the prior written consent of the Required Consenting Term Lenders, in each case, which remains uncured for five (5) Business Days after the receipt by the Company of written notice from the Required Consenting Term Lenders pursuant to Section 22 hereof;

(xi) any of the Milestones have not been achieved, extended, or waived after the required date for achieving such Milestone, unless such failure is the result of any act, omission or delay on the part of a Consenting Creditor who is a member of the applicable terminating Consenting Creditors Group in violation of its obligations under this Agreement (in which case this Consenting Creditors Termination Event shall not be available as a basis for termination of this Agreement to members of such Consenting Creditors Group);

(xii) any termination of the DIP Facility or acceleration of the obligations under the DIP Facility;

(xiii) the Debtors enter into any commitment or agreement to receive or obtain debtor in possession financing, cash collateral usage, exit financing and/or other financing arrangements, other than as expressly contemplated in the DIP Facility;

(xiv) the Debtors' use of cash collateral or the DIP Facility has been validly terminated (or, in the case of the DIP Facility, accelerated) in accordance with the DIP Orders and the DIP Facility;

(xv) the Bankruptcy Court denies entry of the Confirmation Order and such order denying confirmation remains in effect for three (3) Business Days after entry of such order, or the Confirmation Order, the Disclosure Statement Order or any of the orders approving the Definitive Documents are reversed, dismissed, stayed, vacated, reconsidered, modified or amended without the consent of the Required Consenting Term Lenders;

(xvi) any court of competent jurisdiction has entered a final, non-appealable judgment or order declaring this Agreement to be unenforceable; or

(xvii) the Company Entities (i) withdraw the Plan, (ii) publicly announce their intention not to support the Restructuring, (iii) provide notice to counsel to the Ad Hoc Groups pursuant to Section 10, or (iv) publicly announce, or execute a definitive written agreement with respect, to an Alternative Transaction.

b. FILO Ad Hoc Group Termination Events. This Agreement may be terminated with respect to the members of the FILO Ad Hoc Group by the Required FILO Ad Hoc Group Members by the delivery to the Company and counsel to the Crossover Ad Hoc Group of a written notice in accordance with Section 22 hereof upon the occurrence and continuation of any of the following events (each, a “*FILO Ad Hoc Group Termination Event*”):

(i) the breach by any Company Entity of (A) any affirmative or negative covenant contained in this Agreement or (B) any other obligations of such breaching Company Entity set forth in this Agreement, in each case, in any material respect and which breach remains uncured (to the extent curable) for a period of five (5) Business Days following the Company’s receipt of notice from the Required FILO Ad Hoc Group Members, as applicable, pursuant to Section 22 hereof;

(ii) any representation or warranty in this Agreement made by any Company Entity shall have been untrue in any material respect when made, and such breach remains uncured (to the extent curable) for a period of five (5) Business Days following the Company’s receipt of notice from the Required FILO Ad Hoc Group Members, as applicable, pursuant to Section 22 hereof;

(iii) the breach in any material respect by any Consenting Creditor, of any of the representations, warranties, or covenants of any such parties set forth in any Definitive Document, which remains uncured for five (5) Business Days after the Company’s receipt of notice from the Required FILO Ad Hoc Group Members, as applicable, pursuant to Section 22 hereof;

(iv) any Company Entity files any motion, pleading, or related document with the Bankruptcy Court or otherwise makes a public disclosure that is materially inconsistent with this Agreement, the Restructuring Term Sheet, the DIP Term Sheet, or the Definitive Documents (in each case as modified in accordance with Section 2) and such motion, pleading, related document or other public disclosure has not been withdrawn within five (5) Business Days after the Company receives written notice from the Required FILO Ad Hoc Group Members, as applicable, in accordance with Section 22 that such motion, pleading, related document or public disclosure is materially inconsistent with this Agreement;

(v) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any ruling, judgment, or order enjoining the consummation of any material portion of the Restructuring or rendering illegal the Plan or any material portion thereof, and either (A) such ruling, judgment, or order has been issued at the request of or with the acquiescence of any Company Entity, or (B) in all other circumstances, such ruling, judgment, or order has not been reversed or vacated within ten (10) calendar days after such issuance; *provided* that this termination right may not be exercised by

the members of the FILO Ad Hoc Group if a Consenting FILO Lender who is a member of the FILO Ad Hoc Group sought or requested such ruling or order in contravention of any obligation set forth in this Agreement;

(vi) the Bankruptcy Court (or other court of competent jurisdiction) enters an order (A) directing the appointment of an examiner (other than an independent fee examiner) with expanded powers or a trustee in any of the Chapter 11 Cases, (B) converting any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, (C) dismissing any of the Chapter 11 Cases, or (D) the effect of which would render the Plan incapable of consummation on the terms set forth in this Agreement;

(vii) any Company Entity files or supports (or fails to timely object to) another Person in filing (A) a motion or pleading challenging the amount, validity, or priority of any Claims held by any Consenting FILO Lender against the Company, (B) any plan of reorganization, liquidation, dissolution, administration, moratorium, receivership, winding up, bankruptcy, or sale of all or substantially all of the Company's assets other than the Plan, (C) a motion or pleading asserting (or seeking standing to assert) any purported claims or causes of action against any of the Consenting FILO Lenders, or (D) takes any corporate action for the purpose of authorizing any of the foregoing, which event remains uncured for a period of five (5) Business Days following the Company's receipt of notice from the Required FILO Ad Hoc Group Members or counsel to the Required FILO Ad Hoc Group Members pursuant to Section 22 hereof;

(viii) any Company Entity (A) applies for or consents to the appointment of a receiver, monitor, administrator, administrative receiver, trustee, custodian, sequestrator, conservator or similar official with respect to any Company Entity or for a substantial part of such Company Entity's assets, (B) makes a general assignment or arrangement for the benefit of creditors, or (C) takes any corporate action for the purpose of authorizing any of the foregoing;

(ix) the Bankruptcy Court enters an order providing relief against any Required FILO Ad Hoc Group Member with respect to any of the causes of action or proceedings specified in Section 7.b(vii)(A) or (C);

(x) (A) any Definitive Document filed by the Company or any Consenting Creditor, or any related order entered by the Bankruptcy Court, in the Chapter 11 Cases, or Canadian Court in the Recognition Proceedings, is inconsistent with the terms and conditions set forth in this Agreement or is otherwise not in accordance with this Agreement in any material respect, or (B) any of the terms or conditions of any of the Definitive Documents is waived, amended, supplemented, or otherwise modified without the prior written consent of the Required FILO Ad Hoc Group Members, in each case, which remains uncured for five (5) Business Days after the receipt by the Company of written notice from the Required FILO Ad Hoc Group Members pursuant to Section 22 hereof;

(xi) any of the Milestones have not been achieved, extended, or waived after the required date for achieving such Milestone, unless such failure is the result of any act, omission or delay on the part of a Consenting Creditor who is a member of the applicable terminating Consenting Creditors Group in violation of its obligations under this Agreement (in

which case this Consenting Creditors Termination Event shall not be available as a basis for termination of this Agreement to members of such Consenting Creditors Group);

(xii) any termination of the DIP Facility or DIP ABL FILO Credit Agreement or acceleration of the obligations under the DIP Facility or DIP ABL FILO Credit Agreement;

(xiii) the Debtors enter into any commitment or agreement to receive or obtain debtor in possession financing, cash collateral usage, exit financing and/or other financing arrangements, other than as expressly contemplated in the DIP Facility or DIP ABL FILO Credit Agreement;

(xiv) the Debtors' use of cash collateral or the DIP Facility or DIP ABL FILO Credit Agreement has been validly terminated (or, in the case of the DIP Facility, accelerated) in accordance with the DIP Orders and the DIP Facility or DIP ABL FILO Credit Agreement;

(xv) the Bankruptcy Court denies entry of the Confirmation Order, or the Confirmation Order or any of the orders approving the Definitive Documents that are subject to the Required FILO Ad Hoc Group Members' consent rights pursuant to Section 2 of this Agreement are reversed, dismissed, stayed, vacated, reconsidered, modified or amended without the consent of the Required FILO Ad Hoc Group Members;

(xvi) any court of competent jurisdiction has entered a final, non-appealable judgment or order declaring this Agreement to be unenforceable; or

(xvii) the Company Entities (i) withdraw the Plan, (ii) publicly announce their intention not to support the Restructuring, (iii) provide notice to counsel to the Ad Hoc Groups pursuant to Section 10, or (iv) publicly announce, or execute a definitive written agreement with respect to, an Alternative Transaction.

c. Company Termination Events. This Agreement may be terminated by the Company by the delivery to the Consenting Creditors (or counsel on their behalf) of a written notice in accordance with Section 22 hereof, upon the occurrence and continuation of any of the following events (each, a "***Company Termination Event***"), provided, that the Company is not in breach in any material respect at such time of any of its obligations set forth in this Agreement:

(i) the breach in any material respect by one or more of the Consenting Creditors of any of the representations, warranties, or covenants of such Consenting Creditor(s) set forth in this Agreement, which breach remains uncured for a period of ten (10) Business Days after the receipt by the applicable Consenting Creditor from the Company of written notice of such breach, which written notice will set forth in reasonable detail the alleged breach;

(ii) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any ruling, judgment, or order enjoining the consummation of or rendering illegal the Plan or any material portion thereof, and either (A) such ruling, judgment, or order has been issued at the request of (or agreement by) a

Consenting Creditor, or (B) in all other circumstances, such ruling, judgment, or order has not been reversed or vacated within thirty (30) calendar days after such issuance; *provided* that this termination right may not be exercised by the Company if any Company Entity sought or requested such ruling or order in contravention of any obligation set forth in this Agreement;

(iii) the failure of the Consenting Creditors to hold (A) at least 66 2/3% in aggregate principal amount outstanding of the Tranche B-2 Term Loan, and (B) at least 66 2/3% in aggregate principal amount outstanding of the ABL FILO Term Loan;

(iv) the Bankruptcy Court (or other court of competent jurisdiction) enters an order (A) directing the appointment of an examiner (other than an independent fee examiner) with expanded powers or a trustee in any of the Chapter 11 Cases, (B) converting any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, (C) dismissing any of the Chapter 11 Cases, or (D) the effect of which would render the Plan incapable of consummation on the terms set forth in this Agreement;

(v) the board of directors or managers or similar governing body, as applicable, of any Company Entity determines (after consulting with counsel) (A) that continued performance under this Agreement (including taking any action or refraining from taking any action) would be inconsistent with the exercise of its fiduciary duties under applicable law or (B) in the exercise of its fiduciary duties to pursue an Alternative Transaction;

(vi) the Bankruptcy Court denies entry of the Confirmation Order and such order remains in effect for three (3) Business Days after entry of such order, or the Confirmation Order, the Disclosure Statement Order or any of the orders approving the Definitive Documents are reversed, dismissed, stayed, vacated, reconsidered, modified or amended; or

(vii) any court of competent jurisdiction has entered a final, non-appealable judgment or order declaring this Agreement to be unenforceable.

d. Mutual Termination. This Agreement may be terminated in writing by mutual agreement of the Company Entities, the Required FILO Ad Hoc Group Members and the Required Consenting Term Lenders (a “***Mutual Termination Event***”).

e. Automatic Termination. This Agreement shall terminate automatically without any further required action or notice upon the occurrence of the Effective Date (collectively with the Consenting Term Lender Termination Events, the Consenting FILO Lender Termination Events, the Company Termination Events, and the Mutual Termination Event, the “***Termination Events***”).

f. Effect of Termination. Upon any termination of this Agreement in accordance with this Section 7, this Agreement shall forthwith become null and void and of no further force or effect as to any Party, and each Party shall, except as provided otherwise in this Agreement, be immediately released from its liabilities, obligations, commitments, undertakings, and agreements under or related to this Agreement and shall have all the rights and remedies that it would have had and shall be entitled to take all actions, whether with respect to the Plan or otherwise, that it would have been entitled to take had it not entered into this Agreement;

*provided* that in no event shall any such termination relieve a Party from liability for its breach or non-performance of its obligations hereunder that arose prior to the date of such termination or any obligations hereunder that expressly survive termination of this Agreement under Section 16 hereof, and *provided further*, that notwithstanding anything to the contrary herein, the right to terminate this Agreement under this Section 7 shall not be available to any Party whose failure to fulfil any material obligation under this Agreement has been the cause of, or resulted in, the occurrence of the applicable Termination Event. Upon the termination of this Agreement that is limited in its effectiveness as to an individual Party or Parties in accordance with Section 7: (i) this Agreement shall become null and void and of no further force or effect with respect to the terminated Party or Parties, who shall be immediately released from its or their liabilities, obligations, commitments, undertakings, and agreements under or related to this Agreement and shall have all the rights and remedies that it or they would have had and such Party or Parties shall be entitled to take all actions, whether with respect to the Plan or otherwise, that it or they would have been entitled to take had it or they not entered into this Agreement; *provided*, the terminated Party or Parties shall not be relieved of any liability for breach or non-performance of its or their obligations hereunder that arose prior to the date of such termination or any obligations hereunder that expressly survive termination of this Agreement under Section 16 hereof; and (ii) this Agreement shall remain in full force and effect with respect to all Parties other than the terminated Party or Parties.

g. If the Restructuring is not consummated, nothing herein shall be construed as a waiver by any Party of any or all of such Party's rights, and the Parties expressly reserve any and all of their respective rights. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict any right of any Party, or the ability of any Party, to protect and preserve its rights (including rights under this Agreement), remedies, and interests, including its claims against any other Party. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating hereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms.

## **8. Definitive Documents; Good Faith Cooperation; Further Assurances.**

a. Subject to the terms and conditions described herein, during the Support Period, each Party, severally and not jointly, hereby covenants and agrees to reasonably cooperate with each other in good faith in connection with the negotiation, drafting, execution (to the extent such Party is a party thereto), and delivery of the Definitive Documents. Furthermore, subject to the terms and conditions hereof, each of the Parties shall take such action as may be reasonably necessary or reasonably requested by the other Parties to carry out the purposes and intent of this Agreement, including making and filing any required regulatory filings (*provided* that no Consenting Creditor shall be required to incur any material cost, expense, or liability in connection therewith).

b. Notwithstanding anything in this Agreement to the contrary, if the Company, the Required Consenting Term Lenders and the Required FILO Ad Hoc Group Members (collectively, the "Required Sale Consenting Parties") so agree in writing, then (i) the Company shall pursue on a parallel path basis on terms acceptable to the Required Sale Consenting Parties both the Restructuring and a sale of the business of the Company Entities

pursuant to Section 363 of the Bankruptcy Code and based on a stalking horse bid from Harbin Pharmaceutical Group Holding Co., Ltd. and/or other co-investors and/or their respective designees, which stalking horse bid and sale process generally shall be on terms and conditions, and memorialized pursuant to documentation in form and substance, acceptable to the Required Sale Consenting Parties (the highest and best sale offer pursuant to this sale process, the “Sale Transaction”), and (ii) the Parties shall use commercially reasonable efforts to modify the Plan and all other Definitive Documents to provide for the Sale Transaction alternative (in addition to the Restructuring) and to prepare all pleadings, forms of orders and other documents necessary or desirable to document and effectuate the sale process and the Sale Transaction, which modified Definitive Documents and additional pleadings, forms of orders and other documents shall be in form and substance acceptable to the Required Sale Consenting Parties (all such modified Definitive Documents and additional pleadings, forms of orders and other documents, collectively, the “Sale-Related Definitive Documents”). If the Sale Transaction is consummated in accordance with the terms of the Sale-Related Definitive Documents, then the Parties shall not continue to pursue the Restructuring. If the Sale Transaction is terminated or no longer in full force and effect or is not consummated, or capable of being consummated, by the applicable outer date in accordance with the terms of the Sale-Related Definitive Documents, then the Parties shall proceed to consummate the Restructuring.

## **9. Representations and Warranties.**

a. Each Party, severally and not jointly, represents and warrants to the other Parties that the following statements are true, correct, and complete as of the date hereof (or, in the case of any Consenting Creditor who becomes a party hereto after the date hereof, as of the date such Consenting Creditor becomes a party hereto):

(i) such Party is validly existing and in good standing, to the extent such concept exists in the relevant jurisdiction, under the laws of its jurisdiction of incorporation or organization, and has all requisite corporate, partnership, limited liability company, or similar authority to enter into this Agreement and carry out the transactions contemplated hereby and perform its obligations contemplated hereunder; and the execution and delivery of this Agreement and the performance of such Party’s obligations hereunder have been duly authorized by all necessary corporate, limited liability company, partnership, or other similar action on its part;

(ii) the execution, delivery, and performance by such Party of this Agreement does not and will not (A) violate any provision of law, rule, or regulation applicable to it, its charter, or bylaws (or other similar governing documents), or (B) conflict with, result in a breach of, or constitute a default under any material contractual obligation to which it is a party (*provided, however*, that with respect to the Company, it is understood that commencing the Chapter 11 Cases may result in a breach of or constitute a default under such obligations);

(iii) this Agreement is, and each of the other Definitive Documents to which such Party is a party prior to its execution and delivery will be, duly authorized;

(iv) the execution, delivery, and performance by such Party of this Agreement does not and will not require any registration or filing with, consent or approval of or



notice to, or other action with or by, any federal, state, or governmental authority or regulatory body, except such filings as may be necessary and/or required by the Bankruptcy Court; and

(v) this Agreement, and each of the Definitive Documents to which such Party is a party will be following execution and delivery thereof, is the legally valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability or a ruling of the Bankruptcy Court.

b. Each Consenting Creditor severally (and not jointly) represents and warrants to the Company that, as of the date hereof (or, if later, as of the date such Consenting Creditor becomes a party hereto), (i) such Consenting Creditor is the beneficial owner (including following the settlement or consummation of any unsettled trade, agreement or other arrangement to purchase or otherwise acquire any Claims that has been initiated or entered into as of the date hereof and that is separately identified on its signature page hereto) of (or investment manager, advisor, or subadvisor to one or more beneficial owners of) the aggregate principal amount of Claims set forth below its name on the signature page hereto (or below its name on the signature page of a Joinder Agreement for any Consenting Creditor that becomes a Party hereto after the date hereof), (ii) such Consenting Creditor has (or, following the settlement or consummation of any unsettled trade, agreement or other arrangement to purchase or otherwise acquire any Claims that has been initiated or entered into as of the date hereof, will have), with respect to the beneficial owners of such Claims (as may be set forth on a schedule to such Consenting Creditor's signature page hereto), (A) sole investment or voting discretion with respect to such Claims, (B) full power and authority to vote on and consent to matters concerning such Claims, and to exchange, assign, and transfer such Claims, and (C) full power and authority to bind or act on the behalf of such beneficial owners, (iii) other than pursuant to this Agreement, such Claims are free and clear of any pledge, lien, security interest, charge, claim, option, proxy, voting restriction, right of first refusal, or other limitation on disposition or encumbrance of any kind, that would prevent in any way such Consenting Creditor's performance of its obligations contained in this Agreement at the time such obligations are required to be performed, and (iv) such Consenting Creditor is not the beneficial owner of (or investment manager, advisor, or subadvisor to one or more beneficial owners of) any other Claims against any Company Entity.

c. Each of the Company Parties (including, as applicable, in their respective capacities as Debtors and reorganized Company Entities) represents and warrants, jointly and severally, that as of the date hereof: except as would not materially adversely affect consummation of the transactions contemplated by this Agreement and the Definitive Documents, there are no legal, regulatory or governmental proceedings pending or, to the knowledge of the Company, threatened to which any Company Entity is or could be a party or to which any of their respective property is or could be subject.

#### **10. Additional Provisions Regarding Company Entities' Commitments.**

a. Nothing in this Agreement shall require any director, manager or officer of any Company Entity to violate his, her or its fiduciary duties to such Company Entity. No action or inaction on the part of any director, manager or officer of any Company Entity that such

directors, managers or officers reasonably believe is required by their fiduciary duties to such Company Entity shall be limited or precluded by this Agreement; *provided, however*, that no such action or inaction shall be deemed to prevent any of the Consenting Creditors from taking actions that they are permitted to take as a result of such actions or inactions, including terminating their obligations hereunder; *provided, further*, that, if any Company Entity receives a written proposal for an Alternative Transaction, then such Company Entity shall (A) within one business day of receiving such written proposal, provide counsel to the Consenting Creditors with such written proposal, which shall be subject to professional eyes only unless otherwise authorized by the Company; (B) provide counsel to the Consenting Creditors with regular updates as to the status and progress of such Alternative Transaction; and (C) respond promptly to reasonable information requests and questions from counsel to the Consenting Creditors relating to such Alternative Transaction.

b. Notwithstanding anything to the contrary in this Agreement, but subject to the terms of Section 10.a, each Company Entity and its respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the right to: (i) consider, respond to, and facilitate Alternative Transactions, (ii) provide access to non-public information concerning any Company Entity to any person or enter into confidentiality agreements or nondisclosure agreements with any person, (iii) maintain or continue discussions or negotiations with respect to Alternative Transactions, (iv) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiation of Alternative Transactions, and (v) enter into discussions or negotiations with holders of Claims or Interests, any other party in interest in the Chapter 11 Cases (including any official committee and the United States Trustee), or any other person regarding the Plan or any Alternative Transactions.

c. Nothing in this Agreement shall: (i) impair or waive the rights of any Company Entity to assert or raise any objection permitted under this Agreement in connection with the Restructuring or (ii) prevent any Company Entity from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement.

## **11. Filings and Public Statements.**

The Company shall submit drafts to counsel to the Ad Hoc Groups of any press releases, public documents, and any and all filings with the SEC or the Bankruptcy Court that constitute disclosure of the existence or terms of this Agreement or any amendment to the terms of this Agreement at least forty-eight (48) hours prior to making any such disclosure, and shall afford them a reasonable opportunity under the circumstances to comment on such documents and disclosures and shall consider any such comments in good faith. Except as required by law or otherwise permitted under the terms of any other agreement between the Company on the one hand, and any Consenting Creditor, on the other hand, no Party or its advisors (including counsel to any Party) shall disclose to any person (including other Consenting Creditors), other than the Company's advisors, the principal amount or percentage of any Claims or Interests or any other securities of the Company held by any other Party, in each case, without such Party's prior written consent; *provided* that (i) if such disclosure is required by law, subpoena, or other legal process or regulation, the disclosing Party shall afford the relevant Party a reasonable

opportunity to review and comment in advance of such disclosure and shall take all reasonable measures to limit such disclosure (including by way of a protective order) and (ii) the foregoing shall not prohibit the disclosure of the aggregate percentage or aggregate principal amount of Claims or Interests held by all the Consenting Creditors or any Consenting Creditors Group collectively. Any public filing of this Agreement with the Bankruptcy Court or the SEC shall not include the executed signature pages to this Agreement. Nothing contained herein shall be deemed to waive, amend or modify the terms of any confidentiality or non-disclosure agreement between the Company and any Consenting Creditor.

## **12. Amendments and Waivers.**

During the Support Period, this Agreement, including any exhibits or schedules hereto, may not be waived, modified, amended, or supplemented except (1) with respect to any Definitive Document, pursuant to Section 2, (2) pursuant to the proviso to Section 3 or (3) in a writing signed by the Company Entities, the Required Consenting Term Lenders, and the Required FILO Ad Hoc Group Members; *provided* that: (a) any waiver, modification, amendment, or supplement to (i) this Section 12 shall require the prior written consent of each Party; and (ii) the definition of (A) Required Consenting Term Lender shall require the prior written consent of each Consenting Term Lender, and (B) Required FILO Ad Hoc Group Members shall require the prior written consent of each member of the FILO Ad Hoc Group; and (b) any waiver, modification, amendment, or supplement that has a material, disproportionate, and adverse effect on any of the Tranche B-2 Term Loan Claims held by Consenting Term Lenders or the ABL FILO Term Loan Claims held by Consenting FILO Lenders as compared to (i) in the case of Tranche B-2 Term Loan Claims, the other Consenting Term Lenders, and (ii) in the case of the ABL FILO Term Loan Claims, the other Consenting FILO Lenders, then the consent of such affected Consenting Creditor shall also be required to effectuate such waiver, modification, amendments, or supplement. Amendments to any Definitive Document shall be governed as set forth in such Definitive Document and pursuant to Section 2. Any consent required to be provided pursuant to this Section 12 may be delivered by email from the applicable Consenting Creditor.

## **13. Effectiveness.**

This Agreement shall become effective and binding on the Parties on the Agreement Effective Date; *provided* that signature pages executed by Consenting Creditors shall be delivered to (a) other Consenting Creditors, and counsel to other Consenting Creditors (if applicable), in a redacted form that removes such Consenting Creditors' holdings of Claims and any schedules to such Consenting Creditors' holdings (if applicable) and (b) the Company and the legal and financial advisors to the Company and the Ad Hoc Groups in an unredacted form.

## **14. Governing Law; Jurisdiction; Waiver of Jury Trial.**

a. Except to the extent superseded by the Bankruptcy Code, this Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York, without giving effect to the conflicts of law principles thereof.

b. Each of the Parties irrevocably agrees that any legal action, suit, or proceeding arising out of or relating to this Agreement brought by any party or its successors or assigns shall be brought and determined in (a) the Bankruptcy Court, for so long as the Chapter 11 Cases are pending, and (b) otherwise, any federal or state court in the Borough of Manhattan, the City of New York, and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such proceeding arising out of or relating to this Agreement. Each of the Parties agrees not to commence any proceeding relating hereto or thereto except in the courts described above, other than proceedings in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court as described herein. Each of the Parties further agrees that notice as provided herein shall constitute sufficient service of process and the Parties further waive any argument that such service is insufficient. Subject to the foregoing, each of the Parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim, or otherwise, in any proceeding arising out of or relating to this Agreement, any claim (i) that it is not personally subject to the jurisdiction of the courts as described herein for any reason, (ii) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment, or otherwise) and (iii) that (A) the proceeding in any such court is brought in an inconvenient forum, (B) the venue of such proceeding is improper, or (C) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

c. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

#### **15. Specific Performance/Remedies.**

The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to an injunction or injunctions without the necessity of posting a bond to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Unless otherwise expressly stated in this Agreement, no right or remedy described or provided in this Agreement is intended to be exclusive or to preclude a Party from pursuing other rights and remedies to the extent available under this Agreement, at law, or in equity.

**16. Survival.**

Notwithstanding the termination of this Agreement pursuant to Section 7 hereof, the agreements and obligations of the Parties set forth in Sections 7.e, 12, 14 through 25 (inclusive), 27 and 28 hereof (and any defined terms used in any such Sections) shall survive such termination and shall continue in full force and effect for the benefit of the Parties in accordance with the terms hereof; *provided* that any liability of a Party for failure to comply with the terms of this Agreement also shall survive such termination.

**17. Headings.**

The headings of the sections, paragraphs, and subsections of this Agreement are inserted for convenience only and shall not affect the interpretation hereof or, for any purpose, be deemed a part of this Agreement.

**18. Successors and Assigns; Severability; Several Obligations.**

This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, permitted assigns, heirs, executors, administrators, and representatives; provided that nothing contained in this Section 18 shall be deemed to permit Transfers of interests in any Claims against any Company Entity other than in accordance with the express terms of this Agreement. If any provision of this Agreement, or the application of any such provision to any person or entity or circumstance, shall be held invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision hereof and this Agreement shall continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon any such determination of invalidity, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a reasonably acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible. Notwithstanding anything to the contrary in this Agreement, the Parties agree that (a) the representations and warranties of each Consenting Creditor made in this Agreement are being made on a several, and not joint, basis, (b) the obligations of each Consenting Creditor under this Agreement are several, and not joint, obligations of each of them and (c) no Consenting Creditor shall have any liability for the breach of any representation, warranty, covenant, commitment, or obligation by any other Consenting Creditor. For the avoidance of doubt, the obligations arising out of this Agreement are several and not joint with respect to each Consenting Creditor, in accordance with its proportionate interest hereunder, and the Parties agree not to proceed against any Consenting Creditor for the obligations of another.

**19. No Third-Party Beneficiaries.**

Unless expressly stated herein, this Agreement shall be solely for the benefit of the Parties and no other person or entity shall be a third-party beneficiary hereof.

**20. Prior Negotiations; Entire Agreement.**

This Agreement, including the exhibits and schedules hereto (including the Restructuring Term Sheet and DIP Term Sheet), constitutes the entire agreement of the Parties, and supersedes all other prior negotiations, with respect to the subject matter hereof and thereof, except that the Parties acknowledge that any confidentiality agreements (if any) heretofore executed between the Company and any Consenting Creditor shall continue in full force and effect in accordance with their terms.

**21. Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same agreement. Execution copies of this Agreement may be delivered by facsimile, electronic mail, or otherwise, which shall be deemed to be an original for the purposes of this paragraph.

**22. Notices.**

All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier or by registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

(1) If to the Company, to:

GNC Holdings, Inc.  
300 Sixth Avenue  
Pittsburgh, Pennsylvania 15222  
Tel: (412) 288-4600  
Attn: Susan M. Canning, SVP and General Counsel  
Email: susan-canning@gnc-hq.com

with a copy to:

Latham & Watkins LLP  
330 North Wabash, Suite 2800  
Chicago, IL 60611  
Attention: Rick Levy (richard.levy@lw.com)  
Caroline Reckler (caroline.reckler@lw.com)

(2) If to a Consenting Creditor, to the addresses or facsimile numbers set forth below such Consenting Creditor's signature to this Agreement or the applicable Joinder Agreement, as the case may be,

with a copy to (solely in the case of Consenting Creditors that are members of the Crossover Ad Hoc Group):

Milbank LLP

2029 Century Park East, 33rd Floor  
Los Angeles, California 90067-3019  
Attention: Mark Shinderman; Brett Goldblatt  
Email address:  
MShinderman@Milbank.com  
BGoldblatt@Milbank.com

and with a copy to (solely in the case of Consenting Creditors that are members of the FILO Ad Hoc Group):

Paul, Weiss, Rifkind, Wharton & Garrison, LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Attention: Andrew Rosenberg; Jacob Adlerstein  
Email Address: [arosenberg@paulweiss.com](mailto:arosenberg@paulweiss.com); [jadlerstein@paulweiss.com](mailto:jadlerstein@paulweiss.com)

Any notice given by electronic mail, facsimile, delivery, mail, or courier shall be effective when received.

**23. Reservation of Rights; No Admission.**

a. Nothing contained herein shall (i) limit (A) the ability of any Party to consult with other Parties, or (B) the rights of any Party under any applicable bankruptcy, insolvency, foreclosure, or similar proceeding, including the right to appear as a party in interest in any matter to be adjudicated in order to be heard concerning any matter arising in the Chapter 11 Cases, in each case, so long as such consultation or appearance is consistent with such Party's obligations hereunder; (ii) limit the ability of any Consenting Creditor to sell or enter into any transactions in connection with the Claims, or any other claims against or interests in the Company, subject to the terms of Section 4.b hereof; or (iii) constitute a waiver or amendment of any provision of any applicable credit agreement or indenture or any agreements executed in connection with such credit agreement or indenture.

b. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict the ability of each of the Parties to protect and preserve its rights, remedies, and interests, including its claims against any of the other Parties (or their respective affiliates or subsidiaries) or its full participation in any bankruptcy case filed by the Company or any of its affiliates and subsidiaries. This Agreement is part of a proposed settlement of matters that could otherwise be the subject of litigation among the Parties. Pursuant to Rule 408 of the Federal Rule of Evidence, any applicable state rules of evidence, and any other applicable law, foreign or domestic, this Agreement and all negotiations relating thereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms. This Agreement shall in no event be construed as or be deemed to be evidence of an admission or concession on the part of any Party of any claim or fault or liability or damages whatsoever. Each of the Parties denies any and all wrongdoing or liability of any kind and does not concede any infirmity in the claims or defenses which it has asserted or could assert.

**24. Relationship Among Consenting Creditors.**

It is understood and agreed that no Consenting Creditor has any duty of trust or confidence in any kind or form with any other Consenting Creditor, and, except as expressly provided in this Agreement, there are no commitments among or between them. In this regard, it is understood and agreed that any Consenting Creditor may trade in the debt of the Company without the consent of the Company or any other Consenting Creditor, subject to applicable securities laws, the terms of this Agreement, and any Confidentiality Agreement entered into with the Company; *provided* that no Consenting Creditor shall have any responsibility for any such trading by any other Consenting Creditor by virtue of this Agreement. No prior history, pattern, or practice of sharing confidences among or between the Consenting Creditors shall in any way affect or negate this understanding and agreement.

**25. No Solicitation; Representation by Counsel; Adequate Information.**

a. This Agreement is not and shall not be deemed to be a solicitation for votes in favor of the Plan in the Chapter 11 Cases. The acceptances of the Consenting Creditors with respect to the Plan will not be solicited until such Consenting Creditors have received the Disclosure Statement and Solicitation Materials.

b. Each Party acknowledges that it has had an opportunity to receive information from the Company and that it has been represented by counsel in connection with this Agreement and the transactions contemplated hereby. Accordingly, any rule of law or any legal decision that would provide any Party with a defense to the enforcement of the terms of this Agreement against such Party based upon lack of legal counsel shall have no application and is expressly waived.

c. Although none of the Parties intends that this Agreement should constitute, and they each believe it does not constitute, a solicitation or acceptance of a chapter 11 plan of reorganization or an offering of securities, each Consenting Creditor acknowledges, agrees, and represents to the other Parties that it (i) is an “accredited investor” as such term is defined in Rule 501(a) of the Securities Act of 1933, (ii) understands that any securities to be acquired by it pursuant to the Plan have not been registered under the Securities Act and that such securities are, to the extent not acquired pursuant to section 1145 of the Bankruptcy Code, being offered and sold pursuant to an exemption from registration contained in the Securities Act, based in part upon such Consenting Creditor’s representations contained in this Agreement and cannot be sold unless subsequently registered under the Securities Act or an exemption from registration is available, and (iii) has such knowledge and experience in financial and business matters that such Consenting Creditor is capable of evaluating the merits and risks of the securities to be acquired by it pursuant to the Plan and understands and is able to bear any economic risks with such investment.

**26. Conflicts.**

In the event of any conflict among the terms and provisions of the RSA and of the Restructuring Term Sheet, the terms and provisions of the Restructuring Term Sheet shall control.



**27. Payment of Fees and Expenses.**

The Company shall promptly pay or reimburse all reasonable and documented fees and out-of-pocket expenses when due (including travel costs and expenses) of the attorneys, accountants, other professionals, advisors and consultants of the Ad Hoc Groups (whether incurred directly or on their behalf and regardless of whether such fees and expenses are incurred before or after the Petition Date), including the fees and expenses of the following advisors to (a) the Crossover Ad Hoc Group: (i) Milbank LLP, as U.S. counsel, (ii) Cassels Brock & Blackwell LLP as Canadian counsel, and (iii) Houlihan Lokey, as financial advisor; and (b) the FILO Ad Hoc Group: (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as counsel, and (ii) Alix Partners, as financial advisor, in each case, including all amounts payable or reimbursable under applicable fee or engagement letters with the Company (which agreements shall not be terminated by the Company before the termination of this Agreement); *provided, further*, that to the extent that the Company terminates this Agreement under Section 7.b, the Company's reimbursement obligations under this Section 27 shall survive with respect to any and all fees and expenses incurred on or prior to the date of termination.

**28. Interpretation.**

For purposes of this Agreement:

- a. in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender;
- b. capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;
- c. unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;
- d. unless otherwise specified, any reference herein to an existing document, schedule, or exhibit shall mean such document, schedule, or exhibit, as it may have been or may be amended, restated, supplemented, or otherwise modified from time to time; provided that any capitalized terms herein which are defined with reference to another agreement, are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date hereof;
- e. unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribe or allowed herein. If any payment, distribution, act or deadline under the Plan is required to be made or performed or occurs on a day that is not a Business Day, then the making of such payment or distribution, the performance of such act, or the occurrence of such deadline shall be deemed to be on the next

succeeding Business Day, but shall be deemed to have been completed or to have occurred as of the required date;

f. unless otherwise specified, all references herein to “Sections” are references to Sections of this Agreement;

g. the words “herein,” “hereof,” and “hereto” refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

h. captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

i. references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable limited liability company laws; and

j. the use of “include” or “including” is without limitation, whether stated or not.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed and delivered by their respective duly authorized officers, solely in their respective capacity as officers of the undersigned and not in any other capacity, as of the date first set forth above.

**EXHIBIT A**

**Restructuring Term Sheet**

*Subject to FRE 408 and state law equivalents*

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**GNC HOLDINGS, INC.**  
**RESTRUCTURING TERM SHEET**

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**THIS RESTRUCTURING TERM SHEET (THIS “TERM SHEET”) DOES NOT CONSTITUTE (NOR WILL IT BE CONSTRUED AS) AN OFFER WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OR REJECTIONS AS TO ANY PLAN OF REORGANIZATION, IT BEING UNDERSTOOD THAT SUCH AN OFFER, IF ANY, ONLY WILL BE MADE IN COMPLIANCE WITH APPLICABLE PROVISIONS OF SECURITIES, BANKRUPTCY, AND/OR OTHER APPLICABLE LAWS.**

**THIS TERM SHEET DOES NOT PURPORT TO SUMMARIZE ALL OF THE TERMS, CONDITIONS, REPRESENTATIONS, WARRANTIES, AND OTHER PROVISIONS WITH RESPECT TO THE TRANSACTIONS DESCRIBED HEREIN, WHICH TRANSACTIONS WILL BE SUBJECT TO THE COMPLETION OF DEFINITIVE DOCUMENTS INCORPORATING THE TERMS SET FORTH HEREIN. THE CLOSING OF ANY TRANSACTION WILL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH DEFINITIVE DOCUMENTS. NO BINDING OBLIGATIONS WILL BE CREATED BY THIS TERM SHEET UNLESS AND UNTIL BINDING DEFINITIVE DOCUMENTS ARE EXECUTED AND DELIVERED BY ALL APPLICABLE PARTIES.**

*Capitalized terms used but not defined in this Term Sheet shall have the meanings ascribed to them in the Restructuring Support Agreement to which this Term Sheet is attached (the “RSA”).*

*The liens described in this Term Sheet are further described and subject to the descriptions set forth in the Lien Attachment attached to this Term Sheet.*

<b><u>OVERVIEW</u></b>	
<b>Company Entities</b>	GNC Holdings, Inc. (“ <u>GNC Holdings</u> ”), GNC Parent LLC, GNC Corporation, General Nutrition Centers, Inc., General Nutrition Corporation, General Nutrition Investment Company, Lucky Oldco Corporation, GNC Funding Inc., GNC International Holdings Inc., GNC Headquarters LLC, Gustine Sixth Avenue Associates, Ltd., General Nutrition Centres Company, GNC Government Services, LLC, GNC Canada Holdings, Inc., GNC Puerto Rico Holdings, Inc., GNC Puerto Rico, LLC, and GNC China Holdco, LLC (the “ <u>Company Entities</u> ”)
<b>Existing Indebtedness</b>	The Company Entities’ existing indebtedness consists of:  (1) the “Revolving Term Loans” (the “ <u>ABL Loans</u> ”) under the ABL Credit Agreement, dated as of February 28, 2018 (as amended by that certain First Amendment, dated as of March 20, 2018, that certain Second Amendment, dated as of May 15, 2020, and that certain Third Amendment, dated as of

	<p>June 12, 2020, and as may be further amended, amended and restated, supplemented or otherwise modified from time to time, the “<u>ABL Credit Agreement</u>”), among GNC Corporation, General Nutrition Centers, Inc., as administrative borrower, certain of the Company Entities, as subsidiary borrowers, the lenders and agents parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent (the “<u>ABL Agent</u>”);</p> <p>(2) the “FILO Term Loans” under the ABL Credit Agreement as amended and restated following the Petition Date pursuant to the DIP ABL FILO Credit Agreement (the “<u>ABL FILO Term Loans</u>” and the lenders of the ABL FILO Term Loans, the “<u>FILO Lenders</u>”);</p> <p>(3) the “Tranche B-2 Term Loans” (the “<u>Tranche B-2 Term Loans</u>”) under the Amended and Restated Term Loan Credit Agreement, dated as of February 28, 2018 (as amended by that certain First Amendment, dated as of May 15, 2020, and that certain Second Amendment, dated as of June 12, 2020, and as may be further amended, amended and restated, supplemented or otherwise modified from time to time) (the “<u>Tranche B-2 Term Loan Credit Agreement</u>”), among GNC Corporation, General Nutrition Centers, Inc., as borrower, the lenders (the “<u>Term Lenders</u>”) and agents parties thereto, JPMorgan Chase Bank, N.A., as administrative agent, and GLAS Trust Company LLC, as collateral agent (the “<u>Collateral Agent</u>”, and together with JP Morgan Chase Bank, N.A., the “<u>Term Loan Agents</u>”); and</p> <p>(4) the notes (the “<u>Convertible Notes</u>”) issued under the Indenture, dated as of August 10, 2015 (the “<u>Convertible Notes Indenture</u>”), among GNC Holdings, the other subsidiaries party thereto and The Bank of New York Mellon Trust Company, N.A. as trustee (the “<u>Convertible Notes Trustee</u>”, and the holders of the Convertible Notes, the “<u>Convertible Noteholders</u>”).</p>
<p><b>Restructuring</b></p>	<p>A financial restructuring (the “<u>Restructuring</u>”) of the existing capital structure of the Debtors, which Restructuring will be consummated pursuant to the Plan to be confirmed in the Chapter 11 Cases in the Bankruptcy Court under chapter 11 of the Bankruptcy Code, in each case as provided in this Term Sheet and the RSA.</p> <p>As part of the Restructuring, and to the extent provided in Sections 2 and 6(a)(xiv) of the RSA, the Company Entities will consult with the Required Consenting Term Lenders and the Required FILO Ad Hoc Group Members with respect any determination whether to assume, reject, assume with modifications, or sell any real property leases and/or real property (or enter into any similar transaction). To the extent provided in Section 2 of the RSA, the assumption, rejection, or sale of such real property leases and/or real property shall be subject to the consent of the Required Consenting Term Lenders and the Required FILO Ad Hoc Group Members.</p>
<p><b>DIP Financing</b></p>	<p>The Restructuring will be financed by (i) the use of cash collateral on final terms to be acceptable to the Required Consenting Term Lenders and the Required FILO Ad</p>

	<p>Hoc Group Members, (ii) a “new money” postpetition senior secured debtor-in-possession term loan (the “<u>DIP Term Loans</u>” and “<u>DIP Term Loan Facility</u>”), on terms and conditions set forth in the DIP Term Loan Credit Agreement, attached as <u>Exhibit B</u> to the RSA (the “<u>DIP Term Loan Credit Agreement</u>”), and consisting of (A) an aggregate principal amount of \$100,000,000 in “new money” loans (“<u>New Money DIP Loans</u>”), and (B) an aggregate principal amount of \$100,000,000 of “rolled-up” Prepetition Tranche B-2 Term Loans of the lenders providing the New Money DIP Loans, which shall be “rolled-up” on a dollar-for-dollar basis (the “<u>Term Loan Roll-Up Loans</u>”), and (iii) cash on hand that is currently being used to support the borrowing base under the ABL Credit Agreement, which will be made available to be used for operations pursuant to the terms and conditions of the DIP ABL FILO Credit Agreement and the Interim DIP Order.</p>
<b>ABL</b>	<p>Promptly following entry of the Interim DIP Order, (i) the ABL Loans will be repaid in full using existing cash of the Company Entities, (ii) all (a) outstanding hedge arrangements and obligations constituting the “Specified Hedge Agreement” with the ABL Agent under the Prepetition ABL FILO Credit Agreement outstanding on the Petition Date will be satisfied and terminated, (b) existing cash management obligations constituting “Cash Management Obligations” under the Prepetition ABL FILO Credit Agreement outstanding on the Petition Date will be deemed Cash Management Obligations under the DIP ABL FILO Credit Agreement (iii) the ABL Credit Agreement will be amended and restated to remove certain reserves and minimum liquidity requirements, in each case as set forth in the DIP ABL FILO Credit Agreement (and subject to the terms and conditions thereof) attached as <u>Exhibit C</u> to the RSA, (iv) an aggregate principal amount of ABL FILO Term Loans arising and payable under the Prepetition ABL FILO Credit Agreement totaling \$275,000,000, together with all accrued and unpaid interest, fees and all other expenses related thereto thereon, will be “rolled-up” on a dollar-for-dollar basis pursuant to the DIP Orders and in accordance with the DIP ABL FILO Credit Agreement (the “<u>ABL FILO Roll-Up Loans</u>”), (v) the commitments of the ABL Lenders will be terminated, and (vi) outstanding Letters of Credit will be cash collateralized.</p>
<b><u>CLAIMS AND INTERESTS</u></b>	
<b>Administrative Claims</b>	<p>Claims incurred for a cost or expense of administration of the Chapter 11 Cases entitled to priority under sections 503(b), 507(a)(2), or 507(b) of the Bankruptcy Code (the “<u>Administrative Claims</u>”).</p>
<b>Other Priority Claims</b>	<p>Claims, other than Administrative Claims or Priority Tax Claims, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code (the “<u>Other Priority Claims</u>”).</p>
<b>DIP Term Claims</b>	<p>Claims consisting of (a) the aggregate outstanding principal amount of, plus unpaid interest on, the New Money DIP Loans, and all fees, and other expenses related thereto and arising and payable under the DIP Facility (the “<u>New Money DIP Term Claims</u>”) and (b) the aggregate outstanding principal amount of, plus unpaid interest on, the Term Loan Roll-Up Loans, and all fees, and other expenses related thereto and arising and payable under the DIP Facility (other than any fees and expenses owed to the GLAS Trust Company LLC, as collateral agent and administrative agent under the DIP Credit Agreement (the “<u>DIP Agent</u>”) and the fees and expenses of its counsel, which shall be “<u>DIP Expenses</u>”) (the “<u>Roll-Up DIP Term Claims</u>” and,</p>

	<p>together with the New Money DIP Term Claims, the “<u>DIP Term Claims</u>”). The Interim DIP Order shall provide that the DIP Term Claims shall be superpriority administrative claims and secured by (x) first priority liens on unencumbered assets and “Term Priority Collateral” (as defined in the ABL Intercreditor Agreement) (the “<u>Term Priority Collateral</u>”; such unencumbered assets and Term Priority Collateral, the “<u>Non-ABL Collateral</u>”) (other than proceeds of any avoidance actions brought pursuant to chapter 5 of the Bankruptcy Code or section 724(a) of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or applicable state law equivalents (“<u>Avoidance Action Proceeds</u>”), which liens shall be (1) as to the New Money DIP Term Claims, senior to the liens securing the DIP ABL FILO Claims and (2) as to the Roll-Up DIP Term Claims, pari passu with the liens securing the DIP ABL FILO Claims) and (y) second priority liens on “ABL Priority Collateral” (as defined in the ABL Intercreditor Agreement, the “<u>ABL Priority Collateral</u>”), junior in priority to the liens securing the DIP ABL FILO Claims and adequate protection liens, if any, securing the FILO Term Loans, and otherwise as set forth in the Interim DIP Order.</p>
<b>DIP ABL FILO Claims</b>	<p>Claims consisting of the aggregate outstanding principal amount of and unpaid interest on the DIP ABL FILO Term Loans, and all unpaid fees and other expenses arising and payable pursuant to the DIP ABL FILO Credit Agreement with respect to the DIP ABL FILO Term Loans (the “<u>DIP ABL FILO Claims</u>”), other than any fees and expenses owed to the administrative and collateral agent thereunder and the Ad Hoc Committee of FILO Lenders, and their respective counsels and advisors, which fees and expenses will be paid in cash in accordance with the DIP Orders. The Interim DIP Order shall provide that the DIP ABL FILO Claims shall be superpriority administrative claims and secured by (x) third priority liens on the Term Priority Collateral, junior in priority to the liens securing the DIP Term Claims and the Tranche B-2 Term Loans (including adequate protection liens), (y) second priority liens on unencumbered assets and Non-ABL Collateral (other than Avoidance Action Proceeds, which liens shall be (1) junior to the liens securing the New Money DIP Term Claims, (2) pari passu with the liens securing the Roll-Up DIP Term Claims, and (3) senior to the liens securing the Tranche B-2 Term Loans (including adequate protection liens)), and (z) first priority liens on ABL Priority Collateral, and otherwise as set forth in the Interim DIP Order.</p>
<b>Other Secured Claims</b>	<p>Secured claims, other than the ABL FILO Claims and Tranche B-2 Term Loan Claims (each as defined herein), entitled to vote under the Plan (the “<u>Other Secured Claims</u>”).</p>
<b>Tranche B-2 Term Loan Claims</b>	<p>Claims consisting of the aggregate outstanding principal amount of and unpaid interest on the Tranche B-2 Term Loans, and all unpaid fees and other expenses arising and payable pursuant to the Tranche B-2 Term Loan Credit Agreement (other than any fees and expenses owed to the Collateral Agent and the fees and expenses of its counsel, which shall be “<u>Tranche B-2 Expenses</u>”) (the “<u>Tranche B-2 Term Loan Claims</u>”), and for avoidance of doubt Tranche B-2 Term Loan Claims shall exclude the Roll-Up DIP Term Loans. The portion of the Tranche B-2 Term Loan Claims that are not satisfied through the distribution of FLSO Loans or New Common Shares (as both terms are defined below) shall be treated as unsecured deficiency claims (the “<u>Tranche B-2 Term Loan Deficiency Claims</u>”) as set forth below.</p>
<b>Convertible Notes</b>	<p>Claims consisting of the aggregate outstanding principal amount of and unpaid</p>



<b>Unsecured Claims</b>	interest on the Convertible Notes, and all unpaid fees and other expenses arising and payable pursuant to the Convertible Notes Indenture (the “ <u>Convertible Notes Unsecured Claims</u> ”). The Convertible Notes Unsecured Claims, the Tranche B-2 Term Loan Deficiency Claims and the General Unsecured Claims (as defined below) will be treated as one class of claims for all purposes of the Plan.
<b>General Unsecured Claims</b>	Claims consisting of any prepetition claim against the Company that is not an Administrative Claim, an Other Priority Claim, an ABL Claim, a ABL FILO Claim, a Tranche B-2 Term Loan Claim (including, for avoidance of doubt, a Tranche B-2 Term Loan Deficiency Claim), an Other Secured Claim, a Convertible Notes Unsecured Claim, a Tranche B-2 Term Loan Deficiency Claim, an Intercompany Claim (as defined below), or a Subordinated Claim (as defined below) (the “ <u>General Unsecured Claims</u> ”). The Convertible Notes Unsecured Claims, the Tranche B-2 Term Loan Deficiency Claims and the General Unsecured Claims will be treated as one class of claims for all purposes of the Plan.
<b>Intercompany Claims</b>	Consisting of claims against and between Company Entities (the “ <u>Intercompany Claims</u> ”).
<b>Subordinated Claims</b>	Claims consisting of any prepetition claim that is subject to subordination in accordance with sections 510(b)-(c) of the Bankruptcy Code or otherwise (the “ <u>Subordinated Claims</u> ”).
<b>Existing Equity Interests</b>	All capital stock of GNC Holdings, including shares of (a) shares of Series A Convertible Preferred Stock of GNC Holdings (“ <u>Preferred Stock</u> ”), (b) shares of Class A Common Stock of the Company, and (c) options and warrants to purchase capital stock of GNC Holdings (the “ <u>Existing Equity Interests</u> ”).
<b><u>TREATMENT OF CLAIMS AND INTERESTS</u></b>	
<b>Administrative Claims and Other Priority Claims</b>	On the Effective Date, except to the extent that such holder agrees to a less favorable treatment, each holder of an allowed Administrative Claim, DIP Expenses, Tranche B-2 Expenses, and Other Priority Claim will receive, in full and final satisfaction of such claim, cash in an amount equal to such allowed claim on the Effective Date or as soon as practicable thereafter or such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.
<b>DIP Term Claims</b>	On the Effective Date, (a) the New Money DIP Loans will be converted on a dollar-for-dollar basis into first-lien, first-out loans (“ <u>Exit FLFO Loans</u> ”) under an exit facility of the Reorganized Company (the “ <u>Exit Facility</u> ”) with a second lien on all ABL Priority Collateral and a first lien on all Non-ABL Collateral, which Exit Facility shall be on terms and conditions set forth in the Exit Term Loan Facilities Term Sheet attached to the DIP Credit Agreement, and (b) the Roll-Up DIP Term Claims will be converted on a dollar-for-dollar basis into new first-lien, second-out term loans under the Exit Facility (the “ <u>Exit FLSO Loans</u> ”).
<b>DIP ABL FILO Claims</b>	On the Effective Date, subject to confirmation of the Plan and the satisfaction or waiver of the conditions to conversion in the DIP ABL FILO Credit Agreement, the DIP ABL FILO Term Claims will be converted on a dollar-for-dollar basis into new term loans (“ <u>Exit FILO Loans</u> ”) under a new Exit ABL Facility of the Reorganized Company (the “ <u>Exit ABL Facility</u> ”) with a first lien on all ABL Priority Collateral and a second lien on all Non-ABL Collateral, which Exit ABL Facility shall be on terms and conditions set forth in the Exit ABL Facility Term Sheet attached to the

	DIP ABL FILO Credit Agreement and otherwise subject to the consent rights set forth in Section 2 of the RSA, and shall permit the incurrence of a “first-out” revolving credit facility in an amount set forth in the Exit Revolver/FILO Facility Term Sheet.
<b>Other Secured Claims</b>	<p>On the Effective Date, except to the extent that such holder agrees to less favorable treatment, each allowed Other Secured Claim, at the option of the applicable Debtor with the reasonable consent of the Required Consenting Term Lenders, shall (i) be paid in full in Cash including the payment of any interest required to be paid under section 506(b) of the Bankruptcy Code, (ii) receive the collateral securing its allowed Other Secured Claim, (iii) receive any other treatment that would render such claim unimpaired.</p> <p><i>Unimpaired – Presumed to Accept</i></p>
<b>Tranche B-2 Term Loan Claims</b>	<p>On the Effective Date, each holder of Tranche B-2 Term Loan Claims will receive, in full and final satisfaction of its Tranche B-2 Term Loan Claims, its <i>pro rata</i> share of (a) 100% of the common stock of the Reorganized Company issued on the Effective Date (the “<u>New Common Shares</u>”), subject to dilution by the MIP Shares (as defined below) and the New Warrants (as defined below), (b) \$50 million in principal amount of Exit FLSO Loans, and (c) the Tranche B-2 Term Loan Deficiency Claims.</p> <p><i>Impaired – Entitled to Vote</i></p>
<b>Convertible Notes Unsecured Claims; Tranche B-2 Term Loan Deficiency Claims; General Unsecured Claims</b>	<p>On the Effective Date:</p> <p>(a) if the class of Convertible Notes Unsecured Claims, Tranche B-2 Term Loan Deficiency Claims and allowed General Unsecured Claims votes to accept the Plan, each holder of Convertible Notes Unsecured Claims, Tranche B-2 Term Loan Deficiency Claims and allowed General Unsecured Claims will receive, in full and final satisfaction of its Convertible Notes Unsecured Claims, Tranche B-2 Term Loan Deficiency Claims and allowed General Unsecured Claims, its <i>pro rata</i> share of warrants to purchase 5% of the New Common Shares outstanding on the Effective Date with an exercise period of three years and an exercise price based on an equity value of the Reorganized Company that that would result in a recovery for the holders of Tranche B-2 Term Loan Claims of \$411 million plus accrued interest on the Tranche B-2 Loans as of the Petition Date, subject to the ability of such holders to elect into a \$250,000 cash convenience class; and</p> <p>(b) if the class of Convertible Notes Unsecured Claims, Tranche B-2 Term Loan Deficiency Claims and allowed General Unsecured Claims does not vote to accept the Plan, the Convertible Notes Unsecured Claims, Tranche B-2 Term Loan Deficiency Claims and allowed General Unsecured Claims will be cancelled, released, discharged and extinguished, as the case may be, and will be of no further force or effect, whether surrendered for cancellation or otherwise, and the holders thereof shall receive no recovery on account of such claims.</p> <p><i>Impaired – Entitled to Vote</i></p>
<b>Intercompany Claims</b>	Intercompany claims will receive no distribution under the Plan. All intercompany

	claims will be adjusted, reinstated, or discharged in the Company’s discretion. <i>Unimpaired – Presumed to Accept</i>
<b>Existing Equity Interests/Subordinated Claims</b>	On the Effective Date, Existing Equity Interests and Subordinated Claims, if any, will be cancelled, released, discharged and extinguished, as the case may be, and will be of no further force or effect, whether surrendered for cancellation or otherwise. Holders of Existing Equity Interests and Subordinated Claims shall receive no recovery on account of such Existing Equity Interests and Subordinated Claims. <i>Impaired – Deemed to Reject</i>
<b><u>OTHER MATERIAL PROVISIONS</u></b>	
<b>Releases</b>	The Plan shall contain debtor and third party releases consistent with the prevailing law of the District of Delaware, including a mutual release of all claims among the Debtors, the ABL Lenders, the FILO Lenders, the ABL Agent, the agent under the DIP ABL Credit Agreement, the Ad Hoc Groups and each of their members, the Term Loan Lenders, the Term Loan Agents, the DIP Agent, the Convertible Noteholders, the Convertible Notes Trustee, holders of General Unsecured Claims, any official unsecured creditors’ committee, if formed and approved by the Bankruptcy Court, and the members thereof in their capacity as such, in each case to the extent such party does not submit a voting ballot and affirmatively opt-out of the third party releases to be set forth in the Plan. Releases and exculpations included in the Plan shall otherwise be in form and substance reasonably satisfactory to the Company, the Required Consenting Term Lenders and the Required FILO Ad Hoc Group Members.
<b>Corporate Governance</b>	The Reorganized Company will be a private company. Corporate governance for the Reorganized Company following the Effective Date shall be in form and substance acceptable to the Required Consenting Term Lenders, subject to applicable law (including section 1123(a)(6) of the Bankruptcy Code, if applicable).
<b>Management Incentive Plan</b>	On the Effective Date, the board of directors of the Reorganized Company (the “ <u>New Board</u> ”) shall adopt a Management Incentive Plan (the “ <u>MIP</u> ”) that provides for the issuance of equity, options and/or other equity-based awards (collectively, “ <u>Awards</u> ”) to employees and directors of the Reorganized Company. Ten percent (10%) of the fully diluted New Common Shares of the Reorganized Company that are issued and outstanding on the Effective Date shall be reserved for issuance under the MIP. The amount of New Common Shares to be allocated and awarded under the MIP will be determined by the Debtors and the Required Consenting Term Lenders. The form of the Awards ( <i>i.e.</i> , stock options, restricted stock, appreciation rights, etc.), the participants in the MIP, the allocations of the Awards to such participants (including the amount of allocations and the timing of the grant of the Awards, subject to the immediately preceding sentence), and the terms and conditions of the Awards (including vesting, exercise prices, base values, hurdles, forfeiture, repurchase rights and transferability) shall be determined by the New Board in its sole discretion.
<b>NQDC Plan</b>	In accordance with the Plan, on and after the Effective Date, the Reorganized Company will assume and continue to perform under the non-qualified deferred compensation plan for certain of the Debtors’ U.S. employees, the obligations of which are backed by company-owned life insurance policies held in a “rabbi” trust,

	which the Debtors will maintain pursuant to an approval order of the Bankruptcy Court (the “ <u>NQDC Plan</u> ”).
<b>Indemnification</b>	Under the Plan, all indemnification provisions currently in place (whether in the existing directors’ and officers’ liability insurance policies and runoff endorsements, the by-laws, certificates of incorporation, articles of limited partnership, board resolutions or employment contracts, or other organizational documents) for the current and former directors, officers, managers, employees, attorneys, other professionals and agents of each of the Debtors and such current and former directors’, officers’ and managers’ respective affiliates shall be continuing obligations of the Reorganized Company. The amended and restated bylaws, certificates of incorporation, articles of limited partnership and other organizational documents of the Reorganized Company adopted as of the Effective Date shall include provisions to give effect to the foregoing. All runoff endorsements will be assumed pursuant to the Plan.
<b>Tax Structure</b>	The parties shall cooperate in good faith to structure the Restructuring and related transactions in a tax-efficient manner as determined by the Required Consenting Term Lenders and the Required FILO Ad Hoc Group Members in consultation with the Company Entities, which structure will be in form and substance set forth in the Plan Supplement.

**LIEN ATTACHMENT TO  
GNC HOLDINGS, INC.  
RESTRUCTURING TERM SHEET**

In the event of any conflict in lien priority in this Lien Attachment and the Interim DIP Order, the Interim DIP Order shall control.

<b>LIEN PRIORITY ON COLLATERAL</b>	<b>Term Priority Collateral</b>	<b>ABL Priority Collateral</b>	<b>Unencumbered Collateral (other than Avoidance Action Proceeds)</b>	<b>Avoidance Action Proceeds</b>	<b>Other Encumbered Collateral (not DIP ABL FILO Priority Collateral nor DIP Term Priority Collateral)</b>
<b>1</b>	Carve-Out	Carve-Out	Carve-Out	Carve-Out	Other Liens
<b>2</b>	DIP Term Loan Facility Liens	DIP ABL FILO Term Loans Liens	DIP Term Loan Facility Liens	DIP Term Loan Facility Liens (to the extent of New Money DIP Term Claims)	Carve-Out
<b>3</b>	Tranche B-2 Term Loans Liens;  Term Adequate Protection Liens	ABL FILO Term Loans Liens;  ABL FILO Term Loans Adequate Protection Liens	Tranche B-2 Term Loans Adequate Protection Liens	DIP Term Loan Facility Liens (to the extent of Roll-Up DIP Term Claims)  DIP ABL FILO Term Loans Liens	DIP Term Loan Facility Liens
<b>4</b>	DIP ABL FILO Term Loans Liens	DIP Term Loan Facility Liens	DIP ABL FILO Term Loans Liens	Tranche B-2 Term Loans Adequate Protection Liens  ABL FILO Term Loans Adequate Protection Liens	DIP ABL FILO Term Loans Liens

5	ABL FILO Term Loans Liens; ABL FILO Adequate Protection Liens <sup>[1]</sup>	Tranche B-2 Term Loans Liens; Tranche B-2 Term Loans Adequate Protection Liens	ABL FILO Term Loans Adequate Protection Liens		Tranche B-2 Term Loans Adequate Protection Liens
6					ABL FILO Term Loans Adequate Protection Liens

Defined Terms (as such terms may be modified in the Interim DIP Order):

“Carve-Out” will have the meaning given to such term in the Interim DIP Order.

“Other Encumbered Collateral” means all assets and properties, in each case other than the Term Priority Collateral and the ABL Priority Collateral, that are subject to any validly perfected, enforceable and unavoidable security interest or lien in existence as of the Petition Date (and such security interests or liens, “Other Liens”).

“Unencumbered Collateral” means all assets that do not constitute Term Priority Collateral, ABL Priority Collateral or Other Encumbered Collateral.

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<sup>[1]</sup> The references herein to the ABL FILO Adequate Protection Liens are in the event the “roll-up” of Prepetition FILO Term Loans is successfully challenged or not effective. And any reference to the DIP ABL FILO Liens in the last two columns shall instead be a reference to the ABL FILO Adequate Protection Liens in the event the roll up is challenged or not effective. For the avoidance of doubt, if the repayment of the Prepetition ABL Loans are successfully challenged, the lien priority afforded under the ABL Intercreditor Agreement shall govern.

**EXHIBIT B**

**Form of DIP Credit Agreement**

**DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT**

**dated as of June [●], 2020**

**among**

**GNC CORPORATION,**

**as Parent,**

**GENERAL NUTRITION CENTERS, INC.,**

**as Borrower,**

**The Several Lenders  
from Time to Time Parties Hereto,**

**GLAS TRUST COMPANY LLC  
as Collateral Agent**

**and**

**GLAS TRUST COMPANY LLC  
as Administrative Agent**

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K	Form of Withdrawal Request

DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of June [●], 2020, among GNC CORPORATION, a Delaware corporation (“Parent”), GENERAL NUTRITION CENTERS, INC., a Delaware corporation (the “Borrower”), GNC Holdings, Inc., a Delaware corporation (“Holdings”), GNC Parent LLC, a Delaware limited liability company (“GNC Parent LLC”), the several banks and other financial institutions or entities from time to time parties to this Agreement (the “Lenders”), GLAS TRUST COMPANY LLC, as administrative agent (together with its successors in such capacity, the “Administrative Agent”) and GLAS TRUST COMPANY LLC, as collateral agent (together with its successors in such capacity, the “Collateral Agent”).

## PRELIMINARY STATEMENTS

**WHEREAS**, the Loan Parties have commenced voluntary cases (the “Chapter 11 Cases”) under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), and the Loan Parties continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

**WHEREAS**, GNC Holdings, Inc., in its capacity as foreign representative on behalf of the Loan Parties, commenced a recognition proceeding under Part IV of the *Companies’ Creditors Arrangement Act* (the “CCAA”) in the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”) to recognize in Canada the Chapter 11 Cases as “foreign main proceedings” (the “Recognition Proceedings”);

**WHEREAS**, in connection with the filing of the Chapter 11 Cases and the occurrence of the Interim DIP Order Entry Date, the Borrower, in its role as “ABL Administrative Borrower” under the Prepetition ABL Agreement, has terminated the “Revolving Credit Commitments” (as defined in the Prepetition ABL Agreement), repaid all Prepetition Revolving Loans, and cash collateralized the outstanding “Letters of Credit” (as defined in the Prepetition ABL Agreement) (such termination, repayment and cash collateralization, the “Revolver Termination”);

**WHEREAS**, the Borrower has requested that the Lenders extend post-petition loans and advances to the Borrower in the form of term loans in an aggregate principal amount of \$200,000,000. The Lenders have severally, and not jointly, agreed to extend such credit to the Borrower subject to the terms and conditions hereinafter set forth; and

**WHEREAS**, to provide security for the repayment of the Loans, and the payment of the other Obligations of the Loan Parties hereunder and under the other Loan Documents, the Loan Parties will grant to the Collateral Agent, for its benefit and the benefit of the Lenders, certain security interests, liens, and other rights and protections pursuant to the terms hereof and pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, and super-priority administrative expense claims pursuant to Section 364(c)(1) of the Bankruptcy Code, all as more fully described herein.

The Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## SECTION 1. DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

“ABL Priority Collateral”: the “ABL Priority Collateral” (under and as defined in the Prepetition Intercreditor Agreement).

“ABR”: when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Ad Hoc Group of Crossover Lenders”: the group of ad hoc holders of the Prepetition Term Loans and Prepetition FILO Loans represented by Milbank LLP, Cassels Brock & Blackwell LLP and Houlihan Lokey, Inc.

“Ad Hoc Group Advisors”: Milbank LLP, Cassels Brock & Blackwell LLP and Houlihan Lokey, Inc.

“Adjusted LIBO Rate”: with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the greater of (a)(i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate or (b) with respect to Eurodollar Loans, 1.00%.

“Administrative Agent”: as defined in the preamble hereto.

“Administrative Questionnaire”: an administrative questionnaire in a form supplied by the Administrative Agent.

“Affiliate”: as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Affiliated Lender”: any Affiliate of Parent other than (i) Parent or any Subsidiary of Parent and (ii) any natural Person.

“Agents”: the collective reference to the Administrative Agent and the Collateral Agent.

“Aggregate Exposure”: with respect to any Lender at any time, an amount equal to the aggregate then unpaid principal amount of such Lender’s Term Loans.

“Aggregate Exposure Percentage”: with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

“Agreement”: this Credit Agreement, as amended, amended and restated, supplemented or otherwise modified from time to time.

“Alternate Base Rate”: for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1%, (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1% and (d) with respect to ABR Loans, 2.00%; provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the Screen Rate (or if the Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.17 hereof, then the Alternate Base Rate shall be the greatest of clauses (a), (b) and (d) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Alternative Transaction” means any dissolution, winding up, liquidation, reorganization, recapitalization, assignment for the benefit of creditors, merger, transaction, consolidation, business combination, joint venture, partnership, sale of assets, financing (debt or equity), restructuring, repurchase, refinancing, extension or repayment of a material portion of the Borrower’s funded debt or similar transaction of or by any of the Loan Parties, other than the transactions contemplated by and in accordance with the Restructuring Support Agreement.

“Anti-Corruption Laws”: all laws, rules and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Margin”: (i) 13.00% per annum for Eurodollar Loans and (ii) 12.00% per annum for ABR Loans.

“Approved Fund”: any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit as its primary activity and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Approved Plan of Reorganization”: a Chapter 11 plan of reorganization, having the terms set forth in the Restructuring Support Agreement and otherwise in form and substance reasonably satisfactory to the Borrower and the Required Lenders, and filed by the Loan Parties with the Bankruptcy Court in connection with the Chapter 11 Cases, as may be amended, supplemented or otherwise modified from time to time.

“Assignment and Assumption”: an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.4),



and accepted by the Administrative Agent, in the form of Exhibit C or any other form approved by the Administrative Agent and the Borrower.

“Attributable Indebtedness”: when used with respect to any Sale and Leaseback Transaction, as at the time of determination, the present value (discounted at a rate equivalent to the Borrower’s then-current weighted average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such Sale and Leaseback Transaction.

“Avoidance Actions”: all causes of action arising under Chapter 5 of the Bankruptcy Code and similar statutes of the relevant states.

“Backup Withholding Tax”: United States federal withholding Taxes imposed pursuant to Section 3406 of the Code, as in effect on the date of this Agreement, or any successor provision that is substantially the equivalent thereof, and any regulations or official interpretations thereof (including any revenue ruling, revenue procedure, notice or similar guidance issued by the Internal Revenue Service thereunder as a precondition to relief or exemption from Taxes under such provisions).

“Backstop Commitment Letter”: the DIP Backstop Commitment Letter dated June [●], 2020 among the Borrower, each of the other Loan Parties party thereto and the Backstop Lenders party thereto.

“Backstop Lenders”: certain members of the Ad Hoc Group of Crossover Lenders that have (on a several, but not joint, basis) backstopped the full aggregate amount of the Facility by providing the commitments to participate in the Facility that are not assumed by the other Prepetition Term Loan Lenders.

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

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

“Bankruptcy Code”: Title 11 of the United States Code, as amended from time to time.

“Bankruptcy Court”: as defined in the recitals hereto.

“Bankruptcy Court DIP Order”: the Interim DIP Order or the Final DIP Order, as applicable.

“Bankruptcy Event”: with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, interim receiver, monitor, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or

similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Board”: the Board of Governors of the Federal Reserve System of the United States of America (or any successor).

“Borrower”: as defined in the preamble hereto.

“Borrower Materials”: as defined in Section 5.2.

“Borrowing”: Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Borrowing Request”: a request by the Borrower for a Borrowing substantially in the form of Exhibit F.

“Budget”: the 13-week statement of the Loan Parties’ anticipated cash receipts and Budget Disbursements for the first 13 weeks of the Chapter 11 Cases, set forth on a weekly basis, including the anticipated uses of the proceeds from the Facility for such period and attached hereto as Exhibit H, as updated pursuant to Section 5.1(B)(a) from time to time.

“Budget Disbursements”: in any period, the Loan Parties’ operating disbursements and Capital Expenditures (excluding Professional Fees and restructuring charges arising on account of the Chapter 11 Cases (including U.S. Trustee fees and professional fees and expenses incurred by any official committee appointed in the Chapter 11 Cases or the Agents, the Lenders and/or the Loan Parties or paid by the Loan Parties as adequate protection)).

“Budgeted Disbursements Test”: as defined in the definition of “Budget Event”.

“Budgeted Receipts Test”: as defined in the definition of “Budget Event”.

“Budget Event”: shall mean any of the following:

(a) the aggregate amount of actual receipts during any Budget Testing Period shall be less than the aggregate receipts in the Budget for such Budget Testing Period by an amount greater than the Permitted Variance (this clause (a), the “Budgeted Receipts Test”); or

(b) the aggregate amount of actual Budget Disbursements shall exceed the projected aggregate Budget Disbursements in the Budget for such Budget Testing Period by more than the Permitted Variance (this clause (b), the “Budgeted Disbursements Test”).

“Budget Testing Date” means (a) in the case of the Budgeted Receipts Test, the Wednesday of each week after the Petition Date, commencing with Wednesday, July 22, 2020, and (b) in the case of the Budgeted Disbursements Test, the Wednesday of each week after the Petition Date, commencing with Wednesday, July 8, 2020.

“Budget Testing Period” shall mean:

(a) for the Budgeted Receipts Test, (i) with respect to the first Budget Testing Date, the period beginning on Saturday, June 20, 2020 and ending on the Friday prior to such first Budget Testing Date and (ii) with respect to each Budget Testing Date thereafter, the period beginning on the fifth prior Saturday to such Budget Testing Date and ending on the Friday prior to such Budget Testing Date; and

(b) for the Budgeted Disbursements Test, (i) with respect to the first Budget Testing Date, the period beginning on Saturday, June 20, 2020 and ending on the Friday prior to such first Budget Testing Date, (ii) with respect to the second Budget Testing Date, the period beginning on Saturday, June 20, 2020 and ending on the Friday prior to such second Budget Testing Date, (iii) with respect to the third Budget Testing Date, the period beginning on Saturday, June 20, 2020 and ending on the Friday prior to such third Budget Testing Date, and (iv) with respect to each Budget Testing Date thereafter, the period beginning on the fifth prior Saturday to such Budget Testing Date and ending on the Friday prior to such Budget Testing Date.

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

“Canadian Anti-Corruption Laws”: the *Corruption of Foreign Public Officials Act* (Canada), *Special Economic Measures Act* (Canada), *the Freezing Assets of Corrupt Foreign Officials Act* (Canada), Part of the *Criminal Code* (Canada) and the *Export and Import Permits Act* (Canada), and any related regulations.

“Canadian Anti-Money Laundering Legislation”: the *Criminal Code* (Canada), *the Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and the *United Nations Act* (Canada), and any regulations thereunder.

“Canadian Defined Benefit Plan”: a Canadian Pension Plan which contains a “defined benefit provision,” as defined in subsection 147.1(1) of the *Income Tax Act* (Canada).

“Canadian Court”: as defined in the recitals hereto.

“Canadian Court DIP Recognition Order”: the Interim DIP Recognition Order and the Final DIP Recognition Order, as applicable.

“Canadian Dollars” and “C\$”: lawful currency of Canada.

“Canadian Guarantee and Collateral Agreement”: the Canadian Guarantee and Collateral Agreement, dated as of the Closing Date, executed and delivered by the Canadian Guarantor, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Canadian Guarantor”: General Nutrition Centres Company, an unlimited liability company organized under the laws of Nova Scotia.

“Canadian Pension Plan”: any pension plan maintained or sponsored by the Canadian Guarantor that is subject to the funding requirements of the Pension Benefits Act (Ontario), the *Income Tax Act* (Canada) or applicable pension benefits legislation in any other Canadian jurisdiction and is applicable to employees resident in Canada and to which the Canadian Guarantor is making or accruing an obligation to make contributions or has within the preceding five years made or accrued such contributions.

“Canadian Pension Termination Event”: (a) the withdrawal of the Canadian Guarantor from a Canadian Defined Benefit Plan which is “multi-employer pension plan”, as defined under applicable pension standards legislation, during a plan year, or (b) the filing of a notice of interest to terminate in whole or in part a Canadian Defined Benefit Plan or the filing of an amendment with the applicable Governmental Authority which terminates a Canadian Defined Benefit Plan, in whole or in part, or the treatment of an amendment as a termination or partial termination of a Canadian Defined Benefit Plan, (c) the institution of proceedings by any Governmental Authority to terminate a Canadian Defined Benefit Plan in whole or in part or have a replacement administrator or trustee appointed to administer a Canadian Defined Benefit Plan or (d) any other event or condition or declaration or application which might constitute grounds for the termination or winding up of a Canadian Defined Benefit Plan, in whole or in part, or the appointment by any Governmental Authority of a replacement administrator or trustee to administer a Canadian Defined Benefit Plan.

“Canadian Welfare Plan”: any medical, health, hospitalization, insurance or other employee benefit or welfare plan or arrangement of the Canadian Guarantor applicable to employees resident in Canada.

“Capital Expenditures”: for any period, with respect to any Person, the aggregate of all expenditures by such Person for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that are required to be capitalized under GAAP on a balance sheet of such Person, it being understood that Capital Expenditures do not include amounts expended to purchase assets constituting an on-going business.

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

“Capital Stock”: any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing, including convertible securities but excluding debt securities convertible or exchangeable into any of the foregoing.

“Carve Out” has the meaning specified in the Bankruptcy Court DIP Order.

“Cash Equivalents”: (a) United States and Canadian dollars; (b) in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business and not for speculation; (c) securities and other obligations issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (provided that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than one year from the date of acquisition; (d) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, demand deposits, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any Lender or with any domestic or foreign bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia or any U.S. branch of a foreign bank having, capital and surplus of not less than \$500,000,000; (e) repurchase obligations for underlying securities of the types described in clauses (c) and (d) above or clause (g) below entered into with any financial institution meeting the qualifications specified in clause (d) above; (f) commercial paper rated at least P-2 by Moody’s Investor Service, Inc. or at least A-2 by Standard & Poor’s Rating Services (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) and, in each case, maturing within one year after the date of acquisition; (g) marketable short-term money market and similar highly liquid funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency); (h) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an investment grade rating from either Moody’s or S&P (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) with maturities of one year or less from the date of acquisition; (i) Investments with average maturities of one year or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody’s (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency); (j) short-term obligations of, or fully guaranteed by, the government of Canada, (k) short-term obligations of, or fully guaranteed by, the government of a Province of Canada, in each case having a rating of "A-" (or the then equivalent grade) or better by a nationally recognized rating agency and (l) investment funds investing substantially all of their assets in Cash Equivalents of the kinds described in clauses (a) through (k) of this definition.

In the case of Investments by the Canadian Guarantor or by any Foreign Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a)

through (l) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by the Canadian Guarantor or by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (l) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents shall also include amounts denominated in currencies other than those set forth in clause (a) above, provided that such amounts are converted into Dollars as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

“Cash Management Order”: as defined in Section 4.1(k).

“Cash Management Services”: any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so-called “procurement cards” or “P-cards”), debit card, credit card, cash management and similar services and any automated clearing house transfer of funds.

“CCAA”: as defined in the recitals hereto.

“CFC”: a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change in Law”: (a) the adoption of any law, rule or regulation after the date of this Agreement or, if later, the date on which the applicable Lender becomes a Lender hereunder (a “Later Date”), (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or, if later, the date on which the applicable Lender becomes a Lender hereunder, or (c) compliance by any Lender (or, for purposes of Section 2.18(b), by any lending office of such Lender or by such Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement or, if later, the date on which the applicable Lender becomes a Lender hereunder. Notwithstanding anything herein to the contrary (i) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by United States or foreign regulatory authorities, in each case pursuant to Basel III, and (ii) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a Change in Law, regardless of the date enacted, adopted, issued or implemented.

“Change of Control”: the occurrence of any of the following events: (a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of Holdings or any of its Subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) shall become the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act),

directly or indirectly, of Capital Stock representing more than 51% of the ordinary voting power for the election of directors of Holdings (determined on a fully diluted basis but not giving effect to contingent voting rights which have not vested); (b) Parent shall cease to own and control, of record and beneficially, directly, 100% of each class of outstanding Capital Stock of the Borrower free and clear of all Liens (except Permitted Liens); or (c) Holdings shall cease to beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly) and control, directly or indirectly, 100% of each class of outstanding Capital Stock of the Parent.

“Chapter 11 Cases”: the meaning specified in the recitals hereto.

“Closing Date”: the first date all the conditions in Section 4.1 have been satisfied or waived which shall not be later than three Business Days after the Interim DIP Order Entry Date.

“Code”: the Internal Revenue Code of 1986, as amended from time to time.

“Collateral”: all Property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement and the “DIP Collateral” as defined in the Bankruptcy Court DIP Orders. The term “Collateral” shall not include any Excluded Assets.

“Collateral Agent”: as defined in the preamble hereto.

“Commitment”: with respect to any Lender, such Lender’s New Money Commitment and/or such Lender’s Roll-up Loans Commitment.

“Commonly Controlled Entity”: an entity, whether or not incorporated, that is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a group that includes the Borrower and that is treated as a single employer under Sections 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“Company Intellectual Property”: as defined in Section 3.9.

“Confirmation Date”: the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

“Confirmation Order”: an order of the Bankruptcy Court, in form and substance acceptable to the Required Lenders, confirming the Approved Plan of Reorganization.

“Contractual Obligation”: with respect to any Person, any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

“Credit Party”: the Administrative Agent, the Collateral Agent or any Lender.

“Debtor Relief Laws”: the Bankruptcy Code of the United States, the Bankruptcy and Insolvency Act (Canada), the Companies’ Creditors Arrangement Act (Canada), the Winding Up and Restructuring Act (Canada), and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States, Canada or other applicable jurisdictions from time to time in effect.

“Default”: any of the events specified in Section 7, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Defaulting Lender”: any Lender that (a) has failed, within three Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or the Administrative Agent in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after written request by the Administrative Agent, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans (unless such Lender indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan under this Agreement cannot be satisfied) under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the Administrative Agent’s receipt of such certification in form and substance reasonably satisfactory to the Administrative Agent, or (d) has become the subject of a Bankruptcy Event or Bail-in Action. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

“DIP Funding Account”: the account in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent in which the proceeds of the New Money Loans shall be deposited and held.

“DIP Superpriority Claim”: allowed superpriority administrative expense claims granted by the Bankruptcy Court DIP Order to the Administrative Agent, on behalf of itself and



the Lenders, pursuant to Bankruptcy Code sections 364(c)(1), as set forth in the Bankruptcy Court DIP Order (a) with priority over any and all administrative expense claims and unsecured claims against the Loan Parties or their estates in any of the Chapter 11 Cases or in any other proceedings superseding or related to any of the foregoing, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code or any other provision of the Bankruptcy Code and (b) which shall at all times be senior to the rights of the Loan Parties and their estates, and any successor trustee or other estate representative to the extent permitted by law.

“Disposition”: with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof (excluding Liens); and the terms “Dispose” and “Disposed of” shall have correlative meanings.

“Disqualified Capital Stock”: any Capital Stock which, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Capital Stock which is not otherwise Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Capital Stock which is not otherwise Disqualified Capital Stock), in whole or in part, (iii) provides for the scheduled payments or dividends in cash, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the date that is 91 days after the Maturity Date at the time of issuance, except, in the case of clauses (i) and (ii), if as a result of a change of control event or asset sale or other Disposition or casualty event, so long as any rights of the holders thereof to require the redemption thereof upon the occurrence of such a change of control event or asset sale or other Disposition or casualty event are subject to the prior payment in full of the Obligations; provided that if such Capital Stock is issued pursuant to a plan for the benefit of employees of Parent, the Borrower or any of its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by Parent, the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Disqualified Institution”:

- (1) any Person that is or controls a competitor of the Borrower or any of its Subsidiaries and is identified by the Borrower in writing to the Administrative Agent from time to time prior to, on or after the Closing Date; or
- (2) any Affiliate of any of the foregoing Persons that is (i) reasonably identifiable solely on the basis of the similarity of such Affiliate’s name (but excluding any such Affiliate that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and

with respect to which such foregoing Person does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such Affiliate) or (ii) identified by the Borrower to the Administrative Agent in writing from time to time prior to, on or after the Closing Date.

“Dollars” and “\$”: lawful currency of the United States of America.

“Domestic Subsidiary”: a Restricted Subsidiary that is incorporated, organized or otherwise formed under the laws of the United States, any State thereof or the District of Columbia.

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

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

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

“Election Deadline”: 5:00 pm eastern time on the date that is ten (10) Business Days following the entry of the Interim DIP Order.

“Eligible Assignee”: (i) any Lender, any Affiliate of a Lender and any Approved Fund, (ii) any commercial bank, insurance company, investment or mutual fund or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933) and which extends credit or buys loans in the ordinary course, and (iii) solely for the purpose of Section 10.6, any Loan Party that is a Wholly Owned Subsidiary and a Domestic Subsidiary and a disregarded entity for tax purposes.

“Environmental Laws”: any and all laws, rules, orders, regulations, statutes, ordinances, enforceable guidelines, codes, decrees, or other legally enforceable requirements of any international authority, foreign government, the United States or Canada, or any state, provincial, territorial, local, municipal or other governmental authority, regulating, relating to or imposing liability or standards of conduct for protection of the environment or of human health, or employee health and safety (as it relates to exposure to Hazardous Materials).

“Environmental Liability”: any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Restricted Subsidiary resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or

threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permits”: any and all permits, licenses, approvals, registrations, and other authorizations of a Governmental Authority required under any Environmental Law.

“ERISA”: the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Event” means (i) a Reportable Event with respect to any Single Employer Plan (excluding those for which the provision for 30 day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Single Employer Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Single Employer Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Single Employer Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by any Borrower or Commonly Controlled Entity from any Single Employer Plan with two or more contributing sponsors or the termination of any such Single Employer Plan resulting in liability to any Borrower or Commonly Controlled Entity pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Single Employer Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Single Employer Plan; (vi) the imposition of liability on any Borrower or Commonly Controlled Entity pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of any Borrower or Commonly Controlled Entity in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by any Borrower or Commonly Controlled Entity of notice from any Multiemployer Plan that it is in Insolvency, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or Section 4068 of ERISA upon the property and rights to property belonging to any Borrower or Commonly Controlled Entity; or (ix) a Canadian Pension Termination Event.

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

“Eurodollar”: when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default”: any of the events specified in Section 7, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Exchange Act”: the Securities Exchange Act of 1934, as amended.

“Excluded Assets”: the collective reference to:

(1) any licenses, franchises, charters and authorizations of a Governmental Authority to the extent a security interest therein under the Loan Documents is prohibited by or would require the consent, license or approval of any Governmental Authority (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition);

(2) any asset if the granting of a security interest under the Loan Documents in such asset would be prohibited by any (x) law, treaty, rule or regulation (including all applicable regulations and laws regarding assignments of and security interests in, government receivables) or a court or other Governmental Authority or would require the consent, license or approval of any Governmental Authority (other than proceeds thereof, to the extent the assignment of such proceeds is effective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition and the assignment of such proceeds is not prohibited by applicable law and does not require the consent, license or approval of any Governmental Authority) or (y) contractual obligation (only to the extent such restriction is binding on such asset (i) on the Closing Date or (ii) on the date of the acquisition thereof and not entered into in contemplation thereof) (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition);

(3) any lease, license or other agreement to the extent that a grant of a security interest therein under the Loan Documents would violate or invalidate such lease, license or agreement (except any such lease, license or agreement among Holdings and its Wholly-Owned Subsidiaries and except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition);

(4) Capital Stock (i) in any Person that is not a Wholly-Owned Subsidiary to the extent the pledge or other granting of a security interest under the Loan Documents in such Capital Stock would be prohibited by, or require a consent or approval under, organizational or governance documents or shareholders’ or similar agreements of or with respect to such Person (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order, or other applicable law notwithstanding such prohibition) and (ii) in Unrestricted Subsidiaries, broker-dealer Subsidiaries, not-for-profit Subsidiaries and captive insurance Subsidiaries;

(5) any assets subject to a Lien permitted by Section 6.3(j) or 6.3(q) to the extent the documents governing such Lien prohibit, or require a consent or approval in order for, such assets to be subject to the Liens created by the Loan Documents (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP order or other applicable law notwithstanding such prohibition);

(6) any United States (or Canadian) intent-to-use application for registration of a trademark or service mark prior to the acceptance by the United States Patent and Trademark Office (or the Canadian Intellectual Property Office) of a statement of use or an amendment to allege use, to the extent and for so long as the grant of a security interest therein would impair the validity or enforceability of, or render void or voidable or result in the cancellation of, a Loan Party's right, title or interest therein or any trademark or service mark registration issued therefrom;

(7) assets sold or otherwise disposed of to a Person who is not a Loan Party in compliance with Section 6.5;

(8) "margin stock" within the meaning of Regulation U;

(9) segregated trust fund accounts, payroll accounts, accounts used solely for making payments in respect of withholding taxes and employee benefits, trust accounts, escrow accounts for the benefit of unaffiliated third parties, and the cash collateral account established pursuant to the LC Cash Collateral Agreement (collectively, the "Excluded Accounts");

(10) assets of broker-dealer Subsidiaries, not-for-profit Subsidiaries and captive insurance Subsidiaries;

(11) "consumer goods" (as defined in the PPSA);

(12) any Receivables for which the account debtor is incorporated or located in Iran; and

(13) any Avoidance Actions (other than the proceeds thereof);

provided that (a) in the case of clauses 2(y), (3) and (5), such exclusion shall not apply (i) to the extent the prohibition or restriction is ineffective under Section 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code, the Bankruptcy Code or other applicable law or (ii) to proceeds of the assets referred to in such clause, the assignment of which is expressly deemed effective under Section 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code, the Bankruptcy Code or other applicable law and (b) assets described above shall no longer be "Excluded Assets" upon termination of the applicable prohibition or restriction described above that caused such assets to be treated as "Excluded Assets".

"Excluded Domestic Subsidiaries": GNC Intermediate IP Holdings, LLC, GNC Intellectual Property Holdings, LLC, Nutra Insurance Company, GNC Newco Parent LLC and GNC Supply Purchaser, LLC.

"Excluded Subsidiary": (a) [reserved], (b) [reserved], (c) [reserved], (d) [reserved], (e) the Excluded Domestic Subsidiaries, (f) any Restricted Subsidiary which is a limited partnership of which the Borrower or a Guarantor does not constitute the general partner, (g) [reserved], (h) any Subsidiary to the extent such Subsidiary's guaranteeing any of the Obligations or otherwise becoming a Loan Party is prohibited or restricted by any Requirement of Law or requires the consent, approval, license or authorization of any Governmental Authority (unless such consent, approval, license or authorization has been obtained (it being agreed that

the Borrower shall be under no obligation to seek the same)), (i) not-for-profit Subsidiaries, (j) any Subsidiary which is not a Wholly-Owned Subsidiary of Parent, (k) captive insurance Subsidiaries, (l) broker-dealer Subsidiaries, (m) special purpose receivables Subsidiaries, (n) [reserved], and (o) any Subsidiary with respect to which (i) the Administrative Agent and the Borrower reasonably agree that the cost or other consequences of providing a guarantee or granting Liens to secure the Obligations are likely to be excessive in relation to the value to be afforded thereby or (ii) in the case of any Person that becomes a Subsidiary after the Closing Date, providing such a guarantee or granting such Liens would reasonably be expected to result in material adverse tax consequences as determined in good faith by the Borrower and consented to by the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed); provided that any Subsidiary described above shall be deemed not to be an Excluded Subsidiary if the Borrower has notified the Administrative Agent in writing that such Subsidiary should not be treated as an Excluded Subsidiary (and solely for purposes of Section 5.10(c) and the Security Documents, such Subsidiary shall be deemed to have been acquired at the time such notice is received by the Administrative Agent).

“Excluded Taxes”: with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Loan Parties hereunder, (a) Taxes imposed on (or measured by) its overall net income (however denominated), franchise or similar Taxes imposed on it (in each case, in lieu of net income Taxes) and Backup Withholding Taxes imposed on it by (i) the United States of America, (ii) the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office or the office to which its interests, rights and obligations under this Agreement are assigned is located or (iii) any other jurisdictions (or any political subdivision thereof) as a result of a present or former connection between the Administrative Agent, such Lender or other recipient and such jurisdiction imposing such Tax other than a connection arising as a result of the execution or delivery of, receipt of any payments, exercise of any rights or performance of any obligations under, enforcement of or any transaction or other activities related to any Loan Document, (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction in which the Borrower is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.22(b)), any United States federal withholding Tax that is in effect and would apply to amounts payable (including, for the avoidance of doubt, commitment fees and other consent, amendment and similar fees) to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 2.20(a), (d) any Taxes that are attributable to a Foreign Lender’s failure to comply with Section 2.20(e)(i), and (e) any Taxes imposed under, or as a result of the failure of such recipient to satisfy the applicable requirements under, FATCA.

“Existing Letters of Credit”: the letters of credit set forth on Schedule 1.1(a).

“Exit Conversion”: the meaning specified in Section 2.23(a).

2.23(b)(i). “Exit Term Loan Facility Credit Agreement”: the meaning specified in Section

I. “Exit Term Loan Facility Term Sheet”: the Term Sheet attached hereto as Exhibit

“Facility”: the Loans and Commitments made available to the Borrower under this Agreement.

“FATCA”: Sections 1471 through 1474 of the Code, as in effect on the date of this Agreement or any successor provision that is substantially the equivalent thereof, any current or future regulations or official interpretations thereof (including any revenue ruling, revenue procedure, notice or similar guidance issued by the Internal Revenue Service thereunder as a precondition to relief or exemption from Taxes under such provisions and including any agreements entered into pursuant to Section 1471(b)(1) of the Code) and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

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

“Final DIP Recognition Order”: an order of the Canadian Court in the Recognition Proceedings, in form and substance satisfactory to the Required Lenders in their sole discretion, recognizing and enforcing the Final DIP Order in Canada.

“Final DIP Order”: the final order of the Bankruptcy Court, approving the Facility on a final basis, in form and substance satisfactory to the Required Lenders, as the same may be amended, modified or supplemented from time to time with the express written consent of the Required Lenders.

“Final DIP Order Entry Date”: the date on which the Final DIP Order is entered on the docket of the Bankruptcy Court.

“Final Loan”: the Loan made on or after the Final DIP Order Entry Date.

“First-Lien First Out Loans”: as defined in the Exit Term Loan Facility Term Sheet.

“First-Lien Second Out Loans”: as defined in the Exit Term Loan Facility Term Sheet.

“Flood Insurance Laws”: collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute

thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Lender”: any Lender that is organized under the laws of a jurisdiction other than that of the United States of America. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary”: any Subsidiary of the Borrower (other than the Canadian Guarantor and other than GNC Puerto Rico LLC) that is not a Domestic Subsidiary.

“GAAP”: generally accepted accounting principles in the United States of America as in effect from time to time.

“GNC Parent LLC”: as defined in the preamble hereto.

“Governmental Authority”: any nation or government, any state, province, territory or other political subdivision thereof and any other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government.

“Guarantee and Collateral Agreement”: the Guarantee and Collateral Agreement, dated as of the Closing Date, executed and delivered by Parent, the Borrower and each Subsidiary Guarantor (other than the Canadian Guarantor), as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Guarantee Obligation”: with respect to any Person (the “guaranteeing person”), any obligation of the guaranteeing person guaranteeing or having the economic effect of guaranteeing any Indebtedness, lease payments, dividend payments or other economic obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security for such primary obligation, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, in each case, so as to enable the primary obligor to pay such primary obligation, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation (or portion thereof) in respect of



which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

“Guarantors”: the collective reference to Holdings, GNC Parent LLC, Parent, the Canadian Guarantor and the Subsidiary Guarantors.

“Hazardous Materials”: (i) petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and explosive or radioactive substances or (ii) any chemical, material, waste, substance or pollutant that is prohibited, limited or regulated pursuant to any Environmental Law.

“Hedge Agreements”: all interest rate or currency swaps, caps or collar agreements, foreign exchange agreements, commodity contracts or similar arrangements entered into by the Borrower or its Restricted Subsidiaries providing for protection against fluctuations in interest rates, currency exchange rates, commodity prices or the exchange of nominal interest obligations, either generally or under specific contingencies.

“Holdings”: as defined in the preamble hereto.

“Impacted Interest Period”: as defined in the definition of “LIBO Rate”.

“Indebtedness”: of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of Property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out obligation unless such obligation is not paid after becoming due and payable or appears as a liability on the balance sheet of such Person and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property), but limited to the lesser of the fair market value of such Property and the principal amount of such Indebtedness if recourse is solely to such Property, (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under bankers' acceptances, letters of credit, surety bonds and similar instruments (except unsecured and unmatured reimbursement obligations in respect thereof obtained in the ordinary course of business to secure the performance of obligations that are not Indebtedness pursuant to another clause of this definition), (g) the liquidation value of all Disqualified Capital Stock of such Person, to the extent mandatorily redeemable in cash prior to the date which is the 91<sup>st</sup> day after the Maturity Date (other than in connection with change of control events and asset sales and other Disposition and casualty events to the extent that the terms of such Capital Stock provide that such Person may not redeem any such Capital Stock in connection with such change of control

event or asset sale or other Disposition or casualty event unless such redemption is subject to the prior payment in full of the Obligations), (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above; (i) all obligations of the kind referred to in clauses (a) through (h) above secured by any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligations (but limited to the lesser of the fair market value of such Property and the principal amount of such obligations) and (j) the net obligations of such Person in respect of Hedge Agreements solely for the purposes of Section 6.2 and Section 7.

“Indemnified Taxes”: Taxes other than Excluded Taxes.

“Information Officer”: FTI Consulting Canada Inc., in its capacity as court-appointed information officer in connection with the Recognition Proceedings.

“Initial Recognition Order” means an order of the Canadian Court, in form and substance acceptable to the Required Lenders in their sole discretion, among other things, recognizing the Chapter 11 Cases as foreign main proceedings under Part IV of the CCAA.

“Insolvency”: with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

“Insolvent”: pertaining to a condition of Insolvency.

“Intellectual Property”: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, Canadian, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, service marks, technology, know-how and processes, recipes, formulas, trade secrets, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Intercreditor Agreements”: the Prepetition Intercreditor Agreement and any other intercreditor agreement entered into by or among any Representatives and the Loan Parties, in each case as in effect from time to time.

“Interest Election Request”: a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.10.

“Interest Payment Date”: (a) with respect to any ABR Loan, the last day of each month, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and the Maturity Date of the Facility.

“Interest Period”: with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two or three months thereafter, provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next

succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim DIP Order”: the order of the Bankruptcy Court, approving the Facility on an interim basis, substantially in the form of Exhibit J hereto.

“Interim DIP Order Entry Date”: the date on which the Interim DIP Order is entered on the docket of the Bankruptcy Court.

“Interim DIP Recognition Order”: the order issued by the Canadian Court in form and substance acceptable to the Required Lenders in their sole discretion, which shall have been issued by the Canadian Court no later than three (3) Business Days after the entry of the Interim DIP Order and shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of the Required Lenders. For the avoidance of doubt the Interim DIP Recognition Order may be part of the Supplemental Order.

“Interim CCAA Order”: the order issued by the Canadian Court in form and substance acceptable to the Required Lenders in their sole discretion, which provides, among other things, an interim stay against the Loan Parties in Canada and which order shall have been entered by the Canadian Court as soon as practicable after the filing of the Chapter 11 Cases and before the “first day” hearing before the Bankruptcy Court.

“Interpolated Rate”: as defined in the definition of “LIBO Rate”.

“Investments”: as defined in Section 6.8.

“IRS”: the United States Internal Revenue Service.

“LC Cash Collateral Agreement”: the Cash Collateral Agreement, dated as of [●], 2020, between General Nutrition Centers, Inc. and JPMorgan Chase Bank, N.A.

“Lender Parties”: as defined in Section 9.16.

“Lenders”: the Persons listed on Schedule 2.1 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“LIBO Rate”: with respect to any Eurodollar Borrowing for any Interest Period, the London interbank offered rate as administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for Dollars for a period equal in

length to such Interest Period as displayed on page LIBOR01 or LIBOR02 of the Reuters Screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; in each case, the “Screen Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the Screen Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement; provided, further, that, if the Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”) with respect to Dollars, then the LIBO Rate shall be the Interpolated Rate at such time. “Interpolated Rate” means, at any time, the rate per annum (rounded to the same number of decimal places as the Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the Screen Rate for the longest period (for which that Screen Rate is available in Dollars) that is shorter than the Impacted Interest Period and (b) the Screen Rate for the shortest period (for which that Screen Rate is available for Dollars) that exceeds the Impacted Interest Period, in each case, at such time.

“Lien”: any mortgage, pledge, hypothecation, security assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing); provided that in no event shall an operating lease in and of itself constitute a Lien.

“Loan”: any loan made by any Lender pursuant to this Agreement.

“Loan Documents”: this Agreement, the Security Documents, the Prepetition Intercreditor Agreement, the Bankruptcy Court DIP Order, the Notes and any other agreement, instrument, report and other document evidencing or securing any Obligation.

“Loan Parties”: the Borrower and the Guarantors.

“Material Adverse Effect”: (a) a material adverse effect on the business, assets, liabilities, financial condition or results of operations of the Loan Parties and their Restricted Subsidiaries, taken as a whole, (b) a material and adverse effect on the rights and remedies of the Administrative Agent, the Collateral Agent and Lenders, taken as a whole, under the Loan Documents or (c) a material and adverse effect on the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents; provided that none of the following shall constitute a Material Adverse Effect under clause (a) hereof: (i) the COVID-19 pandemic and the direct and indirect effects of the COVID-19 pandemic on the Loan Parties (provided that the exception in this clause (i) shall not apply to the extent that such pandemic and the direct and indirect effects thereof are disproportionately adverse to the Loan Parties, taken as whole, as compared to other companies in similar lines of business that the Loan Parties operate), (ii) the Chapter 11 Cases, Recognition Proceedings and/or the events and conditions related and/or leading up to or following the commencement of the Chapter 11 Cases and Recognition Proceedings, (iii) any defaults under agreements that are stayed under the

Bankruptcy Code or CCAA, as applicable, as a result of the Chapter 11 Cases or Recognition Proceedings, (iv) reduction in payment terms by suppliers, reclamation claims, and any “going concern” or other qualification, exception or explanatory note in the Loan Parties’ audited financial statements, (v) any matters publicly disclosed prior to the Closing Date, (vi) any matters disclosed in the “first day orders” and “second day orders” entered by the Bankruptcy Court at the time of the commencement of the Chapter 11 Cases, and (vii) any matters disclosed in the Schedules hereto.

“Material Debt”: Indebtedness (other than Indebtedness constituting Obligations), or obligations in respect of one or more Hedge Agreements (other than to the extent constituting Obligations), of any one or more of Parent, the Borrower or any Restricted Subsidiary in an aggregate principal amount exceeding \$2,000,000. For purposes of determining Material Debt, the “obligations” of Parent, the Borrower or any Restricted Subsidiary in respect of any Hedge Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Parent, the Borrower or such Restricted Subsidiary would be required to pay if such Hedge Agreement were terminated at such time.

“Maturity Date”: the earliest to occur of (i) [●]<sup>1</sup>, (ii) the date that is 35 days (or such later date as the Required Lenders may agree) after the Petition Date if the Final DIP Order has not been entered prior to the expiration of such 35-day period, (iii) the date the Bankruptcy Court orders the conversion of the Chapter 11 Cases to a Chapter 7 liquidation or the dismissal of the Chapter 11 Cases, (iv) the acceleration of the Loans and the termination of the Commitment under the Facility, (v) the sale of all or substantially all of the Loan Parties’ assets and (vi) the consummation of a Chapter 11 plan of reorganization for the Loan Parties; provided that if the Exit Conversion occurs, the Loans shall not be paid in cash and shall convert in accordance with the terms and conditions set forth in Section 2.23.

“Maximum Rate”: as defined in Section 9.17.

“Milestones”: the “DIP Term Milestones” as defined in the Bankruptcy Court DIP Order (which Milestones may be extended in writing by the Required Lenders).

“Moody’s”: Moody’s Investor Services, Inc.

“Multiemployer Plan”: a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower or any Commonly Controlled Entity contributes or has an obligation to contribute or with respect to which the Borrower or any Commonly Controlled Entity has any liability (including if such liability was imposed pursuant to Section 4212(c) of ERISA).

“Net Cash Proceeds”: (a) in connection with any Recovery Event, the proceeds thereof received by the Loan Parties in the form of cash and Cash Equivalents of such Recovery Event, net of the sum of (i) out-of-pocket attorneys’ fees, accountants’ fees and investment banking and advisory fees incurred by the Loan Parties in connection with such Recovery Event, (ii) principal, premium or penalty, interest and other amounts required to be paid in respect of Indebtedness secured by the asset subject to such Recovery Event and that is required to be

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<sup>1</sup> To be date that is 6 months from Petition Date.

repaid in connection with such Recovery Event (other than Indebtedness under the Loan Documents), (iii) other out-of-pocket fees and expenses actually incurred in connection therewith, (iv) taxes (and the amount of any distributions made pursuant to Section 6.6 to permit Parent or any direct or indirect parent company of the Parent to pay taxes) (including, without limitation, sales, transfer, deed or mortgage recording taxes) paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (v) in the case of any Recovery Event by a Restricted Subsidiary that is not a Wholly Owned Subsidiary, the pro-rata portion of the Net Cash Proceeds thereof (calculated without regard to this clause (v)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a Restricted Subsidiary that is a Wholly Owned Subsidiary as a result thereof and (vi) any reserve established in accordance with GAAP; provided that such reserved amounts shall be Net Cash Proceeds to the extent and at the time of any reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any such reserve, and (b) in connection with any issuance or incurrence of any Indebtedness or Capital Stock, the cash proceeds received by the Loan Parties from such issuance or incurrence, net of attorneys' fees, investment banking and advisory fees, accountants' fees, underwriting discounts and commissions and other customary fees, costs and expenses actually incurred in connection therewith, any swap breakage costs and other termination costs related to Hedge Agreements and any other fees and expenses actually incurred in connection therewith), in each case as determined reasonably and in good faith by a Responsible Officer of the Borrower.

"New Money Commitment" means as to each Lender, its obligation to make a New Money Loan to Borrower hereunder, expressed as an amount representing the maximum principal amount of New Money Loans to be made by such Lender under this Agreement, as such commitment may be reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to an Assignment and Assumption or an election joinder in the form of Exhibit G. The amount of each Lender's New Money Commitment is set forth on Schedule 2.1 under the caption "New Money Loans" or, otherwise, in the Assignment and Assumption or election joinder pursuant to which such Lender shall have assumed its New Money Commitment, as the case may be. The aggregate amount of the New Money Commitments on the Closing Date is \$100,000,000.

"New Money Loans": the Loans made pursuant to Section 2.1 under the New Money Commitment.

"Non-Consenting Lender": as defined Section 2.22(c).

"Nonpublic Information": information which has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD.

"Note": any promissory note evidencing any Loan substantially in the form of Exhibit D hereto.

"NYFRB": the Federal Reserve Bank of New York.

“NYFRB Rate”: for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement; provided, further, that the NYFRB Rate shall in no event be determined for any day to be lower than the Federal Funds Effective Rate for such day (to the extent that the Federal Funds Effective Rate is published for such day or for the immediately preceding Business Day).

“Obligations”: the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans and all other obligations and liabilities of the Loan Parties to the Administrative Agent, the Collateral Agent or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement or any other Loan Document, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to the Administrative Agent, to the Collateral Agent or to any Lender that are required to be paid by the Borrower pursuant hereto).

“Operating Account”: the deposit account established by the Borrower for the purpose of receipt of the Withdrawals and proceeds of Collateral.

“Organizational Documents”: with respect to any Person, (i) in the case of any corporation, the certificate of incorporation or articles of incorporation and by-laws (or similar constitutive documents) of such Person, (ii) in the case of any limited liability company, the certificate or articles of formation or organization and operating agreement (or similar constitutive documents) of such Person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar constitutive documents) of such Person, (iv) in the case of any general partnership, the partnership agreement (or similar constitutive document) of such Person, (v) in the case of any unlimited liability company, the memorandum of association, and (vi) in any other case, the functional equivalent of the foregoing.

“Other Taxes”: any and all present or future recording, stamp or documentary or any other excise or property Taxes, charges or similar levies imposed by any Governmental Authority arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Overnight Bank Funding Rate”: for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.-managed banking offices

of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Parent”: as defined in the preamble hereto.

“Participant”: as defined in Section 9.4(c).

“PBGC”: the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

“Permitted Liens”: Liens permitted by Section 6.3.

“Permitted Variance”: for purposes of testing whether a Budget Event has occurred, during any Budget Testing Period, a variance of, (a) with respect to the Budgeted Receipts Test, 15% and (b) with respect to the Budgeted Disbursements Test, 15% for the first two Budget Testing Periods and 10% for each subsequent Budget Testing Period.

“Person”: an individual, partnership, corporation, limited liability company, unlimited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Petition Date”: June [●], 2020.

“Plan”: at a particular time, any employee benefit plan that is covered by ERISA and in respect of which the Borrower or a Commonly Controlled Entity is (or, if such Plan were terminated at such time, would under Section 4062 or Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Platform”: as defined in Section 5.2.

“Pledged Capital Stock”: as defined in the Guarantee and Collateral Agreement.

“PPSA”: the Personal Property Security Act (Ontario) or the equivalent legislation (including the *Civil Code* (Quebec)) in any other applicable province or territory of Canada.

“Prepetition ABL Agent”: JPMorgan Chase Bank, N.A., in its capacity as administrative agent under any of the Prepetition ABL Loan Documents or any successor administrative agent.

“Prepetition ABL Agreement”: that certain ABL Credit Agreement, dated as of February 28, 2018 (the “Prepetition Credit Closing Date”) (as amended by that certain First Amendment, dated as of March 20, 2018, that certain Second Amendment, dated as of May 15, 2020, and that certain Third Amendment, dated as of June 12, 2020), among Parent, the Borrower, the Subsidiaries party thereto as borrowers, the several banks and other financial institutions or entities from time to time party thereto as lenders and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.



“Prepetition ABL Loan Documents”: the Prepetition ABL Agreement and the other “Loan Documents” under and as defined in the Prepetition ABL Agreement.

“Prepetition ABL Loan Indebtedness”: Indebtedness of Parent, the Borrower or any Guarantor outstanding, or secured, under the Prepetition ABL Loan Documents.

“Prepetition ABL/FILO Amendment and Restatement”: an amendment and restatement to the Prepetition ABL Agreement in form and substance satisfactory to the Required Lenders and providing for the rolling up of the Prepetition FILO Loans.

“Prepetition Agents”: the Prepetition Term Loan Agent and the Prepetition ABL Agent.

“Prepetition Convertible Notes Documents”: the Prepetition Convertible Notes Indenture and the other documents evidencing Indebtedness for borrowed money executed in connection therewith.

“Prepetition Convertible Notes Indenture”: as defined in the definition of “Prepetition Convertible Senior Notes”.

“Prepetition Convertible Senior Notes”: the 1.50% Convertible Senior Notes due August 15, 2020 issued under that certain indenture dated as of August 10, 2015, among Holdings, Parent, the Borrower and the other subsidiaries party thereto, and Bank of New York Mellon Trust Company, N.A., as trustee (such indenture, the “Prepetition Convertible Notes Indenture”).

“Prepetition Convertible Senior Note Indebtedness”: Indebtedness of Holdings, the Borrower or any Guarantor under the Prepetition Convertible Notes Documents.

“Prepetition Credit Closing Date”: as defined in the definition of “Prepetition ABL Agreement”.

“Prepetition FILO Lenders”: the lenders of the Prepetition FILO Loans.

“Prepetition FILO Loans”: the “FILO Term Loans” under and as defined in the Prepetition ABL Agreement.

“Prepetition Intercreditor Agreement”: the Intercreditor Agreement, dated as of February 28, 2018, by and among the Prepetition Term Loan Agent, the Prepetition Term Loan Collateral Agent, the Prepetition ABL Agent, Parent, the Borrower and its Restricted Subsidiaries parties thereto, as amended, restated, supplemented or otherwise modified from time to time.

“Prepetition Lenders”: the Prepetition Term Loan Lenders, the Prepetition FILO Lenders and the Prepetition Revolving Lenders.

“Prepetition Loan Documents”: the Prepetition ABL Loan Documents, the Prepetition Term Loan Documents and the Prepetition Convertible Notes Documents.

“Prepetition Obligations”: the Prepetition Term Loan Obligations, the Prepetition ABL Loan Indebtedness and the Prepetition Convertible Senior Note Indebtedness.

“Prepetition Revolving Lenders”: the lenders of the Prepetition Revolving Loans.

“Prepetition Revolving Loans”: the “Revolving Credit Loans” under and as defined in the Prepetition ABL Agreement.

“Prepetition Term Loan Agent”: JPMorgan Chase Bank, N.A., in its capacity as administrative agent under the Prepetition Term Loan Documents or any other successor administrative agent.

“Prepetition Term Loan Agreement”: that certain Amended and Restated Term Loan Credit Agreement, dated as of February 28, 2018 (as amended by that certain First Amendment, dated as of May 15, 2020, and that certain Second Amendment, dated as of June 12, 2020, and as may be further amended, amended and restated, supplemented or otherwise modified from time to time), among Parent, the Borrower, the several banks and other financial institutions or entities from time to time party thereto as lenders, the Prepetition Term Loan Collateral Agent and the Prepetition Term Loan Agent.

“Prepetition Term Loan Collateral Agent”: GLAS Trust Company LLC, in its capacity as collateral agent under any of the Prepetition Term Loan Documents or any successor collateral agent.

“Prepetition Term Loan Documents”: the “Loan Documents” as defined in the Prepetition Term Loan Agreement.

“Prepetition Term Loan Lenders”: the lenders of the Prepetition Term Loans.

“Prepetition Term Loan Obligations”: the “Obligations” under and as defined in the Prepetition Term Loan Agreement.

“Prepetition Term Loans”: the “Loans” under and as defined in the Prepetition Term Loan Agreement.

“Primary Related Parties”: as defined in Section 9.3(b).

“Prime Rate”: the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent in its reasonable discretion) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent in its reasonable discretion). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Professional Fees”: to the extent allowed at any time, whether by interim or final compensation order, all unpaid fees and expenses incurred by persons or firms retained by the Loan Parties pursuant to sections 327, 328, or 363 of the Bankruptcy Code.

“Property”: any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

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

“Qualified Capital Stock”: Capital Stock that is not Disqualified Capital Stock.

“Receivable”: as defined in the Guarantee and Collateral Agreement.

“Recognition Proceedings” has the meaning specified in the recitals hereto.

“Recovery Event”: any settlement of, or payment in respect of, any property or casualty insurance claim or any condemnation proceeding relating to any asset of the Borrower or any of its Restricted Subsidiaries (other than assets consisting of ABL Priority Collateral or otherwise subject to a Permitted Lien).

“Register”: as defined in Section 9.4(b)(iv).

“Regulation FD”: Regulation FD as promulgated by the US Securities and Exchange Commission under the Securities Act and Exchange Act as in effect from time to time.

“Regulation U”: Regulation U of the Board as in effect from time to time.

“Reinvestment Deferred Amount”: with respect to any Reinvestment Event, the aggregate amount of Net Cash Proceeds received by the Borrower or any of its Restricted Subsidiaries in connection therewith that are not applied to prepay the Term Loans pursuant to Section 2.15(b) as a result of the delivery of a Reinvestment Notice.

“Reinvestment Event”: any Recovery Event in respect of which the Borrower has delivered a Reinvestment Notice.

“Reinvestment Notice”: a written notice executed by a Responsible Officer stating that the Borrower (or a Restricted Subsidiary) intends and expects to use all or a portion of the amount of Net Cash Proceeds of a Recovery Event to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets useful in its or such Restricted Subsidiary’s business.

“Reinvestment Prepayment Amount”: with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets useful in the Borrower’s or a Restricted Subsidiary’s business.

“Reinvestment Prepayment Date”: with respect to any Reinvestment Event, the earlier of (a) the date occurring six months after such Reinvestment Event and (b) the date on which the Borrower shall have determined not to, or shall have otherwise ceased to, restore, rebuild, repair, construct, improve, replace or otherwise acquire assets useful in the Borrower’s or the applicable Restricted Subsidiary’s business with all or any portion of the relevant Reinvestment Deferred Amount.

“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.

“Replacement Liens”: with respect to any Lien, any modification, replacement, renewal or extension of such Lien; provided that (i) such modification, replacement, renewal or extension of such Lien does not extend to any additional property other than (A) after-acquired property (to the extent such after-acquired property would have been subject to such Lien prior to such modification, replacement, renewal or extension) and (B) proceeds and products thereof, and (ii) any Indebtedness secured by such Liens is permitted by Section 6.2.

“Reportable Event”: any of the “reportable events” set forth in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Single Employer Plan, other than those events as to which notice is waived pursuant to PBGC Regulation § 4043 as in effect on the Closing Date (no matter how such notice requirement may be changed in the future).

“Representative”: with respect to Indebtedness permitted to be incurred pursuant to Section 6.2 (and permitted to be secured by all or any portion of the Collateral pursuant to Section 6.3), the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“Required Lenders”: at any time, the holders of more than 50% of the aggregate unpaid principal amount of the Loans then outstanding.

“Requirement of Law”: as to any Person, the Certificate of Incorporation and By Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Requirement of Tax Law”: as to any Person, any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority relating to Taxes, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Resignation Effective Date”: as defined in Section 8.9.

“Responsible Officer”: as to any Person, the chief executive officer, president, chief financial officer, chief accounting officer, comptroller, treasury manager, treasurer or assistant treasurer of such Person, but in any event, with respect to financial matters, the chief

financial officer, chief accounting officer, comptroller, treasurer or assistant treasurer of such Person. Unless otherwise qualified, all references to a “Responsible Officer” shall refer to a Responsible Officer of the Borrower.

“Restricted Payments”: as defined in Section 6.6.

“Restricted Subsidiary”: any Subsidiary other than an Unrestricted Subsidiary.

“Restructuring Support Agreement”: that certain Restructuring Support Agreement dated as of June [●], 2020 among the Borrower, the other Loan Parties party thereto, and the Prepetition Term Loan Lenders and Prepetition FILO Lenders that are “Consenting Creditors” thereunder.

“Returns”: with respect to any Investment, any dividends, distributions, return of capital and other amounts received or realized in respect of such Investment.

“Revolver Termination”: as defined in the recitals hereto.

“Roll-up Lenders”: the Lenders with a Roll-up Loan Commitment as set forth on Schedule 2.1.

“Roll-up Loans”: the loans deemed made pursuant to Section 2.2 under the Roll-up Loans Commitment.

“Roll-up Loan Aggregate Commitment” means \$100,000,000, which amount shall be (i) comprised of a roll-up and refinancing of the Prepetition Term Loans on the Final DIP Order Entry Date approved pursuant to the Final DIP Order and (ii) deemed funded on the Final DIP Order Entry Date approved pursuant to the Bankruptcy Court DIP Order as set forth in Section 2.2.

“Roll-up Loans Commitment” means, as to each Roll-up Lender, its obligation to be deemed to make a Roll-up Loan to the Borrower pursuant to Section 2.2 in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Schedule 2.1 under the caption “Roll-up Loans Commitment” or in the election joinder, as applicable.

“Sale and Leaseback Transaction”: as defined in Section 6.12.

“Sales Report”: as defined in Section 5.1(B)(c).

“Sanctioned Country”: at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, for purposes of Sanctions imposed, administered or enforced by the U.S. government, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person”: at any time, (a) any Person listed in any Sanctions-related list of “designated Persons” maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United

Kingdom, (b) any Person listed in any Sanctions- related list of “designated Persons” maintained by the federal government of Canada, (c) any Person operating, organized or resident in a Sanctioned Country or (d) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a), (b) or (c).

“Sanctions”: economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government or the Canadian government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom.

“S&P”: Standard & Poor’s Ratings Group, a division of The McGraw Hill Corporation.

“Screen Rate”: as defined in the definition of “LIBO Rate”.

“SEC”: the Securities and Exchange Commission (or successors thereto or an analogous Governmental Authority).

“Secured Parties”: collectively, the Administrative Agent, the Collateral Agent, the Lenders, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to this Agreement.

“Security Documents”: the collective reference to the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement.

“Single Employer Plan”: any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

“Statutory Reserve Rate”: a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subsidiary”: as to any Person, a corporation, partnership, limited liability company, unlimited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time

owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantor”: as of the Closing Date, each Subsidiary of the Borrower listed on Schedule 1.1(b), together with each Subsidiary of the Borrower that becomes a Subsidiary Guarantor after the Closing Date pursuant to Section 5.10(c).

“Supplemental Order” means an order of the Canadian Court, in form and substance acceptable to the Required Lenders in their sole discretion, among other things, granting customary additional relief in the Recognition Proceedings.

“Taxes”: any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Loans”: means, collectively, the New Money Loans and the Roll-up Loans.

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

“UCC” or “Uniform Commercial Code”: the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“Unrestricted Subsidiary”: each of GNC Intermediate IP Holdings, LLC, a Delaware limited liability company and GNC Intellectual Property Holdings, LLC, a Delaware limited liability company.

“Variance Report”: as defined in Section 5.1(B)(b).

“Variance Statement Period”: (I) with respect to the Variance Report delivered on July 1, 2020, the period beginning on Saturday, June 20, 2020 and ending on Friday, June 26, 2020, (II) with respect to the Variance Report delivered on July 8, 2020, the period beginning on Saturday, June 20, 2020 and ending on Friday, July 3, 2020, (III) with respect to the Variance Report delivered on July 15, 2020, the period beginning on Saturday, June 20, 2020 and ending on Friday, July 10, 2020, (IV) with respect to each Variance Report delivered thereafter, the period beginning on the fifth prior Saturday to the required date of delivery of such Variance Report and ending on the Friday prior to the required date of delivery of such Variance Report.

“Withdrawal”: a disbursement of funds from the DIP Funding Account, “Withdraw” and “Withdrawn” shall have correlative meanings thereto.

“Withdrawal Amount”: the amount set forth in the Budget in the line item entitled “Withdrawal” for such week.

“Withdrawal Date”: the date of a Withdrawal.

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

“Withdrawal Request”: a request by the Borrower for a Withdrawal substantially in the form of Exhibit K.

“Withdrawal Cap”: (i) for the first four weeks after the Closing Date, an amount equal to the aggregate Withdrawal Amount for such 4-week period, (ii) for each week thereafter prior to adoption of a new Budget, the aggregate of the Withdrawal Amount for such week plus any unused amounts from previous weeks and (iii) upon a Proposed Budget becoming the new Budget as described in Section 5.1(B)(a) hereof, (a) for the first four weeks after the adoption of such new Budget, an amount equal to the aggregate Withdrawal Amount for such 4-week period and (b) for each week thereafter prior to adoption of a new Budget, the aggregate of the Withdrawal Amount for such week plus any unused amounts from previous weeks.

“Withholding Agent”: any Loan Party or the Administrative Agent, as applicable.

“Wholly Owned Subsidiary”: as to any Person, any other Person all of the Capital Stock of which (other than (a) directors’ qualifying shares and (b) nominal shares issued to foreign nationals to the extent required by any applicable Requirement of Law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

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

## 1.2 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, unless otherwise specified herein or in such other Loan Document:

(i) the words “hereof”, “herein” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Documents as a whole and not to any particular provision of thereof;

(ii) Section, Schedule and Exhibit references refer to (A) the appropriate Section, Schedule or Exhibit in this Agreement or (B) to the extent such



references are not present in this Agreement, to the Loan Document in which such reference appears;

(iii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;

(iv) the word “will” shall be construed to have the same meaning and effect as the word “shall”;

(v) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings);

(vi) unless the context requires otherwise, the word “or” shall be construed to mean “and/or”;

(vii) unless the context requires otherwise, (A) any reference to any Person shall be construed to include such Person’s legal successors and permitted assigns, (B) any reference to any law or regulation shall refer to such law or regulation as amended, modified or supplemented from time to time, and any successor law or regulation, (C) the words “asset” and “property” shall be construed to have the same meaning and effect, and (D) references to agreements (including this Agreement) or other Contractual Obligations shall be deemed to refer to such agreements or Contractual Obligations as amended, restated, amended and restated, supplemented or otherwise modified from time to time;

(viii) references to any direct or indirect parent company of the Parent shall refer to Holdings and any of its Wholly Owned Subsidiaries which are parent companies of the Parent; and

(ix) 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 Québec, (q) “personal property” shall be deemed to include “movable property”, (r) “real property” shall be deemed to include “immovable property”, (s) “tangible property” shall be deemed to include “corporeal property”, (t) “intangible property” shall be deemed to include “incorporeal property”, (u) “security interest” and “mortgage” shall be deemed to include a “hypothec”, (v) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication under the Civil Code of Québec, (w) all references to “perfection” of or “perfected” Liens shall be deemed to include a reference to the “opposability” of such Liens to third parties, (x) any “right of offset”, “right of setoff” or similar expression shall be deemed to include a “right of compensation”, (y) “goods” shall be deemed to include “corporeal movable property” other than chattel paper, documents of title, instruments, money and securities, and (z) an “agent” shall be deemed to include a “mandatary”.

(c) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including”.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) The expressions “payment in full,” “paid in full” and any other similar terms or phrases when used herein with respect to the Obligations shall mean the payment in full, in immediately available funds, of all of the Obligations (excluding contingent reimbursement and indemnification obligations that are not then due and payable).

1.3 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Eurodollar Loan”) and as either New Money Loans or Roll-up Loans.

1.4 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time (provided that, notwithstanding anything to the contrary herein, (i) all accounting or financial terms used herein shall be construed, and all financial computations pursuant hereto shall be made, without giving effect to any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Holdings or any Subsidiary at “fair value”, as defined therein, (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein shall be disregarded, and such Indebtedness shall at all times be valued at the full stated principal amount thereof), (iii) [reserved] and (iv) notwithstanding anything to the contrary herein, only those leases that would result or would have resulted in Capital Lease Obligations or Capital Expenditures under GAAP as in effect on the Prepetition Credit Closing Date (assuming for purposes hereof such leases were in existence on the Prepetition Credit Closing Date) will be considered capital leases and all calculations under this Agreement will be made in accordance therewith. In the event that any “Accounting Change” as defined below shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then upon the written request of the Borrower or the Administrative Agent, the Borrower, the Administrative Agent and the Lenders shall enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrower’s financial condition shall be the same after such Accounting Change as if such Accounting Change had not occurred; provided that provisions of this Agreement in effect prior to the date of such Accounting Change shall remain in effect until the effective date of such amendment. “Accounting Change” refers to any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants.

1.5 Agent Determinations. Any references in this Agreement to actions, determinations or decisions (but not calculations of interest, principal, fees or expenses) being made at the discretion (whether implied or expressly so stated) of (but not “sole” discretion of), or matters, calculations or documentation being satisfactory to, (or, in each case, any like or similar term) any Agent shall, unless otherwise expressly set forth in this Agreement, mean (or be deemed to mean) such Agent, as applicable, acting at the written direction, or with the written consent, of the Required Lenders or the Ad Hoc Group of Crossover Lenders (which written direction or consent may be provided via email).

1.6 Classification of Permitted Items For purposes of determining compliance at any time with Sections 6.2, 6.3, 6.5, 6.6, 6.8, 6.9, 6.14 or 6.15, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, Contractual Obligation, encumbrance or restriction or payment, prepayment, repurchase, redemption, defeasance or amendment, modification or other change in respect of Indebtedness meets the criteria of more than one of the categories of transactions permitted pursuant to any clause of such Sections 6.2, 6.3, 6.5, 6.6, 6.8, 6.9, 6.14 or 6.15, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower in its sole discretion at such time of determination. For the avoidance of doubt, the Borrower may at any time classify and reclassify Indebtedness (or any portion thereof) incurred under Section 6.2 and Liens (or any portion thereof) incurred under Section 6.3 among applicable exceptions to such covenants.

1.7 Rounding Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.8 Currency Equivalents Generally.

(a) For purposes of determining compliance with Sections 6.2, 6.3, 6.8 and 6.9 with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder).

## SECTION 2. AMOUNT AND TERMS OF COMMITMENTS

2.1 New Money Loans. Subject to the terms and conditions set forth herein and in the Bankruptcy Court DIP Order, each Lender severally agrees to make loans to the Borrower denominated in Dollars on the applicable borrowing date in an amount equal to such Lender’s New Money Commitment, if any. The Borrower may make only two borrowings on the New Money Commitments, the first of which will occur on the Closing Date in an aggregate principal amount of \$30,000,000 and the second of which will constitute the Final Loan and will occur on or following the Final DIP Order Entry Date, as requested by the Borrower pursuant to Section 2.6, in an aggregate principal amount of \$70,000,000. Amounts borrowed under this

Section 2.1 and repaid or prepaid may not be reborrowed. Proceeds of the New Money Loans shall be deposited in the DIP Funding Account and used as permitted herein.

2.2 Roll-up Loans. Subject to the terms and conditions set forth herein and in the Bankruptcy Court DIP Order, each Roll-up Lender severally and not jointly agrees to make Roll-up Loans on account of its Roll-up Loans Commitment to the Borrower, which loans in the aggregate shall equal and be made in accordance with the terms of the Roll-up Loan Aggregate Commitment. Only one Roll-up Loan shall be deemed made. The Roll-up Loans shall be deemed made following the Final DIP Order Entry Date in an aggregate principal amount of \$100,000,000.

2.3 Election Option. Each Lender and the Borrower, hereby acknowledge and agree that each Prepetition Term Loan Lender that is not a Backstop Lender that is or becomes a party to the Restructuring Support Agreement may participate in providing both New Money Loans and Roll-up Loans in an amount equal to its pro rata proportion (determined on the basis of the principal amount of Prepetition Term Loans held by such Prepetition Term Loan Lender as compared to the principal amount of Prepetition Term Loans held by all Prepetition Term Loan Lenders under the Prepetition Term Loan Agreement on the Election Deadline) by executing an election joinder in the form of Exhibit G no later than the Election Deadline. Thereafter, (x) each such Person shall become a Lender on the next business day after the Election Deadline and (y) each existing Lender's unused Commitment shall be reduced proportionally on such date.

2.4 [Reserved].

2.5 Loans and Borrowings. (a) The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder.

(b) Subject to Section 2.17, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the applicable Lender to make such Loan and the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. At the time each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of five (5) Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the applicable Maturity Date for such Borrowing.

2.6 Request for Borrowing. To request a Borrowing of Term Loans, the Borrower shall (a) notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 11:00 A.M., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or electronic transmission to the Administrative Agent of a written Borrowing Request signed by the Borrower. Such Borrowing Request shall specify the following information in compliance with Section 2.5:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and
- (iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period”.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender’s Loan to be made as part of the requested Borrowing.

2.7 [Reserved].

2.8 Funding of Borrowings.

(a) Each Lender shall make each New Money Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the DIP Funding Account.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender’s share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may (but shall not be required to), in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with

banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

2.9 Withdrawal. Subject to Section 4.2, the Borrower may request disbursements from the DIP Funding Account by delivering to the Administrative Agent (with a copy to the Ad Hoc Group Advisors) a Withdrawal Request, not later than 12:00 p.m., New York City time, one Business Day before (or such shorter time as agreed by the Required Lenders) the proposed date of the applicable Withdrawal; *provided* that the amount that may be Withdrawn shall not exceed the Withdrawal Cap without the consent of the Required Lenders; provided further that the Borrower shall not withdraw amounts in excess of its expected upcoming needs for the upcoming week. Promptly upon the receipt of a Withdrawal Request and the satisfaction or waiver of the conditions set forth in Section 4.2, the Administrative Agent shall disburse funds from the DIP Funding Account to the Operating Account in an aggregate principal amount equal to the amount specified in such Withdrawal Request. All proceeds of the New Money Loans shall be held in the DIP Funding Account at all times until such proceeds are disbursed in accordance with this Section 2.9. Notwithstanding anything herein to the contrary, the Administrative Agent shall have no obligation to disburse any amount in excess of the amounts then held in the DIP Funding Account.

2.10 Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(a) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.6 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or electronic transmission to the Administrative Agent of a written Interest Election Request signed by the Borrower.

(b) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.5:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(c) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(d) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

2.11 [Reserved].

2.12 Repayment of Loans; Evidence of Debt. (a) Except as otherwise set forth in Section 2.23 hereof, the Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan of such Lender in cash on the Maturity Date.

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

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

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

(d) Any Lender may request through the Administrative Agent that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns and in the form of Exhibit D hereto. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.4) be represented by one or more promissory notes in such form payable to such payee and its registered assigns.

2.13 Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to voluntarily prepay any Borrowing in whole but not in part, without premium or penalty (but subject to Section 2.19) subject to prior notice in accordance with paragraph (c) of this Section.

(a) Each prepayment of Term Loans pursuant to Section 2.13(a) shall be applied ratably to the Loans then outstanding.

(b) The Borrower shall notify the Administrative Agent by telephone (confirmed by written notice (which may be by email)) of any voluntary prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Borrowing, not later than 10:00 a.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date; provided that any notice of prepayment of Term Loans may be conditioned upon the effectiveness of other credit facilities or any other financing or a sale transaction, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.16. Each repayment of a Borrowing shall be applied ratably to the Loans included in the repaid Borrowing.

2.14 Premiums and Fees.

(a) The Borrower and each Lender agrees that on the date of each Borrowing, the Borrower shall receive proceeds from the New Money Loans based on a purchase price of 96% of the principal amount thereof.



(b) On the date of the Exit Conversion, the Borrower shall pay to the Lenders an exit premium in the amount of 3.00% of the New Money Loans, payable upon the Exit Conversion.

(c) The Borrower shall pay to the Backstop Lenders the amounts and at the times agreed in the Backstop Commitment Letter.

(d) The Borrower agrees to pay to the Administrative Agent and to the Collateral Agent, for their own account, fees payable in the amounts and at the times separately agreed upon in the fee proposal dated June 7, 2020 between the Borrower and GLAS Trust Company LLC, as Administrative Agent and Collateral Agent.

2.15 Mandatory Prepayments. (a) If Indebtedness is incurred by a Loan Party (other than Indebtedness permitted under Section 6.2), then no later than two Business Days after the date of such issuance or incurrence, an amount equal to 100% of the Net Cash Proceeds thereof shall be applied to the prepayment of the Term Loans as set forth in Section 2.15(d) together with accrued and unpaid interest thereon. The provisions of this Section do not constitute a consent to the incurrence of any Indebtedness by any Loan Party.

(a) If on any date a Loan Party shall receive Net Cash Proceeds from any Recovery Event then, unless a Reinvestment Notice shall be delivered in respect thereof, no later than three Business Days (or, if a Default or Event of Default has occurred and is continuing, one Business Day) after the date of receipt by such Loan Party of such Net Cash Proceeds, an amount equal to 100% of such Net Cash Proceeds shall be applied to the prepayment of the Term Loans as set forth in Section 2.15(d) together with accrued and unpaid interest thereon; provided that (i) notwithstanding the foregoing, on each Reinvestment Prepayment Date an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event shall be applied to the prepayment of the Term Loans (together with accrued interest thereon), and (ii) if the Net Cash Proceeds from any Recovery Event exceed \$1,000,000, then no Reinvestment Notice with respect thereto may be delivered without the consent of the Required Lenders; provided further that to the extent that the Net Cash Proceeds of any such Recovery Event result from any settlement of, or payment in respect of, any property or casualty insurance claim or any condemnation proceeding relating to ABL Priority Collateral, such Net Cash Proceeds shall first be applied as required pursuant to Section 2.15(b) of the Prepetition ABL/FILO Amendment and Restatement before being applied to the mandatory prepayment of the Term Loans pursuant to this Section 2.15(b).

(b) [Reserved].

(c) Amounts to be applied pursuant to this Section 2.15 shall be applied first to prepay outstanding ABR Loans and then to prepay Eurodollar Loans, and shall be applied ratably to the Loans then outstanding.

2.16 Interest. (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Margin.

(a) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(b) Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default pursuant to Section 7.1(a), any overdue amount payable by the Borrower hereunder shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of or interest on any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other overdue amount, 2% plus the rate applicable to Term Loans that are ABR Loans as provided in paragraph (a) of this Section prior to giving effect to any increase in such rate pursuant to this paragraph (c).

(c) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(d) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error. Notwithstanding the foregoing, solely for the purposes of the Interest Act (Canada) and disclosure under such Act, whenever interest to be paid under this Agreement is to be calculated on the basis of a year of 365 days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by either 365 or such other period of time, as the case may be.

(e) Notwithstanding anything to the contrary herein, interest shall not accrue on the Roll-up Loans until the day they are deemed made pursuant to Section 2.2 hereof.

2.17 Alternate Rate of Interest. (a) If prior to the commencement of any Interest Period for a Eurodollar Borrowing the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period, then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or electronic transmission as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (B) if any

Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

(a) If at any time the Administrative Agent (in consultation with the Required Lenders and the Borrower) determines (which determination shall be conclusive absent manifest error) that either (i) the circumstances set forth in clause (a)(i) of this Section 2.17 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i) of this Section 2.17 have not arisen but the supervisor for the administrator of the Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Screen Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent (in consultation with the Required Lenders) and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Margin); provided that, if such alternate rate of interest as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 9.2, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this clause (b) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 2.17(b), only to the extent the Screen Rate for such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (y) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

2.18 Increased Costs. (a) If any Change in Law shall:

(i) subject the Administrative Agent or any Lender to any Taxes (other than (A) Indemnified Taxes covered under Section 2.20, (B) Excluded Taxes or (C) Other Taxes) on its Loans, Commitments or other obligations hereunder, or its deposits, reserves or other liabilities or capital attributable thereto;

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

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (excluding any condition relating to Taxes) affecting this Agreement or Eurodollar Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender (or in the case of clause (i), to the Administrative Agent or such Lender) of making, converting to, continuing or maintaining any Eurodollar Loan (or in the case of clause (i), any Loan) (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by the Administrative Agent or such Lender hereunder (whether of principal, interest or otherwise), then, upon request of such Lender, the Borrower will pay to the Administrative Agent or such Lender, as the case may be, such additional amount or amounts as will compensate the Administrative Agent or such Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital or liquidity requirements or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital or liquidity requirements (whether or not having the force of law) from any Governmental Authority made subsequent to the Closing Date has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth in reasonable detail the matters giving rise to a claim under this Section 2.18 by such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) If any Lender reasonably determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Eurodollar Loans, or to determine or charge interest rates based upon the Adjusted LIBO Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the

Borrower may at its option revoke any pending request for a borrowing of, conversion to or continuation of Eurodollar Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

2.19 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.13(c) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.22(c), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event (other than loss of profit). Such loss, cost or expense to any Lender shall consist of an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. Absent manifest error in the determination of such amount, the Borrower shall pay such Lender the amount shown as due on any such certificate within 15 days after receipt thereof.

2.20 Taxes. (a) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the applicable Withholding Agent shall be required by Requirement of Tax Law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased by the applicable Loan Party as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.20(a)) the Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable Withholding Agent shall make or cause to be made such deductions and (iii) the applicable Withholding Agent shall pay or cause to be paid the full amount deducted to the relevant Governmental Authority in accordance with Requirement of Tax Law.

(a) In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with Requirement of Tax Law.

(b) The Loan Parties shall indemnify the Administrative Agent and each Lender within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of any Loan Party hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto; provided that the Loan Parties shall not be obligated to make payment to the Administrative Agent or any Lender pursuant to this Section in respect of penalties, interest and other liabilities attributable to any Indemnified Taxes or Other Taxes if (i) written demand therefor has not been made by the Administrative Agent or such Lender within 30 days from the date on which the Administrative Agent or such Lender knew of the imposition of such Indemnified Taxes or Other Taxes by the relevant Governmental Authority, (ii) such penalties, interest and other liabilities have accrued after the Loan Parties have indemnified or paid any additional amount pursuant to this Section or (iii) such penalties, interest and other liabilities are attributable to the gross negligence, bad faith or willful misconduct of the Administrative Agent or such Lender as determined by a court of competent jurisdiction by final and non-appealable judgment. A certificate setting forth in reasonable detail the basis for such claim and the calculation of the amount of any such payment or liability shall be delivered to the Borrower by a Lender or by the Administrative Agent on its own behalf or on behalf of a Lender, and shall be conclusive absent manifest error.

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

(d) (i) Each Lender other than a Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly executed copies of IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal withholding tax. Each Foreign Lender shall deliver to the Borrower and the Administrative Agent (i) two properly completed and duly executed copies of IRS Form W-8BEN or Form W-8BEN-E, Form W-8ECI or, to the extent a Foreign Lender is not the beneficial owner, Form W-8IMY (together with any applicable underlying IRS forms), or any subsequent versions thereof or successors thereto, (ii) in the case of a Foreign Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of “portfolio interest,” a certificate in the form attached hereto as Exhibit E-1, E-2, E-3 or E-4, as applicable, and two properly completed and duly executed copies of the applicable IRS Form W-8BEN or Form W-8BEN-E, or any subsequent versions thereof or successors thereto, or (iii) any other form prescribed by applicable requirements of U.S. federal income tax law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable requirements of law to permit the Borrower and the Administrative Agent to determine the deduction required to be made, in

each case, certifying such Foreign Lender's entitlement to an exemption from or a reduction in U.S. federal withholding tax with respect to payments of interest to be made hereunder or under any other Loan Documents. Such forms shall be delivered by each Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation) and from time to time thereafter upon the request of the Borrower or the Administrative Agent. In addition, each Lender shall promptly deliver such forms upon the obsolescence or invalidity of any form previously delivered by such Lender. Each Lender shall promptly notify the Borrower and the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the United States taxing authorities for such purpose). Any Lender, if requested by the Administrative Agent or the Borrower, shall deliver such other documentation prescribed by or reasonably requested by the Administrative Agent or the Borrower as will enable the Administrative Agent or the Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(i) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed pursuant to FATCA if such Lender fails to comply with any requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the applicable Withholding Agent, on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation) and from time to time thereafter upon the request of the applicable Withholding Agent, such documentation prescribed by Requirement of Tax Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the applicable Withholding Agent as may be necessary for the applicable Withholding Agent to comply with its obligations under FATCA, to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and to determine the amount to deduct and withhold from such payment. To the extent that the relevant documentation provided pursuant to this paragraph is rendered obsolete or inaccurate in any material respect as a result of changes in circumstances with respect to the status of a Lender, such Lender shall, to the extent permitted by Requirement of Tax Law, deliver to the applicable Withholding Agent revised and/or updated documentation sufficient for the applicable Withholding Agent to confirm as to whether such Lender has complied with its respective obligations under FATCA. Solely for purposes of this clause (e)(ii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding any other provision of this Section 2.20, a Lender shall not be required to deliver any form pursuant to this Section 2.20 that such Lender is not legally able to deliver.

(e) Each Lender shall indemnify the Administrative Agent for the full amount of any Taxes imposed by any Governmental Authority that are attributable to such Lender and that are payable or paid by the Administrative Agent, together with all interest, penalties, reasonable costs and expenses arising therefrom or with respect thereto, as determined by the Administrative Agent in good faith. Should the applicable Withholding Agent not deduct or

withhold any Taxes imposed by FATCA from a payment under any Loan Document based on the documentation provided by a Lender pursuant to Section 2.20(e)(ii), any amounts subsequently determined by a Governmental Authority to be subject to U.S. federal withholding Tax imposed pursuant to FATCA (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) shall be indemnified by such Lender. A certificate as to the amount of such payment or liability delivered to any Lender by the Withholding Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent under this paragraph (f).

(f) Solely for purposes of determining withholding Taxes imposed under FATCA, from and after the Closing Date, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Loans as not qualifying as a “grandfathered obligation” within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(g) If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section 2.20, it shall pay over such refund to the applicable Loan Party within a reasonable period (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.20 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party pursuant to this Section 2.20(h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the Administrative Agent or any Lender be required to pay any amount to a Loan Party pursuant to this paragraph (h) the payment of which would place the Administrative Agent or any Lender in a less favorable net after-Tax position than the such party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.20(h) shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

(h) Each party’s obligations under this Section 2.20 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

2.21 Payments Generally; Pro rata Treatment; Sharing of Set-offs. (a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or amounts payable under Section 2.18, 2.19 or 2.20 or otherwise) prior to the time



expressly required hereunder for such payment (or if no such time is expressly required, prior to 2:00 p.m. New York City time), on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 3 Second Street, Suite 206, Jersey City, NJ 07311, except that payments pursuant to Sections 2.18, 2.19, 2.20 or 9.3 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under any Loan Document shall be made in Dollars. Any Term Loans paid or prepaid may not be reborrowed.

(a) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

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

(c) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the

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

(d) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.8(b), 2.21(d) or 8.7, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

2.22 Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.18, or if the Borrower is required to pay any amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.20, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.18 or 2.20, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(a) If any Lender (or any Participant in the Loans held by such Lender) requests compensation under Section 2.18, or if the Borrower is required to pay any amount to any Lender (or its Participant) or any Governmental Authority for the account of any Lender pursuant to Section 2.20, or if any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.4 (provided that, if the required Assignment and Assumption is not executed and delivered by such Lender, such Lender will be unconditionally and irrevocably deemed to have executed and delivered such Assignment and Assumption as of the date such Lender receives payment in full of the amounts set forth in clause (i) below)), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (but, for the avoidance of doubt, not any amounts in respect of contingent reimbursement and indemnification obligations which are not due and payable), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (ii) in the case of any such assignment resulting from a claim for compensation under Section 2.18 or payments required to be made pursuant to

Section 2.20, such assignment will result in a reduction in such compensation or payments in the future. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

(b) If any Lender (such Lender, a “Non-Consenting Lender”) has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.2 requires the consent of all of the Lenders or all affected Lenders, then the Borrower may (unless such Non-Consenting Lender grants such consent), at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, replace such Non-Consenting Lender by requiring such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.4 (provided that, if the required Assignment and Assumption is not executed and delivered by such Non-Consenting Lender, such Non-Consenting Lender will be unconditionally and irrevocably deemed to have executed and delivered such Assignment and Assumption as of the date such Non-Consenting Lender receives payment in full of the amounts set forth in clause (i) below)), all of its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (but, for the avoidance of doubt, not any amounts in respect of contingent reimbursement and indemnification obligations which are not due and payable), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (ii) the replacement Lender shall grant its consent with respect to the applicable proposed amendment, waiver, discharge or termination.

## 2.23 Conversion of Loans.

(a) Upon the consummation of an Approved Plan of Reorganization, subject to the satisfaction, or waiver, of the conditions set forth in the Exit Term Loan Facility Term Sheet and otherwise substantially in accordance with the terms set forth in the Exit Term Loan Facility Credit Agreement, the Borrower may exercise an option to continue or convert the Loans into an exit term facility financing on the effective date of such Approved Plan of Reorganization (the “Exit Conversion”).

(b) If the Borrower elects to exercise the Exit Conversion, subject to the satisfaction or waiver by the Required Lenders of the conditions contained in the Exit Term Loan Facility Term Sheet:

(i) each Lender, severally and not jointly, hereby agrees to continue its Loans hereunder outstanding on the effective date of the Approved Plan of Reorganization as set forth in the Exit Term Loan Facility Term Sheet under, and subject entirely and exclusively to the terms and provisions of, the definitive documentation to be mutually agreed (including a credit agreement governing the continuation and conversion of the Loans, the “Exit Term Loan Facility Credit Agreement”) and related documentation which documentation shall be substantially consistent with the Exit Term

Loan Facility Term Sheet and is otherwise in form and substance reasonably satisfactory to the Required Lenders; and

(ii) subject to Section 2.23(a), the Administrative Agent, the Lenders and the Loan Parties agree that, upon the effectiveness of the Exit Term Loan Facility Credit Agreement:

(A) the Borrower, in its capacity as reorganized Borrower, and each Guarantor that is a guarantor under the Prepetition Term Loan Agreement (subject to the Approved Plan of Reorganization), in its capacity as a reorganized Guarantor, shall assume all the Obligations hereunder with respect to the Loans and all other obligations in respect thereof in the manner set forth in the Exit Term Loan Facility Credit Agreement and related loan documents;

(B) the New Money Loans hereunder shall be continued as or converted to, as the case may be, First-Lien First Out Loans under the Exit Term Loan Facility Credit Agreement;

(C) each Lender hereunder shall be a lender under the Exit Term Loan Facility Credit Agreement in respect of its New Money Loans continued as, or converted to, as the case may be, First-Lien First Out Loans;

(D) the Roll-up Loans hereunder shall be continued as or converted to, as the case may be, First-Lien Second Out Loans under the Exit Term Loan Facility Credit Agreement;

(E) each Lender hereunder shall be a lender under the Exit Term Loan Facility Credit Agreement in respect of its Roll-up Loans continued as, or converted to, as the case may be, First-Lien Second Out Loans;

(F) unless the Borrower or the Required Lenders otherwise elect, GLAS Trust Company LLC shall be the administrative agent and collateral agent under the Exit Term Loan Facility Credit Agreement; and

(G) with respect to the Loans, this Agreement and all Obligations hereunder with respect thereto shall terminate and be superseded and replaced by the Exit Term Loan Facility Credit Agreement.

### SECTION 3. REPRESENTATIONS AND WARRANTIES

To induce the Agents and the Lenders to enter into this Agreement and to make the Loans Parent and the Borrower hereby jointly and severally represent and warrant to each Agent and each Lender on the Closing Date, on the date of each Borrowing and each Withdrawal Date that:

3.1 Financial Condition. The audited consolidated balance sheets of Holdings as at December 31, 2019, and the related consolidated statements of income and of cash flows for the fiscal years ended on such dates, reported on by and accompanied by an unqualified report from PricewaterhouseCoopers, present fairly in all material respects the consolidated

financial condition of Holdings as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal years then ended. The unaudited consolidated balance sheet of Holdings as at March 31, 2020, and the related unaudited consolidated statements of income and cash flows for the three-month period ended on such date, present fairly in all material respects the consolidated financial condition of Holdings as at such date and the consolidated results of its operations and its consolidated cash flows for the three-month period then ended (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP (unless otherwise noted therein) applied consistently throughout the periods involved (except as disclosed therein).

3.2 No Change. Since the Petition Date there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

3.3 Corporate Existence; Compliance with Law. As of the Petition Date, each of the Loan Parties (a) is duly organized, validly existing and in good standing or in full force and effect under the laws of the jurisdiction of its organization (to the extent such concepts exist in such jurisdictions), (b) subject to the entry and terms of the Bankruptcy Court DIP Order and other orders of the Bankruptcy Court, as applicable, has the organizational power and authority, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign organization and in good standing or in full force and effect under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification and (d) unless stayed by the Chapter 11 Cases, is in compliance with all Requirements of Law, except, in the case of the foregoing clauses (a) (solely with respect to Subsidiaries), (b), (c) and (d), as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.4 Organizational Power; Authorization; Enforceable Obligations. Subject to the entry and terms of the Bankruptcy Court DIP Order, each Loan Party has the corporate or other organizational power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to borrow hereunder. Each Loan Party has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party. Other than the Bankruptcy Court DIP Order, no material consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement or any of the other Loan Documents, except (i) consents, authorizations, filings and notices that have been obtained or made and are in full force and effect, (ii) the consents, authorizations, filings and notices described in Schedule 3.4, (iii) the filings referred to in Section 3.18, (iv) filings necessary to create or perfect Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (v) those consents, authorizations, filings and notices the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each Loan Document has been duly executed and delivered on behalf of each Loan Party that is a party thereto. Subject to the entry and the terms of the Bankruptcy Court DIP Orders, this Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each

Loan Party that is a party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

3.5 No Legal Bar. Subject to the entry and terms of the Bankruptcy Court DIP Order, the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law applicable to, or any Contractual Obligation of, Parent, the Borrower or any of its Restricted Subsidiaries, except, in each case, as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any such Requirement of Law or any such Contractual Obligation (other than Permitted Liens).

3.6 No Material Litigation. As of the Petition Date, except as set forth on Schedule 3.6 and except for the Chapter 11 Cases (or matters arising therefrom) and Recognition Proceedings (or matters arising therefrom), no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of Parent or the Borrower, threatened in writing against any Loan Party or against any of their respective properties or revenues (a) with respect to this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that would reasonably be expected to have a Material Adverse Effect (after giving effect to indemnification from certain manufacturers and applicable insurance).

3.7 No Default. None of the Loan Parties is in default under or with respect to any of its post-petition material Contractual Obligations in any respect that would reasonably be expected to have a Material Adverse Effect.

3.8 Ownership of Property; Liens. As of the Petition Date, each of the Loan Parties has good title to, or a valid leasehold interest in, all real property and other Property material to the conduct of its business except where the failure to have such title or interests would not reasonably be expected to have a Material Adverse Effect. None of the Pledged Capital Stock is subject to any Lien except for Permitted Liens.

3.9 Intellectual Property. As of the Petition Date, except as would not reasonably be expected to result in a Material Adverse Effect, to the knowledge of Parent and the Borrower, (i) each of the Loan Parties owns, or has a valid license to use, all Intellectual Property necessary for the conduct of its business as currently conducted ("Company Intellectual Property"); (ii) no claim has been asserted in writing and is pending by any Person challenging or questioning the use of any Company Intellectual Property or the validity or effectiveness of any Company Intellectual Property, nor does Parent or the Borrower know of any valid basis for any such claim; and (iii) the use of Company Intellectual Property by the Loan Parties does not infringe on the Intellectual Property rights of any Person.

3.10 Taxes. As of the Petition Date, each of the Loan Parties has filed or caused to be filed all income and all other material tax returns that are required to be filed and has paid all income and all other material Taxes, assessments, fees and other governmental charges levied or imposed upon it or its properties, income or assets due and payable by it (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the applicable Loan Party, as the case may be) except, in each case, where the failure to do so would not reasonably be expected to have a Material Adverse Effect. To the knowledge of Parent and the Borrower, no material written claim has been asserted with respect to any Taxes (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the applicable Loan Party, as the case may be, or the payment of which are stayed by the Chapter 11 Cases). No Loan Party is a party to any tax sharing, tax allocation or other similar agreement relating to taxes. No Loan Party has made an election pursuant to Section 965(h) of the Code.

3.11 Federal Regulations. No part of the proceeds of any Loans will be used by any Loan Party for “purchasing” or “carrying” any “margin stock” within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect or for any purpose that violates the provisions of the Regulations of the Board. On the Closing Date, no Loan Party owns any “margin stock”.

3.12 ERISA. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) no ERISA Event has occurred, and (ii) the present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Single Employer Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Single Employer Plan allocable to such accrued benefits by a material amount.

3.13 Investment Company Act. No Loan Party is an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

3.14 Subsidiaries. (a) The Subsidiaries listed on Schedule 3.14(a) constitute all the direct and indirect Subsidiaries of Holdings as of the Closing Date. Schedule 3.14(a) sets forth as of the Closing Date the exact legal name (as reflected on the certificate of incorporation (or formation)) and jurisdiction of incorporation (or formation) of each Subsidiary of Parent and, as to each such Subsidiary, the percentage and number of each class of Capital Stock of such Subsidiary owned by Parent and its Subsidiaries.

(a) As of the Closing Date, except as set forth on Schedule 3.14(b), there are no outstanding subscriptions, options, warrants, calls or similar rights (other than stock options granted to employees, directors, managers and consultants and directors’ qualifying shares) relating to any Capital Stock of any Loan Party.

3.15 Purpose of Loans. The proceeds of the Loans will be used in accordance in all material respects with the terms of the Bankruptcy Court DIP Order, the Loan Documents and the Budget (subject to the Permitted Variance), including, without limitation: (i) to pay

Professional Fees and amounts due to the Ad Hoc Group Advisors and the Agents hereunder and professional fees and expenses (including legal, financial advisor, appraisal and valuation-related fees and expenses) incurred by the Ad Hoc Group Advisors and the Agents, including those incurred in connection with the preparation, negotiation, documentation and court approval of the transactions contemplated hereby and (ii) to provide working capital, and for other general corporate purposes of the Loan Parties, to fund intercompany advances to Excluded Subsidiaries to the extent permitted hereunder, and to pay administration costs of the Chapter 11 Cases and claims or amounts approved by the Bankruptcy Court.

3.16 Environmental Matters. Other than exceptions to any of the following that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) the Loan Parties (i) are in compliance with all applicable Environmental Laws; (ii) hold all Environmental Permits required for any of their current operations or for any property owned, leased, or otherwise operated by any of them; and (iii) are in compliance with all of their Environmental Permits;

(b) to the knowledge of any Loan Party, Hazardous Materials are not present at, on, under or in any real property now or formerly owned, leased or operated by any Loan Party, or, to the knowledge of any Loan Party, at any other location (including, without limitation, any location to which Hazardous Materials have been sent by any Loan Party for re-use or recycling or for treatment, storage, or disposal) which would reasonably be expected to (i) give rise to the imposition of Environmental Liabilities on any Loan Party, (ii) materially interfere with any Loan Party's continued operations, or (iii) materially impair the fair saleable value of any real property owned or leased by any Loan Party;

(c) there is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) pursuant to any Environmental Law to which any Loan Party is named as a party that is pending or, to the knowledge of any Loan Party, threatened in writing;

(d) none of the Loan Parties has received any written request for information, or been notified in writing that it is a potentially responsible party under or relating to the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law;

(e) no Loan Party has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with Environmental Law or Environmental Liability; and

(f) no Loan Party has assumed or retained by contract any Environmental Liability.

3.17 Accuracy of Information, etc. No written statement or written information (other than projections and other forward-looking information and information of a general economic nature or general industry nature) contained in this Agreement, any other Loan Document or any other document, certificate or written statement furnished to the Agents or the



Lenders or any of them, by or at the direction and on behalf of any Loan Party for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, taken as a whole with all such other written statements, written information, documents and certificates, contained as of the date such written statement, written information, document or certificate was so dated or certified, any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were delivered, contained herein or therein not materially misleading (after giving effect to all written updates thereto delivered by or on behalf of any Loan Party).

3.18 Security. The provisions of the Interim DIP Order, the Final DIP Order and the Canadian Court DIP Recognition Order, as applicable, are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest (subject, in the case of any Collateral, to Liens permitted by Section 6.3) on all right, title and interest of the respective Loan Parties in the Collateral described therein (with such priority as provided for in the Bankruptcy Court DIP Order or, with respect to the Canadian Guarantor, in the Canadian Court DIP Recognition Order). Except for the Interim DIP Order, the Final DIP Order and the Canadian Court DIP Recognition Order, as applicable, no filing or other action will be necessary to perfect the Liens on any Collateral under the Laws of the United States of America.

3.19 Budget and Financial Plan. The Budget was prepared in good faith based on assumptions believed by the Loan Parties to be reasonable at the time made and upon information believed by the management of the Borrower to have been accurate based upon the information available to the management of the Borrower at the time such Budget was furnished to the Administrative Agent. On and after the delivery of any Variance Report in accordance with this Agreement, such Variance Report shall be complete and correct in all material respects and fairly represent in all material respects the matters set forth therein for the period covered thereby.

3.20 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) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the “Act”).

3.21 Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance in all material respects by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, and the Borrower and its Subsidiaries, and to the knowledge of the Borrower, its directors, officers, employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower or any of its Subsidiaries or (b) to the knowledge of the Borrower, any director, officer, employee or agent of the Borrower or any of its Subsidiaries that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

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

3.23 Canadian Welfare and Pension Plans. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) each Loan Party has adopted all Canadian Welfare Plans required pursuant to applicable Requirements of Law and each of such plans has been maintained and each Loan Party is in compliance with such laws in all material respects including, without limitation, all requirements relating to employee participation, funding, investment of funds, benefits and transactions with the Loan Parties and persons related to them, (ii) no Loan Party has a material contingent liability with respect to any post-retirement benefit under a Canadian Welfare Plan, (iii) with respect to Canadian Pension Plans: (a) no Canadian Pension Termination Event has occurred and no steps have been taken to terminate any Canadian Pension Plan (wholly or in part) which could result in any Loan Party being required to make a material additional contribution to any Canadian Pension Plan, (b) no contribution failure has occurred with respect to any Canadian Pension Plan sufficient to give rise to a lien or charge under any applicable pension benefits laws of any other jurisdiction (for certainty, not including payments in respect of contributions payable but not yet due), and (c) no condition exists and no event or transaction has occurred with respect to any Canadian Pension Plan which is reasonably likely to result in any Loan Party incurring any material liability, fine or penalty, (iv) each Canadian Pension Plan is in compliance (other than immaterial non-compliance) with all applicable pension benefits and tax laws, (v) all contributions (other than immaterial amounts) (including employee contributions made by authorized payroll deductions or other withholdings) required to be made to the appropriate funding agency in accordance with all applicable Requirements of Law (other than immaterial non-compliance) and the terms of each such Canadian Pension Plan have been made in accordance with all applicable Requirements of Law (other than immaterial non-compliance) and the terms of such Canadian Pension Plan (other than immaterial non-compliance), (vi) all liabilities under each Canadian Pension Plan are funded in accordance with the terms of the respective Canadian Pension Plans, the requirements of applicable pension benefits laws and of applicable regulatory authorities (other than immaterial non-compliance), (vii) no event has occurred and no conditions exist with respect to any Canadian Pension Plan that has resulted or could reasonably be expected to result in any such Canadian Pension Plan having its registration revoked or refused by any administration of any relevant pension benefits regulatory authority or being required to pay any taxes (other than taxes the amounts of which are immaterial) or penalties under any applicable pension benefits or tax laws and (viii) no Loan Party contributes to, sponsors or maintains, or has in the past 5 years contributed to, sponsored or maintained, a Canadian Defined Benefit Pension Plan.

3.24 Canadian Anti-Corruption and Canadian Anti-Money Laundering. The Canadian Guarantor has adopted and maintains adequate procedures designed to ensure that it is in compliance in all material respects with all Canadian Anti-Money Laundering Legislation and Canadian Anti-Corruption Laws.

#### SECTION 4. CONDITIONS PRECEDENT

4.1 Conditions to Closing Date and the Initial Extension of Credit. The obligations of each Lender to make Loans hereunder on the Closing Date are subject to the satisfaction of the following conditions on the Closing Date:

(a) Loan Documents. The Administrative Agent shall have received (i) this Agreement, executed and delivered by a duly authorized officer of Parent and the Borrower, (ii) an executed signature page from each Lender party to this Agreement on the Closing Date and (iii) executed copies of the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement;

(b) Closing Certificate. The Administrative Agent shall have received a certificate of each Loan Party, dated the Closing Date, substantially in the form of Exhibit B hereto, with appropriate insertions and attachments;

(c) Other Certifications. The Administrative Agent shall have received the following:

(i) a copy of the charter or other similar organizational document of each Loan Party and each amendment thereto, certified (as of a date reasonably near the date of the initial extension of credit) as being a true and correct copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized (or, with respect to the Canadian Guarantor, by a Responsible Officer) (other than with respect to General Nutrition Investment Company and GNC Canada Holdings, Inc.);

(ii) a copy of a certificate of the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized, dated reasonably near the date of the initial extension of credit, listing the charter or other similar organizational document of such Loan Party and each amendment thereto on file in such office and, if available, certifying that (A) such amendments are the only amendments to such Person's charter on file in such office and (B) such Person is duly organized and (to the extent such certificate exists in the relevant jurisdiction) in good standing or full force and effect under the laws of such jurisdiction (other than with respect to General Nutrition Investment Company, GNC Canada Holdings, Inc. and the Canadian Guarantor); and

(iii) a certificate of a duly authorized officer or director of each Loan Party, certifying (i) that the 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 the Loan Documents; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents;

(d) Filings, Registrations, Recordings and Searches. Each UCC and PPSA financing statement required by the Security Documents or under law to be filed, registered or recorded in order to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Permitted Liens), shall have been filed, registered or recorded

or shall have been delivered to the Administrative Agent in proper form for filing, registration or recordation;

(e) “Know-Your-Customer”. The Loan Parties shall have provided or caused to be provided the documentation and other information to the Administrative Agent required by United States and Canadian regulatory authorities under applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and Canadian Anti-Money Laundering Legislation, in each case, at least two Business Days prior to the Closing Date, to the extent reasonably requested in writing at least five Business Days prior to the Closing Date;

(f) Budget. The Administrative Agent shall have received the initial Budget, a monthly forecast for the period through the Maturity Date and an opening pro forma balance sheet for the Loan Parties;

(g) Commencement of Chapter 11 Cases. The Chapter 11 Cases shall have been commenced and all of the pleadings related to the “first day orders” and “second day orders” entered by the Bankruptcy Court at the time of the commencement of the Chapter 11 Cases and prior to the Interim DIP Order shall be in form and substance reasonably satisfactory to the Required Lenders;

(h) Commencement of Recognition Proceedings. The Recognition Proceedings shall have been commenced;

(i) Restructuring Support Agreement. Receipt of a Restructuring Support Agreement;

(j) Interim DIP Order. The Interim DIP Order, substantially in the form of Exhibit J hereto, shall have been entered by the Bankruptcy Court within three (3) Business Days after the Petition Date and the Administrative Agent shall have received a true and complete copy of such order, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Lenders and such order shall not be subject to a stay pending appeal or motion for leave to appeal or other proceeding to set aside any such order or the challenge to the relief provided for in such order, except as consented to by the Required Lenders;

(k) Cash Management Order. An order entered by the Bankruptcy Court pertaining to the Loan Parties’ cash management system (“Cash Management Order”) and all motions and other documents filed with the Bankruptcy Court prior to the Closing Date in connection therewith, shall be in form and substance reasonably satisfactory to the Required Lenders;

(l) No Appointment of Trustee. No trustee or other disinterested person with expanded powers pursuant to Section 1104(c) of the Bankruptcy Code shall have been appointed or designated in any of the Chapter 11 Cases, and no motion shall be pending in the Bankruptcy Court seeking any such relief;

(m) Adequate Protection. The Prepetition Term Loan Agent and the Prepetition Term Loan Lenders shall have each received adequate protection in respect of the Liens securing the Prepetition Term Loan Obligations as set forth in the Interim DIP Order;

(n) DIP Financing Protections. The Collateral Agent, for its benefit and the benefit of each Lender, shall have been granted a perfected, valid, enforceable Lien on, and security interest in, the Collateral, in addition to the DIP Superpriority Claim, on the terms and conditions set forth herein and in the Interim DIP Order;

(o) Prepetition ABL/FILO Amendment and Restatement. The Administrative Agent shall have received an executed copy of the Prepetition ABL/FILO Amendment and Restatement.

For purposes of determining whether the conditions specified in this Section 4.1 have been satisfied on the Closing Date, by executing this Agreement and/or funding any Loans hereunder, the Administrative Agent and each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Administrative Agent or such Lender, as the case may be.

4.2 Conditions to Each Extension of Credit and each Withdrawal Date. (x) The agreement of each Lender to make any extension of credit requested to be made by it hereunder on any date (including, without limitation, its initial extension of credit) (other than a conversion of Loans to the other Type, or a continuation of Eurodollar Loans) and (y) the Borrower's right to make a Withdrawal on any Withdrawal Date is subject to the satisfaction of, with respect to clause (x) above, all of the following conditions precedent, and with respect to clause (y) above, the conditions precedent in clauses (a) through (f) below:

(a) Representations and Warranties. Each of the representations and warranties made by any Loan Party in the Loan Documents shall be true and correct in all material respects on and as of such date as if made on and as of such date, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date (provided that, in each case, such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified by materiality or Material Adverse Effect).

(b) No Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the extensions of credit requested to be made on such date or the Withdrawal of proceeds on such date, as applicable.

(c) Borrowing Request. The Administrative Agent shall have received a Borrowing Request or a Withdrawal Request, as applicable.

(d) Compliance with Budget. The Administrative Agent and Ad Hoc Group Advisors shall have received all periodic updates required under the Budget pursuant to Section 5.1(B)(a) and any Variance Reports pursuant to Section 5.1(B)(b), in each case required to be

delivered pursuant to such applicable Section prior to the delivery of the applicable Borrowing Request or Withdrawal Request.

(e) [Reserved].

(f) Final DIP Order. With respect to the Final Loans, the Final DIP Order shall have been entered by the Bankruptcy Court and (i) the Administrative Agent shall have received a true and complete copy of such order, (ii) such order shall be in form and substance satisfactory to the Required Lenders in their sole discretion and (iii) such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated in a manner inconsistent with the terms of this Agreement absent the prior written consent of the Required Lenders.

(g) Costs and Expenses. All reasonable and documented out-of-pocket costs, fees, expenses (including, without limitation, reasonable and documented legal fees and expenses) set forth in the Loan Documents or otherwise required pursuant to Section 2.14 to be paid to the Agents and the Lenders (and to counsel of the Agents and the Ad Hoc Group Advisors) on or before such date shall have been paid; provided that, legal fees shall be limited to the reasonable and documented fees and disbursements of one counsel for the Administrative Agent (which shall be Dorsey & Whitney LLP) and one lead U.S. counsel for the Ad Hoc Group of Crossover Lenders (which shall be Milbank LLP), one lead Canadian counsel for the Ad Hoc Group of Crossover Lenders (which shall be Cassels Brock & Blackwell LLP) and, in addition, one local counsel in each appropriate jurisdiction), including reasonable and documented out-of-pocket costs and expenses of (a) the Agents administering the Facility and (b) preparing all documents and enforcing any and all obligations relating to the Facility.

Each Borrowing Request and each Withdrawal Request submitted by the Borrower shall be deemed to be a representation and warranty that the applicable conditions specified in Section 4.2 have been satisfied on and as of the date of the applicable Borrowing or Withdrawal Date, as applicable.

## SECTION 5. AFFIRMATIVE COVENANTS

Holdings, GNC Parent LLC, Parent and the Borrower each hereby jointly and severally agree that, so long as any Loan or other amount (excluding contingent reimbursement and indemnification obligations which are not due and payable) is owing to any Lender or any Agent hereunder, it shall and shall cause each of the Loan Parties that are Subsidiary Guarantors to:

5.1 Financial Statements, Budget.

(A) Financial Statements.

Furnish to the Administrative Agent for further delivery to each Lender:

(b) within 90 days after the end of each fiscal year of the Borrower, a copy of the audited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such year and the related audited consolidated statements of income and of cash flows for such year, setting forth in each case in comparative form the figures as of the end of and for

the previous year, all in reasonable detail and prepared in accordance with GAAP, by PricewaterhouseCoopers or other independent certified public accountants of nationally recognized standing;

(c) within 45 days after the end of each of the first three quarterly periods of each fiscal year of the Borrower, the unaudited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures as of the end of and for the corresponding period in the previous year, all in reasonable detail and certified by a Responsible Officer as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its consolidated Subsidiaries in accordance with GAAP (subject to normal year end audit adjustments and the absence of footnotes); and

(d) within 30 days after the end of each month (other than the third fiscal month of any fiscal quarter), a copy of the unaudited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such month and the related unaudited consolidated statements of income and of cash flows for such month.

(B) Budget and Other Information.

Furnish to the Administrative Agent for further delivery to each Lender:

(a) no later than Wednesday, July 22, 2020, and no later than the Wednesday of each fourth week thereafter, an updated 13-week statement of the Loan Parties' anticipated cash receipts and Budget Disbursements for the subsequent 13-week period (a "Proposed Budget"). Unless the Administrative Agent or Required Lenders notifies the Loan Parties in writing (which may be by email) on or before the Wednesday of the week following the delivery of any Proposed Budget that such Proposed Budget is not in form and substance reasonably satisfactory to the Required Lenders, such Proposed Budget shall on such Wednesday become the "Budget" for all purposes. If the Administrative Agent or Required Lenders deliver such notice that such Proposed Budget is not in form and substance reasonably satisfactory to the Required Lenders, the Budget then in effect shall continue as the then-effective Budget;

(b) on each Wednesday following the Petition Date, commencing on July 1, 2020, (prior to 11:59 p.m.) (x) a report (each, a "Variance Report") in form acceptable to the Required Lenders setting forth in reasonable detail the Borrower's actual aggregate cash receipts and aggregate cash Budget Disbursements for the relevant Variance Statement Period as compared to the projected, aggregate cash receipts and Budget Disbursements provided by the then-current Budget for the same period and setting forth (a) the actual cash receipts and Budget Disbursements for the relevant Variance Statement Period and available cash on hand as of the end of such period, (b) the variance in dollar amounts of the actual aggregate receipts and aggregate cash Budget Disbursements for the relevant Variance Statement Period from those reflected for the corresponding period in the Budget and (c) a description of the nature of any material positive or negative variance in certain line items to be reasonably agreed and (y) a statement by a Responsible Officer of Holdings as to whether or not a Budget Event shall have occurred for the relevant Budget Testing Period, if applicable;

(c) on Wednesday of each week (commencing after the first full week after the Petition Date), provide to the Administrative Agent and the Ad Hoc Group Advisors a report with respect to the immediately prior week setting forth sales and same-store sales (in Dollar amounts) broken down by (i) retail (domestic and franchise), (ii) e-commerce, (iii) U.S. retail segment, (iv) wholesale segment and (v) international segment (the “Sales Report”);

(d) within seven days after the start of each month commencing after the Petition Date, provide to the Administrative Agent and Ad Hoc Group Advisors the Sales Report with respect to the immediately prior month, accompanied by an analysis comparing the results in the Sales Report with the forecasted results that appeared in the Budget covering the corresponding period of time, for each month commencing June 2020;

(e) on Wednesday of each week (commencing after the first full week after the Petition Date), provide to the Administrative Agent and Ad Hoc Group Advisors a report setting forth, in Dollar amounts, sale proceeds and product margin achieved in the going-out-of-business sale with respect to the immediately prior week; and

(f) on Wednesday of each week (commencing after the first full week after the Petition Date), provide to the Administrative Agent and the Ad Hoc Group Advisors a report containing an update on negotiations with landlords, including a written summary of lease modifications and related savings.

The Borrower shall, to the extent requested by the Ad Hoc Group Advisors, weekly, at a time mutually agreed with the Administrative Agent that is promptly after the delivery of the information required pursuant to clause (B)(b) above, participate in a conference call for the Ad Hoc Group Advisors to discuss the financial condition and results of operations of the Loan Parties and the Budget and Variance Report. The Agents and the Lenders acknowledge that the content of such calls will include Nonpublic Information.

Notwithstanding the foregoing, the obligations in paragraphs (A)(a) and (A)(b) of this Section 5.1 may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any direct or indirect parent company of the Borrower that directly or indirectly owns all of the Capital Stock of the Borrower or (B) the Borrower’s (or any direct or indirect parent company thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; provided that, with respect to each of clauses (A) and (B), (i) to the extent such information relates to a parent of the Borrower and if requested by the Administrative Agent, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to the Borrower (or such parent), on the one hand, and the information relating to the Borrower and the Subsidiaries on a standalone basis, on the other hand (which consolidating information shall be certified by a Responsible Officer of the Borrower as fairly presenting such information unless such consolidating information is contained in the financial statements included in a Form 10-K or 10-Q filed with the SEC), and (ii) to the extent such information is in lieu of information required to be provided under Section 5.1(A)(a), the consolidated financial statements included in the materials provided pursuant to the foregoing clause (A) or (B) are accompanied by a report of PricewaterhouseCoopers or other independent public accountants of recognized national standing.



5.2 Certificates; Other Information. Furnish to the Administrative Agent in each case (other than in the case of clauses (c) and (h) below) for further delivery to each Lender or, in the case of clause (g) below, to the relevant Lender:

(a) [reserved];

(b) concurrently with the delivery of any financial statements pursuant to Sections 5.1(A)(a), 5.1(A)(b) and 5.1(A)(c), a certificate of a Responsible Officer stating that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate;

(c) [reserved];

(d) to the extent that the Borrower (or a direct or indirect parent company of Borrower) is not otherwise required to file reports on form 10-K or 10-Q with the SEC, within 45 days after the end of each of the first three fiscal quarters of the Borrower in each fiscal year, or within 90 days after the fourth fiscal quarter of the Borrower in each fiscal year, a narrative discussion and analysis of the financial condition and results of operations of the Borrower and its Subsidiaries for such fiscal quarter and for the period from the beginning of the then current fiscal year to the end of such fiscal quarter, as compared to the comparable periods of the previous year;

(e) promptly after the furnishing thereof, copies of any material notices received by any Loan Party from, or material statement or material report furnished to, any holder (which is not an Affiliate of Parent) of Material Debt and not otherwise required to be furnished to the Administrative Agent or the Lenders pursuant to any other clause of this Section 5.2 (other than any such notices, statements or reports of an administrative or ministerial nature including, for the avoidance of doubt, with respect to any “Borrowing Base Certificate” (as defined in the Prepetition ABL/FILO Amendment and Restatement) and other notices with respect to the calculation of the “Borrowing Base” (as defined in the Prepetition ABL/FILO Amendment and Restatement));

(f) within ten days after the same are sent, copies of all reports that Parent or the Borrower or any of its Restricted Subsidiaries sends to the holders of (x) any Material Debt (other than any such reports of an administrative or ministerial nature including, for the avoidance of doubt, any “Borrowing Base Certificate” (as defined in the Prepetition ABL/FILO Amendment and Restatement) and other reports with respect to the calculation of the “Borrowing Base” (as defined in the ABL Credit Agreement)) or (y) any class of its public equity securities and, within ten days after the same are filed, copies of all reports that Parent or the Borrower or any of its Restricted Subsidiaries may make to, or file with, the SEC (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be furnished to the Administrative Agent or the Lenders pursuant to any other clause of this Section 5.2; in each case only to the extent such reports are of a type customarily delivered by borrowers to lenders in syndicated loan financings;

(g) promptly, such additional financial and other information regarding the business, legal, financial or corporate affairs of any Loan Party or any Restricted Subsidiary as the Administrative Agent may from time to time reasonably request (on its own behalf or on behalf of any Lender); and

(h) promptly after the same are available and to the extent feasible and reasonably practicable not later than three (3) days prior to the filing thereof with the Bankruptcy Court or the Canadian Court by or on behalf of the Loan Parties, proposed forms of the Bankruptcy Court DIP Order, all other proposed orders and pleadings related to the Facility, any plan of reorganization or liquidation, and any disclosure statement related to such plan.

Concurrently with the delivery of any document or notice required to be delivered pursuant to this Section 5.2 (collectively, the “Borrower Materials”), the Borrower shall indicate in writing whether such document or notice contains Nonpublic Information (which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof if such Borrower Materials may be distributed to “public-side” Lenders). Parent and the Borrower and each Lender acknowledge that certain of the Lenders may be “public- side” Lenders (Lenders that do not wish to receive material non-public information with respect to Holdings, Parent, the Borrower, its Subsidiaries or their securities) and, if documents or notices required to be delivered pursuant to this Section 5.2 or otherwise are being distributed through IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform (the “Platform”), any document or notice that the Borrower has indicated contains Nonpublic Information shall not be posted on that portion of the Platform designated for such public-side Lenders. All Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “public side”. If the Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.2 contains Nonpublic Information, the Administrative Agent shall post such document or notice solely on that portion of the Platform designated for Lenders who do not wish to receive material nonpublic information with respect to Parent, the Borrower, its Subsidiaries and their securities.

5.3 Payment of Obligations. Subject to the Bankruptcy Court DIP Order, pay, discharge or otherwise satisfy before they become delinquent, as the case may be, all its material tax obligations, except (a) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of Parent, the Borrower or its Restricted Subsidiaries, as the case may be or (b) where the failure to pay, discharge or otherwise satisfy the same would not reasonably be expected to have a Material Adverse Effect.

5.4 Conduct of Business and Maintenance of Existence, etc. (a) (i) Preserve, renew and keep in full force and effect its corporate or other organizational existence and (ii) take all reasonable action to maintain all rights, privileges, franchises, permits and licenses necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by Section 6.4 and except (other than in the case of the preservation of existence of Parent and the Borrower) to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect; (b) to the extent not in conflict with this Agreement or the other Loan Documents, comply with all applicable Requirements of Law, except to the extent that failure to comply therewith would not, in the aggregate, reasonably be expected to have a

Material Adverse Effect; and (c) maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws.

5.5 Maintenance of Property; Insurance. (a) Except as would not reasonably be expected to have a Material Adverse Effect, keep all Property and systems necessary in its business (in the good faith belief of the Borrower) in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance (or, with respect to inventory and equipment at the retail store level, a program of self-insurance) on all its Property meeting the requirements of Section 5.3 of the Guarantee and Collateral Agreement and in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same geographic regions by companies of similar size engaged in the same or a similar business and as would be carried under similar circumstances; provided that such insurance shall not be required to cover ephedra products or other products for which insurance is not available or is not available on commercially reasonable terms.

5.6 Inspection of Property; Books and Records; Discussions. (a) Keep proper books of records in conformity with GAAP and all material applicable Requirements of Law of all material dealings and transactions in relation to its business activities and (b) permit representatives of the Administrative Agent, at reasonable business times and upon reasonable prior notice, to visit and inspect any of its properties and examine and, at the Borrower's expense, and make abstracts from any of its books and records as often as may reasonably be desired (subject to the immediately succeeding sentence) and to discuss the business, operations, properties and financial and other condition of Parent, the Borrower and its Restricted Subsidiaries with officers and employees of Parent, the Borrower and its Restricted Subsidiaries and with their respective independent certified public accountants (subject to such accountants' policies and procedures). Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing (in which case there shall be no limits on such visits, inspections and examinations) such visits, inspections and examinations shall be limited to two per fiscal year (and, (x) so long as no Event of Default has occurred and is continuing, only one time at the Borrower's expense and (y) following the occurrence and during the continuance of an Event of Default, not more than two times at the Borrower's expense); provided, however, that unless an Event of Default exists, (i) such inspections for environmental matters shall be limited to no more than once per fiscal year and (ii) at all times such inspections for environmental matters shall be limited to non-intrusive and non-invasive visual observations. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 5.6, none of Parent, the Borrower or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by any Requirement of Law or any binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

5.7 Notices. Promptly give notice to the Administrative Agent in each case for further delivery to the Collateral Agent and each Lender of:

(a) knowledge by the Borrower or Parent of the occurrence of any Default or Event of Default;

(b) any (i) default or event of default (or alleged default) under any Contractual Obligation (other than the Loan Documents) of any of the Loan Parties or (ii) litigation, investigation or proceeding which may exist at any time between any of the Loan Parties and any Governmental Authority, that in the case of either of clause (i) or (ii), would reasonably be expected to have a Material Adverse Effect;

(c) any litigation or proceeding against any of the Loan Parties (other than the Chapter 11 Cases and the Recognition Proceedings) that would reasonably be expected to have a Material Adverse Effect;

(d) the following events to the extent such events would reasonably be expected to have a Material Adverse Effect, as soon as possible and in any event within 15 days after the Borrower or any Commonly Controlled Entity knows or has reason to know thereof: (i) the occurrence of any ERISA Event or Canadian Pension Termination Event with respect to any Plan or Canadian Defined Benefit Plan, a failure to make any required contribution to a Single Employer Plan or Multiemployer Plan or a Canadian Pension Plan that would reasonably be expected to give rise to a Lien in favor of the PBGC, the Financial Services Commission of Ontario (or other like provincial entities) ("FSCO") or a Single Employer Plan or Multiemployer Plan or Canadian Pension Plan, the creation of any Lien in favor of any Person including the PBGC, the FSCO or a Single Employer Plan or Multiemployer Plan or Canadian Pension Plan or any withdrawal from, or the termination or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC or the FSCO or the Borrower or any Loan Party or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination or Insolvency of, any Plan or Canadian Defined Benefit Plan;

(e) any event, occurrence, or circumstance in which a material portion of the Collateral is damaged, destroyed, or otherwise impaired or adversely affected, to the extent any of the foregoing would reasonably be expected to have a Material Adverse Effect; and

(f) any other development or event that results in or would reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action (if any) Parent, the Borrower or the relevant Loan Party proposes to take with respect thereto.

5.8 Environmental Laws. (a) Comply in all respects with all applicable Environmental Laws, and obtain, maintain and comply with any and all Environmental Permits, except to the extent the failure to so comply with Environmental Laws or obtain, maintain or comply with Environmental Permits would not reasonably be expected to have a Material Adverse Effect.

(a) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other corrective actions required pursuant to Environmental Laws and promptly comply in all respects with all lawful orders and directives of all Governmental Authorities regarding any violation of or non-compliance with Environmental Laws and any release or threatened release of Hazardous Materials, except, in each case, to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect.

5.9 Opposition to Motions. Promptly oppose (i) any motion filed by any third party in the Bankruptcy Court or Canadian Court to (x) lift the stay on the Collateral (other than motions filed by the Administrative Agent or the Lenders) or (y) terminate the exclusive ability of the Loan Parties to file a plan of reorganization, or (ii) any other motion that, if granted, could reasonably be expected to have a material adverse effect on the Administrative Agent or the Lenders or any Collateral.

5.10 Additional Collateral, etc. Subject to any applicable limitation in any Intercreditor Agreement:

(a) [Reserved].

(b) [Reserved].

(c) With respect to any new Subsidiary created or acquired after the Closing Date (other than Excluded Subsidiaries) by the Borrower or a Subsidiary Guarantor promptly cause such new Subsidiary (A) to become a party to the Guarantee and Collateral Agreement and (B) to take such actions reasonably necessary to grant to the Collateral Agent for the benefit of the Secured Parties a perfected first priority security interest (subject to Permitted Liens) in the Collateral described in the Guarantee and Collateral Agreement with respect to such Subsidiary to the extent required under the Guarantee and Collateral Agreement, including, without limitation, the filing of UCC financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by applicable law.

(d) Notwithstanding the foregoing provisions of this Section 5.10 or any other provision hereof or of any other Loan Document, (i) the Borrower and Guarantors shall not be required to grant a security interest in any Excluded Assets, (ii) Liens required to be granted pursuant to this Section 5.10, and actions required to be taken, including to perfect such Liens, shall be subject to exceptions and limitations consistent with those set forth in the Security Documents on the Closing Date (or as created or amended after the Closing Date with the approval of the Borrower), (iii) other than with respect to (A) the Canadian Guarantor and (B) any other Foreign Subsidiary that becomes a Guarantor after the Closing Date, and in such instance, only with respect to the stock of such Foreign Subsidiary and subject to customary exceptions, limitations and restrictions imposed by local law, no Loan Party shall be required to take any actions outside the United States or under non-United States law to create or perfect any Liens on the Collateral (including, without limitation, any Intellectual Property registered or applied for registration in any jurisdiction outside the United States) and no Security Document shall be governed by the laws of any jurisdiction outside the United States, (iv) the Loan Parties shall not be required to deliver any landlord waivers, estoppels, collateral access agreements or bailee letters, (v) the Loan Parties shall not be required to deliver control agreements or

otherwise deliver perfection by “control” (within the meaning of the Uniform Commercial Code or the Securities Transfer Act (Ontario) (or equivalent in any other province or territory)) (including with respect to deposit accounts, securities accounts and commodities accounts),, (vi) notices shall not be required to be sent by any Loan Party or any Subsidiary or permitted to be sent by any Secured Party to account debtors or other contractual third parties unless an Event of Default has occurred and is continuing, (vii) no perfection of security interests (except to the extent perfected by the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order or through the filing of UCC and PPSA financing statements) shall be required with respect to letter of credit rights and (viii) in no event shall perfection be required with respect to any Collateral by means other than (A) the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order and (B) filings of UCC and (with respect to the Canadian Guarantor) PPSA financing statements in the office of the secretary of state or provincial ministry (or similar central filing office) of the jurisdiction of formation or organization of such Loan Party.

5.11 [Reserved].

5.12 Further Assurances. Upon the exercise by the Administrative Agent, the Collateral Agent or any Lender of any right or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, recording, qualification or authorization of any United States or Canadian Governmental Authority, the Borrower will execute and deliver, or will cause its Subsidiaries to execute and deliver all applications, certifications, instruments and other documents that such Agent or such Lender may be required to obtain from the Borrower or any of its Subsidiaries for such governmental consent, approval, recording, qualification or authorization, subject to the terms of Section 5.10 and other than with respect to any Excluded Assets.

5.13 Maintenance of Ratings. The Borrower shall use commercially reasonable efforts to obtain, within 45 days following the Closing Date, and if so obtained, will use commercially reasonable efforts to maintain thereafter a private rating (but not any specific rating) from either Moody’s or S&P for the Term Loans.

5.14 Fiscal Period. End the Fiscal Year of the Borrower on December 31 and maintain the Borrower’s method of determining fiscal quarters as such method is in effect on the Closing Date.

5.15 [Reserved].

5.16 Anti-Corruption and Sanctions. Use, and cause the respective directors, officers, employees and agents of the Borrower and its Subsidiaries to use, the proceeds of any Loan in a manner not (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto. Notwithstanding the foregoing, the covenants in this Section 5.16 shall not be made by nor apply to any Person that qualifies as a corporation that is registered or incorporated under the laws of Canada or any province thereof and that carries on business in whole or in part in Canada within

the meaning of Section 2 of the Foreign Extraterritorial Measures (United States) Order, 1992 passed under the Foreign Extraterritorial Measures Act (Canada) in so far as such covenants would result in a violation of or conflict with the Foreign Extraterritorial Measures Act (Canada) or any similar law.

## SECTION 6. NEGATIVE COVENANTS

Holdings, GNC Parent LLC, Parent and the Borrower each agrees that, so long as any Loan or other amount (excluding Obligations in respect of contingent reimbursement and indemnification obligations which are not due and payable) is owing to any Lender or any Agent hereunder, it shall not, and shall not permit any of the Loan Parties that are Subsidiary Guarantors to:

6.1 [Reserved].

6.2 Limitation on Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of the Loan Parties under (i) the Loan Documents, (ii) the Prepetition Loan Documents in effect on the Petition Date, (iii) the Prepetition ABL/FILO Amendment and Restatement, (iv) the LC Cash Collateral Agreement and the Existing Letters of Credit, and (v) the Carve Out;

(b) Indebtedness of any Loan Party to any other Loan Party or any Restricted Subsidiary, so long as any such Indebtedness owed to a non-Loan Party is subordinated to the Obligations pursuant to the Bankruptcy Court DIP Order;

(c) Indebtedness (including intercompany Indebtedness) and Guarantee Obligations outstanding on the Closing Date;

(d) Guarantee Obligations by Holdings, the Borrower or any of the Guarantors in respect of Indebtedness of the Borrower or any of the Guarantors otherwise permitted hereunder;

(e) Indebtedness in respect of Cash Management Services in the ordinary course of business and Indebtedness arising from the endorsement of instruments or other payment items for deposit and the honoring by a bank or other financial institution of instruments or other payments items drawn against insufficient funds;

(f) to the extent constituting Indebtedness, indemnification, deferred purchase price adjustments, earn-outs or similar obligations, in each case, incurred or assumed in connection with the acquisition of any business or assets or any Investment permitted to be acquired or made hereunder or any Disposition permitted hereunder;

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

(h) Indebtedness in respect of Hedge Agreements entered into in the ordinary course of business, and not for speculative purposes, to protect against exposure to interest rates, commodity prices or foreign exchange rates;

(i) Indebtedness representing deferred compensation or similar obligations to employees of the Borrower and the Guarantors incurred in the ordinary course of business;

(j) Indebtedness incurred by the Borrower or any of the Guarantors in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement- type obligations regarding workers compensation claims; provided that upon the drawing of such letter of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 90 days (or such longer period as may be agreed upon by the Administrative Agent) unless the amount or validity of such obligations are being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the Borrower or the Guarantors, as the case may be; provided further that such Indebtedness shall not exceed \$500,000 in the aggregate at any time outstanding;

(k) Indebtedness in respect of performance, bid, release, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of the Guarantors, in each case in the ordinary course of business;

(l) Indebtedness in respect of letters of credit issued for the account of the Borrower or any of the Guarantors to finance the purchase of inventory so long as (x) such Indebtedness is secured only by cash collateral and in accordance with the Budget and (y) the aggregate principal amount of such Indebtedness does not exceed \$1,500,000 at any one time outstanding;

(m) Indebtedness incurred in the ordinary course of business with respect to customer deposits and other unsecured current liabilities not the result of borrowing and not evidenced by any note or other evidence of Indebtedness;

(n) unsecured Indebtedness of the Borrower or any of the Guarantors owing to the Borrower or any other Guarantors to the extent expressly contemplated in the Budget and constituting an Investment permitted by Section 6.8;

(o) Indebtedness in an aggregate principal amount not to exceed \$625,000 at any one time outstanding; provided that no more than \$250,000 of such Indebtedness may be in respect of borrowed money; and

(p) to the extent constituting Indebtedness, all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in Section 6.2(a) through (o) above.

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness



denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus any undrawn commitments with respect thereto and the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing.

To the extent otherwise constituting Indebtedness, the accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall be deemed not to be Indebtedness for purposes of this Section 6.2. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

6.3 Limitation on Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

(a) Liens for Taxes, assessments or governmental charges that are not required to be paid pursuant to Section 5.3 that are not overdue for a period of more than 60 days or that are being contested in good faith by appropriate proceedings (provided that adequate reserves with respect to such proceedings are maintained on the books of the Borrower or its Subsidiaries, as the case may be, in conformity with GAAP);

(b) (i) carriers', warehousemen's, landlord's, mechanics', contractor's, materialmen's, repairmen's or other like Liens imposed by law or arising in the ordinary course of business which secure amounts that are not overdue for a period of more than 60 days or if more than 60 days overdue, are unfiled and no action has been taken to enforce such Lien, or that are being contested in good faith by appropriate proceedings (provided that adequate reserves with respect to such proceedings are maintained in the books of the Borrower or the applicable Subsidiary, as the case may be, in conformity with GAAP), (ii) Liens of customs and revenue authorities to secure payment of customs duties in connection with the importation of goods and (iii) Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or such other goods in the ordinary course of business;

(c) subject to the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order (i) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations

of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to any Loan Party or any Subsidiary;

(d) deposits by or on behalf of any Loan Party or any of its Subsidiaries to secure the performance of bids, trade contracts and governmental contracts (other than Indebtedness for borrowed money), leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(e) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and title defects that, in the aggregate, do not materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries taken as a whole;

(f) Liens in existence on the Closing Date and Replacement Liens in respect thereof;

(g) Subject to the Bankruptcy Court DIP Order, Liens created pursuant to (i) the Loan Documents, (ii) the Prepetition Loan Documents in effect on the Petition Date, (iii) the Prepetition ABL/FILO Amendment and Restatement, (iv) the LC Cash Collateral Agreement and the Existing Letters of Credit, and (v) the Carve Out;

(h) any interest or title of a lessor or sublessor under any lease or sublease or real property license or sub-license entered into by the Borrower or any Guarantor in the ordinary course of its business and covering only the assets so leased, subleased, licensed or sub-licensed and any Liens on such lessor's, sublessor's, licensee's or sub-licensee's interest or title;

(i) Liens in connection with attachments or judgments or orders in circumstances not constituting an Event of Default under Section 7.1(f);

(j) Liens existing on property at the time of its acquisition or existing on the property of a Person which becomes a Subsidiary of the Borrower after the Closing Date; provided that (i) such Liens existed at the time such property was acquired or such Person became a Subsidiary of the Borrower, (ii) such Liens were not granted in connection with or in contemplation of the applicable acquisition or Investment, (iii) any Indebtedness secured thereby is permitted by Section 6.2 and (iv) such Liens are not expanded to cover additional Property (other than proceeds and products thereof); and Replacement Liens in respect thereof;

(k) Liens consistent with those arising by operation of law consisting of customary and ordinary course rights of setoff upon deposits of cash and Cash Equivalents in favor of banks or other financial or depository institutions in the ordinary course of business;

(l) Liens on insurance policies and the proceeds thereof securing insurance premium financing permitted hereunder;

(m) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Borrower or any Guarantor in the ordinary course of business;

(n) (i) Liens of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on the items in the course of collection, (ii) Liens attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and not for speculative purposes and (iii) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to accounts and cash and Cash Equivalents on deposit in accounts maintained by the Borrower or any Guarantor, in each case under this clause (iii) granted in the ordinary course of business in favor of the banks or other financial or depositary institution with which such accounts are maintained, securing amounts owing to such Person with respect to Cash Management Services (including, without limitation, operating account arrangements and those involving pooled accounts and netting arrangements); provided that, in the case of this clause (iii), unless such Liens arise by operation of applicable law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness for borrowed money;

(o) non-exclusive licenses and sub-licenses of Intellectual Property granted by the Borrower or any of the Guarantors in the ordinary course of business (and, to the extent in existence on the Closing Date or granted by the Borrower or any of the Guarantors in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States and Canada);

(p) UCC or PPSA financing statements or similar public filings that are filed as a precautionary measure in connection with operating leases or consignment of goods in the ordinary course of business;

(q) Liens on property purportedly rented to, or leased by, the Borrower or any of the Guarantors pursuant to a Sale and Leaseback Transaction; provided, that (i) such Sale and Leaseback Transaction is permitted by Section 6.12, (ii) such Liens do not encumber any other property of the Borrower or the Guarantors, and (iii) such Liens secure only the Attributable Indebtedness incurred in connection with such Sale and Leaseback Transaction;

(r) Liens on the assets of Foreign Subsidiaries that secure only Indebtedness permitted pursuant to Section 6.2 and related obligations of Foreign Subsidiaries;

(s) good faith earnest money deposits made in connection with an Investment (other than Investments under Section 6.8(r)) or letter of intent or purchase agreement permitted hereunder;

(t) Liens in favor of a Loan Party or a Restricted Subsidiary securing intercompany Indebtedness permitted hereunder; provided, that such intercompany Indebtedness, to the extent owed from a Loan Party to a non-Loan Party, shall be subordinated to the Obligations pursuant to the Bankruptcy Court DIP Order;

(u) Liens (i) on an Investment permitted pursuant to Section 6.8 to be applied against the purchase price for such Investment or (ii) consisting of an agreement to Dispose of

any property in a Disposition permitted under Section 6.5, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(v) Liens deemed to exist in connection with Investments in repurchase agreements under Section 6.8; provided such Liens do not extend to any assets other than those assets that are the subject of such repurchase agreement;

(w) Liens that are customary contractual rights of setoff relating to purchase orders and other agreements entered into with customers of the Borrower or any of the Subsidiaries in the ordinary course of business;

(x) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of the Guarantors are located;

(y) Liens or rights of setoff against credit balances of the Borrower or any of the Guarantors with credit card issuers or credit card processors or amounts owing by such credit card issuers or credit card processors to the Borrower or any of the Guarantors in the ordinary course of business, to secure the obligations of the Borrower or any of the Guarantors to such credit card issuers and credit card processors as a result of fees and chargebacks;

(z) Liens with respect to Capital Stock in joint ventures that arise pursuant to the applicable underlying joint venture agreement;

(aa) Liens securing obligations in an amount not to exceed \$625,000 at any one time outstanding; provided that no more than \$250,000 of such secured obligations may be in respect of Indebtedness for borrowed money; and

(bb) Liens in favor of the Prepetition Lenders and Prepetition Agents granted pursuant to the Bankruptcy Court DIP Orders.

6.4 Limitation on Fundamental Changes. Consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself, or Dispose of all or substantially all of its Property or business, except that so long as no approval of the Bankruptcy Court is required (or such approval is required and shall have been received):

(a) any Subsidiary of the Borrower may be merged or consolidated with or into the Borrower (provided that the Borrower shall be the continuing or surviving entity) and any Subsidiary of the Borrower may be merged, consolidated or amalgamated with or into any Guarantor (provided that if a Guarantor is party thereto (i) a Guarantor shall be the continuing, surviving or resulting entity or (ii) simultaneously with such transaction, the continuing, surviving or resulting entity shall become a Guarantor and the Borrower shall comply with Section 5.10 in connection therewith);

(b) any Subsidiary of the Borrower may Dispose of all or substantially all of its Property or business (i) (upon liquidation, windup, dissolution or otherwise) to (x) if such Subsidiary is a Loan Party, the Borrower or any other Loan Party and (y) if such Subsidiary is

not a Loan Party, the Borrower or any Subsidiary or (ii) pursuant to a Disposition permitted by Section 6.5;

(c) any Foreign Subsidiary may (i) be merged or consolidated or amalgamated with or into any other Foreign Subsidiary, or (ii) Dispose of any or all of its assets to (upon voluntary liquidation, windup, dissolution or otherwise) any other Foreign Subsidiary;

(d) any merger, amalgamation or consolidation the sole purpose of which is to reincorporate or reorganize a Loan Party or Subsidiary in another jurisdiction; provided that (x) in the case of any such merger, amalgamation or consolidation involving a Loan Party, a Loan Party is the surviving, continuing or resulting Person (or simultaneously with such transaction, the continuing, surviving or resulting entity shall become a Subsidiary Guarantor) and the Borrower shall comply with Section 5.10 in connection therewith and (y) in the case of any such merger or consolidation involving a Loan Party or Subsidiary that is domiciled within the United States (or in the case of the Canadian Guarantor, Canada), the continuing, surviving or resulting entity shall be domiciled within the United States (or in the case of the Canadian Guarantor, Canada);

(e) any Investment permitted by Section 6.8 may be structured as a merger, consolidation or amalgamation; provided that in the case of any such merger, consolidation or amalgamation of a Loan Party, the surviving, continuing or resulting legal entity of such merger, consolidation or amalgamation is a Loan Party (or simultaneously with such transaction, the continuing, surviving or resulting entity shall become a Subsidiary Guarantor) and the Borrower shall comply with Section 5.10 in connection therewith; and

(f) any Loan Party (other than the Borrower) may dissolve, liquidate or wind up its affairs at any time if such dissolution, liquidation or winding up would not reasonably be expected to have a Material Adverse Effect.

6.5 Limitation on Disposition of Property. Dispose of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or, in the case of any Restricted Subsidiary of the Borrower, issue or sell any shares of such Restricted Subsidiary's Capital Stock to any Person, except:

(a) the Disposition of obsolete or worn out property in the ordinary course of business;

(b) the sale of inventory and equipment held for sale in the ordinary course of business or pursuant to a "going out of business" sale;

(c) Dispositions permitted by Section 6.4 (other than Section 6.4(b)(ii));

(d) the sale or issuance of any Loan Party's or any Subsidiary's Capital Stock to the Borrower or any other Loan Party or the sale or issuance of any Excluded Subsidiary's Capital Stock to another Excluded Subsidiary; provided that any Guarantor's ownership interest therein is not diluted;

- (e) the sale of assets in connection with the closure of stores and the Disposition of franchises and stores (and related assets) in the ordinary course of business or pursuant to a “going out of business sale”;
- (f) the Disposition of cash or Cash Equivalents;
- (g) (i) the non-exclusive license or sub-license of Intellectual Property in the ordinary course of business (and, to the extent in existence on the Closing Date or granted in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States and Canada) and (ii) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any immaterial Intellectual Property;
- (h) the lease, sublease, license or sub-license of property which is described in Section 6.3(h);
- (i) the Disposition of surplus or other property no longer used or useful in the business of the Borrower and its Subsidiaries in the ordinary course of business or pursuant to a “going out of business sale”;
- (j) the Disposition of other assets having a fair market value not to exceed \$250,000 in the aggregate in any fiscal year;
- (k) the Disposition of assets subject to or in connection with any Recovery Event;
- (l) Dispositions consisting of Restricted Payments permitted by Section 6.6;
- (m) Dispositions consisting of Investments permitted by Section 6.8;
- (n) Dispositions consisting of Liens permitted by Section 6.3;
- (o) Dispositions of assets pursuant to Sale and Leaseback Transactions permitted pursuant to Section 6.12;
- (p) Dispositions of property to a Loan Party or a Subsidiary; provided that if the transferor of such property is a Loan Party the transferee thereof must be a Loan Party;
- (q) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;
- (r) Dispositions of accounts receivable in connection with the collection or compromise thereof in the ordinary course of business (and not for financing purposes); and
- (s) the unwinding of any Hedge Agreement.

6.6 Limitation on Restricted Payments. Declare or pay any dividend on (other than dividends payable solely in Qualified Capital Stock of the Person making the dividend so long as the ownership interest of any Guarantor in such Person is not diluted), or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Loan Party, whether now or hereafter outstanding, or make any other distribution in respect thereof, whether in cash or property (collectively, “Restricted Payments”), except that:

(a) any Loan Party may make Restricted Payments to any other Loan Party;

(b) to the extent provided for in the Budget, any Loan Party may make Restricted Payments;

(c) the Borrower may pay dividends to permit Parent or any direct or indirect parent company of Parent to (i) pay operating costs and expenses and other corporate overhead costs and expenses (including, without limitation, directors’ fees and expenses and administrative, legal, accounting, filings and similar expenses and salary, bonus and other benefits payable to officers and employees of Parent or any direct or indirect parent company of Parent), in each case to the extent such costs, expenses, fees, salaries, bonuses and benefits are attributable to the ownership or operations of Parent, the Borrower and the Subsidiaries, are reasonable and incurred in the ordinary course of business, (ii) [reserved], (iii) pay taxes which are not determined by reference to income, but which are imposed on Parent or any direct or indirect parent company of Parent as a result of Parent’s or such parent company’s ownership of the equity of Parent or the Borrower or any direct or indirect parent company of Parent, as the case may be, but only if and to the extent that Parent or such parent company has not received cash or other property in connection with the events or transactions giving rise to such taxes, (iv) [reserved], (v) pay franchise taxes and other fees, taxes and expenses required to maintain its corporate existence, (vi) finance any Investment permitted to be made hereunder (so long as (A) such dividends are made substantially concurrently with the closing of such Investment and (B) immediately following the closing thereof (1) all property acquired (whether assets or Capital Stock) shall be contributed to the Borrower or a Subsidiary Guarantor or (2) the Person formed or acquired shall be merged into the Borrower or a Subsidiary Guarantor in order to consummate such Investment (and subject to the provisions of Sections 5.10 and 6.4)), (vii) pay costs, fees and expenses related to any unsuccessful equity or debt offering permitted by this Agreement (other than any such offering intended to benefit Subsidiaries of any such parent company other than the Borrower and its Subsidiaries) and (viii) make payments permitted under Section 6.11 (but only to the extent such payments have not been and are not expected to be made directly by the Borrower or a Subsidiary Guarantor); provided that dividends paid pursuant to this Section 6.6(c) (other than dividends paid pursuant to clause (ii), (iii), or (iv) above) are used by Parent or any direct or indirect parent holding company of Parent for such purpose within 60 days of the receipt of such dividends or are refunded to the Borrower;

(d) any non-Wholly Owned Subsidiary of the Borrower may declare and pay cash dividends to its equity holders generally so long as the Borrower or its respective Subsidiary which owns the equity interests in the Subsidiary paying such dividends receives at least its proportionate share thereof (based upon the relative holding of the equity interests in the Subsidiary paying such dividends);

(e) repurchases of Capital Stock in any Loan Party deemed to occur upon exercise of stock options or warrants or similar rights if such Capital Stock represents a portion of the exercise price of such options or warrants or similar rights (as long as the Loan Parties make no payment in connection therewith that is not otherwise permitted hereunder);

(f) GNC Puerto Rico, LLC may make distributions to GNC Live Well Ireland in an aggregate amount not to exceed \$300,000 per fiscal year;

(g) to the extent constituting Restricted Payments, the Borrower and the Subsidiaries may enter into and consummate transactions permitted by Section 6.4 and Section 6.8 (other than Section 6.8(p)); and

(h) the Borrower or any of the Restricted Subsidiaries may pay cash in lieu of fractional Capital Stock in connection with any dividend, split or combination thereof.

6.7 [Reserved].

6.8 Limitation on Investments. Make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "Investments"), except:

(a) extensions of trade credit or the holding of receivables in the ordinary course of business and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(b) investments in cash and items that were Cash Equivalents at the time such Investment was made;

(c) Investments arising in connection with the incurrence of Indebtedness permitted by Section 6.2(b), 6.2(c) and 6.2(d), to the extent constituting intercompany Indebtedness;

(d) loans and advances to employees, officers, directors, managers and consultants of Parent (or any direct or indirect parent company thereof to the extent relating to the business of Parent, the Borrower and the Subsidiaries), the Borrower or any Subsidiaries of the Borrower in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate principal amount not to exceed \$100,000 at any one time outstanding;

(e) Investments (other than those relating to the incurrence of Indebtedness permitted by Section 6.8(c)) by any Loan Party in any Person that, prior to or concurrently with such Investment, is or becomes a Loan Party (including any such Investment consisting of the contribution by any Loan Party of Capital Stock held by such Loan Party in any other Person (including a Loan Party));



(f) Investments consisting of notes payable by franchisees to any Loan Party in an aggregate principal amount not to exceed \$1,000,000 at any one time outstanding;

(g) Investments received in connection with the bankruptcy or reorganization of, insolvency or liquidation of, or settlement of claims against and delinquent accounts of and disputes with, franchisees, customers and suppliers, or as security for any such claims, accounts and disputes, or upon the foreclosure with respect to any secured Investment;

(h) advances of payroll payments to employees, officers, directors and managers of Parent, the Borrower and the Subsidiaries in the ordinary course of business;

(i) Investments by any Loan Party in Excluded Subsidiaries and joint ventures in an aggregate amount not to exceed \$100,000 at any time outstanding;

(j) Investments by any Loan Party in any Person that is a Foreign Subsidiary in an aggregate amount not to exceed \$250,000;

(k) [reserved];

(l) Investments consisting of promissory notes and other deferred payment obligations and noncash consideration delivered as the purchase consideration for a Disposition permitted by Section 6.5;

(m) Investments existing on the Closing Date and any modification, replacement, renewal, reinvestment or extension thereof (provided that the amount of the original Investment is not increased except by the terms of such original Investment or as otherwise permitted by this Section 6.8);

(n) any Loan Party may endorse negotiable instruments and other payment items for collection or deposit in the ordinary course of business or make lease, utility and other similar deposits in the ordinary course of business;

(o) Investments consisting of obligations under Hedge Agreements permitted by Section 6.2;

(p) Investments consisting of Restricted Payments permitted by Section 6.6 (other than Section 6.6(e));

(q) Investments of any Person that becomes (or is merged or consolidated or amalgamated with) a Subsidiary of the Borrower on or after the Closing Date on the date such Person becomes (or is merged or consolidated or amalgamated with) a Subsidiary of the Borrower; provided that (i) such Investments exist at the time such Person becomes (or is merged or consolidated or amalgamated with) a Subsidiary, and (ii) such Investments are not made in anticipation or contemplation of such Person becoming (or merging or consolidating or amalgamated with) a Subsidiary;

(r) Investments consisting of good faith deposits made in accordance with Section 6.3(s);

(s) deposits made in the ordinary course of business consistent with past practices to secure the performance of leases or in connection with bidding on government contracts;

(t) advances in connection with purchases of goods or services in the ordinary course of business;

(u) Guarantee Obligations permitted under Section 6.2 and, to the extent not constituting Indebtedness, other Guarantee Obligations entered into in the ordinary course of business;

(v) Investments consisting of Liens permitted under Section 6.3;

(w) Investments consisting of transactions permitted under Section 6.4;

(x) Investments in assets useful in the business of the Borrower and its Restricted Subsidiaries made by the Borrower or any of its Restricted Subsidiaries with the proceeds of any Reinvestment Deferred Amount; provided that if the underlying Recovery Event was with respect to a Loan Party, then such Investment shall be consummated by the Borrower or a Subsidiary Guarantor;

(y) Investments by any Loan Party in any Foreign Subsidiary of such Loan Party to the extent each such Investment is made using assets received by such Loan Party as a distribution from a Foreign Subsidiary of such Loan Party; and

(z) Investments in an aggregate amount not to exceed \$250,000 at any time outstanding.

For purposes of covenant compliance, the amount of any Investment at any time shall be the amount actually invested (measured at the time made), without adjustment for subsequent changes in the value of such Investment, net of all Returns on such Investment up to the original amount of such Investment.

6.9 Prepayments of Indebtedness. (a) Make any payment of principal or interest or otherwise on account of any Prepetition Obligations or payables under the Prepetition Loan Documents, other than (i) payments made in compliance in all material respects with the Budget (subject to Permitted Variances), (ii) the Revolver Termination, (iii) letter of credit reimbursement payments pursuant to the LC Cash Collateral Agreement in connection with draws under the Existing Letters of Credit, (iv) payments agreed to in writing by the Required Lenders and (v) payments authorized and approved by the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, including adequate protection payments set forth therein or (b) amend or modify the terms of the Prepetition Loan Documents (other than amendments or modifications not materially adverse to the Agent or the Lenders or their rights and remedies under the Loan Documents or which would not have any material and adverse impact on the Collateral) unless consented to in writing by the Administrative Agent.

6.10 Limitation on Modifications of Organizational Documents. Amend, modify or otherwise change (pursuant to a waiver or otherwise), any of the terms of any

Organizational Document, other than any such amendment, modification or other change which does not adversely affect the Lenders in any material respect.

6.11 Limitation on Transactions with Affiliates. Enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than any Loan Party, any Restricted Subsidiary or any Person that becomes a Restricted Subsidiary as a result of such transaction) unless such transaction is otherwise permitted under this Agreement and upon fair and reasonable terms no less favorable to the Borrower and its Subsidiaries than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate. Notwithstanding the foregoing, the Borrower and its Subsidiaries may (a) [reserved], (b) enter into and consummate the transactions existing on the Closing Date and, to the extent exceeding \$500,000 in amount, listed on Schedule 6.11, (c) make Restricted Payments permitted pursuant to Section 6.6 and repayments and prepayments of Indebtedness permitted pursuant to Section 6.9, (d) make Investments permitted by Section 6.8, (e) [reserved], (f) enter into employment and severance arrangements with officers, directors, managers and employees of the Parent, the Borrower and the Subsidiaries and, to the extent relating to services performed for Parent, the Borrower and the Subsidiaries, pay director, officer and employee compensation (including, without limitation, bonuses) and other benefits (including, without limitation, retirement, health, stock option and other benefit plans) and indemnification and expense reimbursement arrangements; provided that any purchase of Capital Stock of Parent (or any direct or indirect holding company of Parent) in connection with the foregoing shall be subject to Section 6.6, and (g) license on a non-exclusive basis Intellectual Property in the ordinary course of business (and, to the extent in existence on the Closing Date or granted in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States and Canada) (1) on an arm's length basis to permit the commercial exploitation of such Intellectual Property between or among Affiliates of the Borrower and (2) to parent companies of the Parent in connection with their ownership of the Parent.

6.12 Limitation on Sales and Leasebacks. Enter into any arrangement with any Person providing for the leasing by any Loan Party of real or personal property which has been or is to be sold or transferred by such Loan Party to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of such Loan Party (a "Sale and Leaseback Transaction") unless (i) the sale of such property is made for cash consideration in an amount not less than the fair market value of such property, (ii) the Sale and Leaseback Transaction is permitted by Section 6.5 and is consummated within 180 days after the date on which such property is sold or transferred, (iii) any Liens arising in connection with its use of the property are permitted by Section 6.3(q), (iv) the Sale and Leaseback Transaction would be permitted under Section 6.2, assuming the Attributable Indebtedness with respect to the Sale and Leaseback Transaction constituted Indebtedness under Section 6.2.

6.13 [Reserved].

6.14 Limitation on Negative Pledge Clauses. Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of the Borrower or any of the

Guarantors to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations or, in the case of any guarantor, its obligations under the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement, other than (a) this Agreement and the other Loan Documents, the Prepetition Loan Documents in effect on the Petition Date, the Prepetition ABL/FILO Amendment and Restatement, the LC Cash Collateral Agreement and the Existing Letters of Credit, and the Carve Out, (b) customary provisions in joint venture agreements and similar agreements that restrict transfer of or liens on assets of, or equity interests in, joint ventures, (c) non-exclusive licenses or sub-licenses by any Loan Party of Intellectual Property in the ordinary course of business (and, to the extent in existence on the Closing Date or granted by any Loan Party in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States, Canada or Puerto Rico) (in which case any prohibition or limitation shall only be effective against the Intellectual Property subject thereto), (d) (x) prohibitions and limitations in effect on the Closing Date and (y) to the extent such prohibitions and limitations described in clause (x) are set forth in an agreement evidencing Indebtedness, prohibitions and limitations set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such prohibitions and limitations, (e) customary provisions in leases, subleases, licenses and sub-licenses that restrict the transfer thereof or the transfer of the assets subject thereto by the lessee, sublessee, licensee or sub-licensee, (f) prohibitions and limitations arising by operation of law, (g) customary restrictions that arise in connection with any Disposition permitted by Section 6.5 applicable pending such Disposition solely to the assets subject to such Disposition, (h) negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 6.2 but solely to the extent any negative pledge relates to the property financed by or the subject of such Indebtedness and the proceeds and products thereof (other than Indebtedness constituting any unsecured Debt) as long as such pledges and restrictions do not restrict or impair the ability of the Parent, the Borrower and the Restricted Subsidiaries to comply with their obligations under the Loan Documents, (i) customary provisions contained in an agreement restricting assignment of such agreement entered into in the ordinary course of business and (j) customary restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business.

6.15 Limitation on Restrictions on Restricted Subsidiary Distributions. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to (a) make Restricted Payments in respect of any Capital Stock of such Restricted Subsidiary held by, or pay or subordinate any Indebtedness owed to, Parent, the Borrower or any other Restricted Subsidiary, (b) make Investments in the Borrower or any other Restricted Subsidiary or (c) transfer any of its assets to the Borrower or any other Restricted Subsidiary, except in each case for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions existing under the Prepetition Loan Documents in effect on the Petition Date, the Prepetition ABL/FILO Amendment and Restatement, the LC Cash Collateral Agreement and the Existing Letters of Credit, and the Carve Out, (iii) any restrictions with respect to a Restricted Subsidiary imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Restricted Subsidiary, (iv)

customary net worth provisions contained in real property leases entered into by the Borrower or any of its Subsidiaries so long as such net worth provisions would not reasonably be expected to impair materially the ability of the Loan Parties to meet their ongoing obligations under this Agreement or any of the other Loan Documents, (v) any restriction with respect to Excluded Subsidiaries in connection with Indebtedness not prohibited hereunder, (vi) to the extent not otherwise permitted under this Section 6.15, agreements, restrictions and limitations described in clauses (a)-(j) of Section 6.14, (v) restrictions with respect to the transfer of any asset (or the interest in any Person) contained in an agreement that has been entered into in connection with the disposition of such asset (or interest in such Person) permitted hereunder and (vii) prohibitions and limitations arising by operation of law.

6.16 Limitation on Lines of Business. Enter into any business, either directly or through any Subsidiary, except for those businesses in which the Borrower and its Subsidiaries are engaged on the date of this Agreement or that are reasonably related or ancillary thereto or reasonable extensions thereof.

6.17 [Reserved].

6.18 Canadian Pension Plans. Canadian Guarantor shall not, without the consent of the Administrative Agent, maintain, administer, contribute or have any liability in respect of any Canadian Defined Benefit Plan (governed by the province of Ontario) or acquire an interest in any Person if such Person sponsors, maintains, administers or contributes to, or has any liability in respect of any Canadian Defined Benefit Plan (governed by the province of Ontario).

6.19 Use of Proceeds. No portion of the proceeds of the New Money Loans, the Collateral, or the Carve Out may be used:

(a) for any purpose that is prohibited under the Bankruptcy Code or the Bankruptcy Court DIP Order;

(b) to finance in any way: any contested matter, adversary proceeding, suit, arbitration, application, motion or other litigation of any type adverse to the interests of any or all of the Administrative Agent, the Lenders, the Prepetition Agents or the Prepetition Lenders or their respective rights and remedies under the Loan Documents, the Bankruptcy Court DIP Order, the Canadian Court DIP Recognition Order or the Prepetition Loan Documents;

(c) for the payment of fees, expenses, interest or principal under the Prepetition Loan Documents (other than permitted adequate protection payments);

(d) unless the Exit Conversion occurs, to make any distribution under a plan of reorganization confirmed in the Chapter 11 Cases that does not provide for the indefeasible payment of the Loans in full and in cash on the effective date of such plan; and

(e) to make any payment in excess of \$500,000 in the aggregate in settlement of any claim, action or proceeding before any court, arbitrator or other governmental body without the prior written consent of the Administrative Agent acting at the direction of the Required Lenders;

provided that, notwithstanding the foregoing, advisors to the official unsecured creditors' committee, if one is appointed, may investigate the liens granted pursuant to, or any claims under or causes of action with respect to, the Prepetition Loan Documents at an aggregate expense for such investigation not to exceed \$75,000, provided that no portion of such amount may be used to prosecute any claims.

Subject to the Restructuring Support Agreement, nothing herein shall in any way prejudice or prevent the Administrative Agent or the Lenders from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest.

6.20 Chapter 11 Modifications. Except as permitted pursuant to the terms of this Agreement and the Bankruptcy Court DIP Order or otherwise consented to by the Required Lenders, make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Bankruptcy Court DIP Orders.

6.21 Operating Account. Create, incur, assume or suffer to exist any Lien upon the Operating Account other than (i) the first priority Lien created in favor of the Secured Parties under the Loan Documents and (ii) rights of setoff and Liens arising as a matter of law, including bankers' Liens and other similar Liens.

6.22 Right of Subrogation. Assert any right of subrogation or contribution against any other Loan Party until all amounts under this Facility are paid in full in cash and the Commitments are terminated or upon an Exit Conversion.

Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, any disbursements, Indebtedness, Liens, Investments or other transactions restricted by this Section 6 shall nevertheless be permitted hereunder to the extent set forth with specificity in the Budget.

## SECTION 7. EVENTS OF DEFAULT

7.1 Events of Default. If any of the following events shall occur and be continuing:

(a) (i) The Borrower shall fail to pay any principal of any Loan when due in accordance with the terms hereof; or (ii) the Borrower shall fail to pay any interest on any Loan, or any Loan Party shall fail to pay any other amount payable hereunder or under any other Loan Document, within three Business Days after any such interest or other amount becomes due in accordance with the terms hereof or thereof; or

(b) Any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement required to be furnished by it at any time under this Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made or furnished (provided that, in each case such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified by materiality); or

(c) Any Loan Party shall default in the observance or performance of any agreement contained in clause (i) of Section 5.4(a) (with respect to Parent and the Borrower only), Section 5.7(a) or Section 6; or

(d) Any Loan Party shall default in the observance or performance of any covenant or other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Section), and such default shall continue unremedied for a period of fifteen (15) Business Days following delivery of written notice thereof to the Borrower by the Administrative Agent; or

(e) (i) Any Person shall engage in any “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan (other than any “prohibited transaction” for which a statutory or administrative exemption is available) that results in liability of the Borrower or any Commonly Controlled Entity, (ii) any ERISA Event shall occur, or (iii) any other similar event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (iii) above, such event or condition, together with all other such events or conditions, if any, would reasonably be expected to have a Material Adverse Effect; or

(f) One or more final judgments or decrees for the payment of money shall be entered against Parent, the Borrower or any of its Restricted Subsidiaries involving for Parent, the Borrower and its Restricted Subsidiaries taken as a whole a liability (not paid or fully covered by insurance as to which the relevant insurance company has not denied coverage in writing) of \$2,000,000 or more, and all such judgments or decrees shall not have been satisfied, vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or

(g) The Interim DIP Order, Interim DIP Recognition Order, and the Final DIP Order or Final DIP Recognition Order, as applicable, together with the Loan Documents shall cease to create a valid and perfected Lien with such priority required by this Agreement; or

(h) The guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason (other than by reason of the express release thereof pursuant to the provisions of the Loan Documents), to be in full force and effect or any Loan Party shall so assert in writing (other than by reason of the express release thereof pursuant to the provisions of the Loan Documents); or

(i) Any Change of Control shall occur; or

(j) The occurrence of a Canadian Pension Plan Termination Event, or any Lien arises (save for contribution amounts not yet due) in connection with any Canadian Pension Plan, that would reasonably be expected to have a Material Adverse Effect; or

(k) The proceeds of any Loan shall have been expended in a manner which is not in accordance in all material respects with the Budget (subject to Permitted Variances), absent the consent of the Required Lenders; or

(l) There occurs any Budget Event; or

(m) Any Loan Party shall file a motion in the Chapter 11 Cases without the express written consent of Required Lenders, to obtain additional financing from a party other than Lenders under Section 364(d) of the Bankruptcy Code that does not provide for the payment of the Obligations in full in cash upon the incurrence of such additional financing; or

(n) Any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter, an order (i) approving payment of any prepetition claim in excess of \$500,000 in the aggregate other than (x) as provided for in the “first day” or “second day” orders, (y) as contemplated by the Budget (including Permitted Variances), or (z) otherwise as consented to by the Required Lenders in writing, (ii) granting relief from the automatic stay under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of \$500,000 in the aggregate, or (iii) except with respect to the Prepetition Obligations as provided in the Bankruptcy Court DIP Orders, approving any settlement or other stipulation in excess of \$500,000 in the aggregate not approved by the Required Lenders and not included in the Budget with any secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor; or

(o) An order is entered in any of the Chapter 11 Cases appointing, or any Loan Party, or any Restricted Subsidiary of a Loan Party shall file an application for an order seeking the appointment of, (i) a trustee under Section 1104, or (ii) an examiner with enlarged powers relating to the operation of the Loan Parties’ business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; provided that, for the avoidance of doubt, the appointment of a fee examiner shall not constitute an Event of Default; or

(p) An order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, in each case, which does not contain a provision for termination of the Commitment, and payment in full in cash of all Obligations (other than contingent Obligations not due and owing) of the Loan Parties hereunder and under the other Loan Documents upon entry thereof; or

(q) An order is entered by the Bankruptcy Court in any of the Chapter 11 Cases without the express prior written consent of the Required Lenders (i) to revoke, reverse, stay, modify, supplement or amend the Bankruptcy Court DIP Order in a manner that is inconsistent with this Agreement that is not otherwise consented to by the Required Lenders, (ii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to the Loan Parties equal or superior to the priority of the DIP Superpriority Claim, (iii) to grant or permit the grant of a Lien on the Collateral (other than Liens permitted under Section 6.3); or

(r) At any time after the Final DIP Order Entry Date, an application for any of the orders described in clauses 7.1(n), (o), (p), (q) and (s) shall be made by a Person other than the Loan Parties and such application is not contested by the Loan Parties in good faith or any Person obtains a final order under § 506(c) of the Bankruptcy Code against the Administrative Agent or obtains a final order adverse to the Administrative Agent or the Lenders or any of their respective rights and remedies under the Loan Documents or in the Collateral; or



(s) The entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any Loan Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the Required Lenders; or

(t) At any time after the Final DIP Order Entry Date, (i) any Loan Party shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of the Secured Parties, or to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) the Lien or security interest created by Security Documents or the Bankruptcy Court DIP Orders with respect to the Collateral shall, for any reason, cease to be valid or (iii) any action is commenced by the Loan Parties which contests the validity, perfection or enforceability of any of the Liens and security interests of the Secured Parties created by any of the Bankruptcy Court DIP Order, Canadian Court DIP Recognition Order, this Agreement, or any Security Document; or

(u) Any Loan Party shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or Canadian Court) any other Person's motion to, disallow in whole or in part the Lenders' claim in respect of the Obligations or contest any material provision of any Loan Document or any material provision of any Loan Document shall cease to be effective (other than in accordance with its terms); or

(v) (i) The Approved Plan of Reorganization or the Confirmation Order is withdrawn, amended, supplemented or otherwise modified in a manner that materially adversely affects the rights and duties of the Lenders and/or the Administrative Agent without the prior written consent of the Required Lenders, (ii) any plan of reorganization other than an Approved Plan of Reorganization is consummated without the Required Lenders' consent, (iii) any plan of reorganization is filed that does not provide for repayment in full in cash of the Facility without the Required Lenders' consent except to the extent otherwise provided in the Approved Plan of Reorganization or (iv) the Loan Parties publicly announce, or execute a definitive written agreement with respect, to an Alternative Transaction without the consent of the Required Lenders; or

(w) any Subsidiary of a Loan Party that is not subject to the Chapter 11 Cases becomes subject to an insolvency proceeding without the consent of the Required Lenders, other than GNC Holdings, Inc. in connection with the Recognition Proceeding; or

(x) The Bankruptcy Court denies entry of the Confirmation Order and such order remains in effect for seven (7) Business Days after entry of such order, provided, that if the Loan Parties subsequently obtain an order of the Bankruptcy Court approving a plan of reorganization and a subsequent recognition order of the Canadian Court recognizing such order, that are in form and substance substantially similar to the Approved Plan of Reorganization or otherwise approved by the Required Lenders, such Event of Default shall be deemed cured or not to have occurred; or

(y) The termination of the Restructuring Support Agreement in accordance with its terms due to the action or omission, as applicable, of the Loan Parties; or

(z) The failure to meet any of the Milestones by the applicable date for such Milestone set forth in the Bankruptcy Court DIP Order;

then, and in any such event, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent (and for the avoidance of doubt no other Person) shall, by notice to the Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable, subject to the Bankruptcy Court DIP Order and the Canadian Court DIP Order.

## SECTION 8. THE AGENTS

8.1 Appointment. Each Lender hereby irrevocably designates, appoints and authorizes the Administrative Agent and the Collateral Agent as the agents of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Administrative Agent and the Collateral Agent, in such capacities, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent and the Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, each Lender hereby authorizes the Administrative Agent and the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent and the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto and to enter into each Security Document, the Intercreditor Agreements and any other intercreditor or subordination agreements contemplated hereby on behalf of and for the benefit of the Lenders and the other Secured Parties and agrees to be bound by the terms thereof. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent and the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent or the Collateral Agent. Notwithstanding anything to the contrary herein or in any other Loan Document, the Collateral Agent is authorized to take direction from the Administrative Agent.

Without limiting the powers of the Collateral Agent, for the purposes of holding any hypothec granted to the Attorney (as defined below) pursuant to the laws of the Province of Québec to secure the prompt payment and performance of any and all Obligations by any Loan Party, each of the Lenders hereby irrevocably appoints and authorizes the Collateral Agent and, to the extent necessary, ratifies the appointment and authorization of the Collateral Agent, to act as the hypothecary representative of the creditors as contemplated under Article 2692 of the Civil Code of Québec (in such capacity, the “Attorney”), and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Attorney under any related deed of hypothec. The Attorney shall: (a) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Attorney pursuant to any such

deed of hypothec and applicable law, and (b) benefit from and be subject to all provisions hereof with respect to the Collateral Agent mutatis mutandis, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Lenders and the Loan Parties. Any person who becomes a Lender shall, by its execution of an Assignment and Assumption Agreement, be deemed to have consented to and confirmed the Attorney as the person acting as hypothecary representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Lender, all actions taken by the Attorney in such capacity. The substitution of the Collateral Agent pursuant to the provisions of this Section 8 also constitute the substitution of the Attorney.

8.2 Delegation of Duties. Each of the Administrative Agent and the Collateral Agent may execute any of its duties under this Agreement and the other Loan Documents by or through sub-agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. No such Agent shall be responsible for the negligence or misconduct of any such sub-agents or attorneys-in-fact selected by it with reasonable care. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of each such Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facility as well as activities as such Agent. No such Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

8.3 Exculpatory Provisions. Neither any Agent nor any of their respective officers, directors, employees, agents, advisors, attorneys-in-fact or affiliates shall be:

(a) liable to any other Credit Party for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (i) with the consent or at the request of the Ad Hoc Group of Crossover Lenders, the Required Lenders (or such other number or percentage of the Lenders as shall be necessary) or (in the case of the Collateral Agent) the Administrative Agent, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.2) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given in writing to such Agent by the Borrower or a Lender;

(b) responsible in any manner to any other Credit Party for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any other Credit Party to ascertain or to inquire as to the observance or performance of any of the covenants or agreements

contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party. Neither the Administrative Agent nor the Collateral Agent shall be under any obligation to any other Credit Party to ascertain or to inquire as to the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, the value or the sufficiency of any Collateral, or the satisfaction of any condition set forth in Section 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent;

(c) subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(d) subject to any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent or the Collateral Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) or (in the case of the Collateral Agent) the Administrative Agent, provided that such Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(e) subject to a duty or responsibility to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent, the Collateral Agent or any of their respective Affiliates in any capacity, except as expressly set forth herein and in the other Loan Documents;

(f) obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it;

(g) responsible for any unsuitability, inadequacy, expiration or unfitness of any security interest created hereunder or pursuant to any other Loan Document nor shall it be obligated to make any investigation into, and shall be entitled to assume, the adequacy and fitness of any security interest created hereunder or pursuant to any other Loan Document; or

(h) responsible or liable for any failure or delay in the performance of its obligations hereunder or under any other Loan Document arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

8.4 Reliance by the Agents. Each of the Administrative Agent and the Collateral Agent shall be entitled to rely, and shall be fully protected in relying and shall not incur any liability for relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, facsimile or email message, statement, order, telephonic or electronic notices or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Loan Parties), independent accountants and other experts selected by such Agent. Each of the Administrative Agent and the Collateral Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with such Agent. Each of the Administrative Agent and the Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all affected Lenders) or (in the case of the Collateral Agent) the Administrative Agent as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each of the Administrative Agent and the Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Ad Hoc Group of Crossover Lenders or the Required Lenders (or, if so specified by this Agreement, all affected Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans. In determining compliance with any condition hereunder to the making of a Loan or a Withdrawal that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or Withdrawal. Each of the Administrative Agent and the Collateral Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

8.5 Notice of Default. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless such Agent has received notice from a Lender, Parent or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Administrative Agent or the Collateral Agent receives such a notice, such Agent shall give notice thereof to the Lenders and the other such Agent. Each of the Administrative Agent and the Collateral Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all affected Lenders) or (in the case of the Collateral Agent) the Administrative Agent; provided that unless and until such Agent shall have received such directions, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

8.6 Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that none of the Agents nor any of their respective officers, directors, employees,

agents, advisors, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, no Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of such Agent or any of their respective officers, directors, employees, agents, advisors, attorneys-in-fact or affiliates.

8.7 Indemnification. The Lenders agree to indemnify each Agent and its officers, directors, employees, affiliates, agents, advisors and controlling persons (each, an “Agent Indemnitee”) (to the extent not reimbursed by the Loan Parties and without limiting any obligation of the Loan Parties to do so), ratably according to their respective Aggregate Exposure Percentages in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Aggregate Exposure Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs and expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent Indemnitee in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent Indemnitee under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent Indemnitee’s gross negligence or willful misconduct. The agreements in this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

8.8 Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from, own securities of, act as the financial advisor of or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any Subsidiary or other Affiliate thereof as though such Agent were not an Agent and without any duty to account therefor to the Lenders or provide notice to or consent of the Lenders with

respect thereto. With respect to its Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms “Lender” and “Lenders” shall include each Agent in its individual capacity.

8.9 Successor Administrative Agent. Either of the Agents may resign as Agent upon 10 days’ notice to the Lenders and the Borrower. If either Agent shall resign, then the Borrower and the Required Lenders (or, if an Event of Default has occurred and is continuing under Section 7.1(a), the Required Lenders) shall appoint a successor agent for the Lenders, which shall be a financial institution with an office in the United States, or an Affiliate of any such financial institution with an office in the United States, whereupon such successor agent shall succeed to the rights, powers and duties of such Agent, and the term “Administrative Agent” or “Collateral Agent”, as applicable, shall mean such successor agent effective upon such appointment and approval, and the former Agent’s rights, powers and duties as Administrative Agent or Collateral Agent, as applicable, shall be terminated, without any other or further act or deed on the part of such former Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has been appointed as Administrative Agent or Collateral Agent, as applicable, by the date that is 10 days following a retiring Agent’s notice of resignation (or such earlier date as shall be agreed by the Borrower and the Required Lenders) (the “Resignation Effective Date”), the retiring Agent’s resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of such Agent hereunder until such time, if any, as the Borrower and Required Lenders (or, if an Event of Default has occurred and is continuing under Section 7.1(a), the Required Lenders as set forth above) shall appoint a successor agent as provided for above; provided that in no event shall any successor Agent be a Defaulting Lender or a Disqualified Institution. After any retiring Agent’s resignation as Administrative Agent, the provisions of this Section 8 and of Section 9.3 shall continue to inure to its benefit.

8.10 Effect of Resignation or Removal. With effect from the Resignation Effective Date (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Borrower (or, if an Event of Default has occurred and is continuing under Section 7.1(a), the Required Lenders as set forth above) shall appoint a successor agent as provided for above. Upon the acceptance of a successor’s appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Agent (other than any rights to indemnity payments or other amounts owed to the retiring Agent as of the Resignation Effective Date), and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent’s resignation hereunder and under the other Loan Documents, the

provisions of this Section 8 and Section 9.3 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring Agent was acting as Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity (other than in its capacity as a Lender) hereunder or under the other Loan Documents, including, without limitation, (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Secured Parties and (B) in respect of any actions taken in connection with transferring the agency to any successor Agent.

8.11 Collateral and Guarantee Matters. The Administrative Agent and the Collateral Agent agree:

(a) to take such action and execute such documents as may be reasonably requested by the Loan Parties pursuant to Section 9.14 to release any Lien on any property granted to or held by the Collateral Agent on behalf of the Secured Parties under any Loan Document (i) upon the payment in full of the Obligations (other than Obligations in respect of contingent reimbursement and indemnification obligations) and termination of all Commitments, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, (iii) that is or becomes an Excluded Asset or (iv) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 9.2;

(b) to subordinate any Lien on any property granted to or held by the Collateral Agent on behalf of the Secured Parties under any Loan Document as set forth in the applicable Intercreditor Agreement; and

(c) to take such action and execute such documents as may be reasonably requested by any of the Loan Parties pursuant to Section 9.14 to release any Guarantor from its Guarantee Obligations and other obligations under the Loan Documents, and to release any Liens granted by it under the Loan Documents, if such Person ceases to be a Subsidiary or is or becomes an Excluded Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Ad Hoc Group of Crossover Lenders or the Required Lenders will confirm in writing the Administrative Agent's and the Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantee Obligations or Liens pursuant to this Section 8.11. In each case as specified in this Section 8.11, the Administrative Agent and the Collateral Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement and to release the Liens granted by such Guarantor under the Loan Documents, in each case in accordance with the terms of this Section 8.11.



Neither the Administrative Agent nor the Collateral Agent shall be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent or the Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral, any security interests of the Administrative Agent or the Collateral Agent therein or any filings, registrations, or recordings made with respect thereto. Neither the Collateral Agent nor the Administrative Agent shall have any obligation whatsoever to any Lender or any other person to investigate, confirm or assure that the Collateral exists or is owned by any Loan Party or is insured or has been encumbered, or that the liens and security interests granted to the Collateral Agent pursuant hereto or any of the Loan Documents or otherwise have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority.

8.12 Appointment of Borrower. Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrower may execute such documents and provide such authorizations on behalf of such Loan Parties as the Borrower deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent or a Lender to the Borrower shall be deemed delivered to each Loan Party and (c) the Administrative Agent, or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrower on behalf of each of the Loan Parties.

8.13 Administrative Agent or Collateral Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, including during the pendency of the Chapter 11 Cases, each of the Administrative Agent and Collateral Agent (irrespective of whether the principal of any Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent or Collateral Agent shall have made any demand on the Loan Parties) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, Administrative Agent and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, Administrative Agent, Collateral Agent and their respective agents and counsel and all other amounts due Lenders, Administrative Agent and Collateral Agent hereunder) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

(c) and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to pay

to Administrative Agent or Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent, Collateral Agent and their respective agents and counsel, and any other amounts due Administrative Agent or Collateral Agent hereunder. To the extent that the payment of any such compensation, expenses, disbursements and advances of Administrative Agent, Collateral Agent and their respective agents and counsel, and any other amounts due Administrative Agent or Collateral Agent under this Agreement out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

8.14 Agent Duties. If any of the rights, responsibilities or duties of the Agents conflict with such Agents' rights, responsibilities or duties under the Prepetition Term Loan Agreement, this Agreement shall supersede the Prepetition Term Loan Agreement.

## SECTION 9. MISCELLANEOUS

9.1 Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent electronically or by facsimile, as follows:

- (i) if to Parent or the Borrower, to it at:

General Nutrition Centers, Inc.  
300 Sixth Avenue  
Pittsburgh, PA 15222  
Attention: Tricia Tolivar  
Telephone: (412) 288-2029  
Email: Tricia-Tolivar@gnc-hq.com

with copies (which shall not constitute notice) to:

Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022  
Attention: Michèle Penzer  
Telephone: (212) 906-1245  
Email: michele.penzer@lw.com

and

Latham & Watkins LLP  
330 North Wabash, Suite 2800  
Chicago, IL 60611

Attention: Rick Levy and Caroline Reckler  
Telephone: (312) 876-7692 (Rick Levy); (312) 876-7663 (Caroline Reckler)  
Email: Richard.Levy @lw.com; Caroline.Reckler@lw.com

(ii) if to the Administrative Agent:

GLAS Trust Company LLC  
3 Second Street, 10th Floor  
Jersey City, New Jersey 07311  
Attention: Administrator for GNC  
Facsimile: 212-202-6246  
Email: clientservices.Americas@glas.agency

if to the Collateral Agent:

GLAS Trust Company LLC  
230 Park Avenue, 10<sup>th</sup> Floor  
New York, New York 10169  
Attention: Administrator for GNC  
Facsimile: 212-202-6246  
Email: [clientservices.Americas@glas.agency](mailto:clientservices.Americas@glas.agency)

with a copy to:

Dorsey & Whitney LLP  
51 West 52<sup>nd</sup> Street  
New York, New York 10019  
Attn: Sam Kohn and Erin Trigg  
Telephone: (212) 415-9205 (Sam Kohn); (212) 415-9392 (Erin Trigg)  
Email: [kohn.sam@dorsey.com](mailto:kohn.sam@dorsey.com); [trigg.erin@dorsey.com](mailto:trigg.erin@dorsey.com)

if to any other Lender, to it at its address (or facsimile number or email address) set forth in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent, the Collateral Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

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

communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(d) THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s, any Loan Party’s or the Administrative Agent’s transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, other than for direct or actual damages to the extent resulting from the gross negligence, bad faith or willful misconduct of such party or its Related Parties as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) The Administrative Agent, the Collateral Agent and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the Collateral Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party in accordance with Section 9.3. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

9.2 Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the Collateral Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by Parent or the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time.

(a) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.1, Section 4.2 or the waiver of any Default, mandatory prepayment or mandatory reduction of Commitments shall not constitute an increase of any Commitment of any Lender), (ii) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly and adversely affected thereby (except in connection with the waiver of applicability of any post-default increase in interest rates (which waiver shall be effective with the consent of the Required Lenders)), (iii) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment without the written consent of each Lender directly and adversely affected thereby (it being understood that a waiver of any condition precedent set forth in Section 4.1 or Section 4.2 or the waiver of any Default, mandatory prepayment or mandatory reduction of Commitments shall not constitute a postponement of the scheduled date of expiration of any Commitment of any Lender), (iv) change Section 2.21(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby, or (v) change any of the provisions of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or grant any consent hereunder, or release all or substantially all of the Collateral or release Guarantors from their guarantee obligations under the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement representing all or substantially all of the value of such guarantees, taken as a whole, in each case, without the written consent of each Lender directly and adversely affected thereby; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder in a manner adverse to such Agent without the prior written consent of such Agent.

(b) Notwithstanding anything to the contrary contained in this Section 9.2, the Administrative Agent and the Borrower, in their sole discretion, may amend, modify or supplement any provision of this Agreement or any other Loan Document to (i) amend, modify or supplement such provision or cure any ambiguity, omission, mistake, error, defect or inconsistency, so long as such amendment, modification or supplement does not directly and adversely affect the rights or obligations of any Lender, (ii) to permit additional affiliates of the Borrower to guarantee the Obligations and/or provide Collateral therefor and (iii) to add covenants and other terms for the benefit of the Lenders as provided herein. Such amendments shall become effective without any further action or consent of any other party to any Loan Document.

(c) Notwithstanding anything to the contrary contained in this Section 9.2 or any other Loan Document, guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended

and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Requirements of Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement or any other Loan Documents.

9.3 Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by each Agent and its Affiliates, including the reasonable and documented out-of-pocket fees, charges and disbursements of legal counsel for the Administrative Agent and the other Agents, the Ad Hoc Group Advisors in connection with the preparation and administration of this Agreement or any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the Collateral Agent, or all Lenders collectively, including the reasonable and documented out-of-pocket fees, charges and disbursements of legal counsel, the Ad Hoc Group Advisors, the Administrative Agent and the Collateral Agent, or all Lenders collectively, in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; provided that the Borrower's obligations under this Section 9.3(a) for fees and expenses of legal counsel shall be limited to fees and expenses of (x) one outside legal counsel for all Indemnitees described in clauses (i) and (ii) above, taken as a whole (plus one separate outside legal counsel for each of the Collateral Agent and the Administrative Agent), (y) in the case of any conflict of interest, one outside legal counsel for such affected Indemnitee or group of Indemnitees and (z) if necessary, one local or foreign legal counsel in each relevant jurisdiction.

(a) The Borrower shall indemnify the Ad Hoc Committee, the Administrative Agent, each other Agent and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable and documented out-of-pocket expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of (i) one outside legal counsel to each of the Administrative Agent and the Collateral Agent and one outside legal counsel to the other Indemnitees taken as a whole, (ii) in the case of any conflict of interest, one outside legal counsel for the affected Lender or group of Lenders and (iii) if necessary, one local or foreign legal counsel in each relevant jurisdiction), which may at any time be imposed on, incurred by or asserted or awarded against any such Indemnitee arising out of, in connection with, or as a result of (w) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or any other transactions contemplated hereby, (x) any Loan or the use of the proceeds therefrom, (y) any actual or alleged presence or release of Hazardous Materials at, on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability of the Borrower or any of its Subsidiaries, or (z) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims,

damages, liabilities or related expenses (1) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or (except with respect to the Agents) material breach of its obligations under the Loan Documents or willful misconduct of such Indemnitee or its Primary Related Parties, (2) arise out of any claim, litigation, investigation or proceeding that does not involve an act or omission by the Borrower or any of its Affiliates and that is brought by an Indemnitee against any other Indemnitee (provided that in the event of such a claim, litigation, investigation or proceeding involving a claim or proceeding brought by or against the Administrative Agent (in its capacity as such) or the Collateral Agent (in its capacity as such) by other Indemnitees, the Administrative Agent (in its capacity as such) or the Collateral Agent (in its capacity as such) shall be entitled (subject to the other limitations and exceptions set forth above) to the benefit of the indemnities set forth above) or (3) are in respect of indemnification payments made pursuant to Section 8.7, to the extent the Borrower would not have been or was not required to make such indemnification payments directly pursuant to the provisions of this Section 9.3(b). This Section 9.3 shall not apply to Taxes, except any Taxes that represent losses, claims, damages or liabilities arising from a non-Tax claim. As used herein, the “Primary Related Parties” of an Indemnitee are its Affiliates with direct involvement in the negotiation of the Facilities under this Agreement and such Indemnitee’s and Affiliates’ respective directors, officers and employees.

(b) To the extent permitted by applicable law, none of Parent, the Borrower nor any Indemnitee shall assert, and Parent, the Borrower and each Indemnitee hereby waives, any claim against Parent, the Borrower or any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any agreement or instrument contemplated hereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and, to the extent permitted by applicable law, Parent and Borrower and each Indemnitee hereby waive, release and agree not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that nothing contained in this paragraph shall limit the obligations of the Borrower under Section 9.3(b) in respect of any such damages claimed against the Indemnitees by Persons other than Indemnitees.

(c) All amounts due under this Section shall be payable not later than thirty days after written demand therefor.

9.4 Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) subject to Section 6.4, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) 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.

(a) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or, if an Event of Default has occurred and is continuing under Section 7.1(a), any other Eligible Assignee; and provided, further, that the Borrower shall be deemed to have consented to any such assignment unless the Borrower shall have objected thereto by written notice to the Administrative Agent not later than the fifth Business Day following the date the Borrower acknowledges its receipt of notice of the proposed assignment; and

(B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender, or an Approved Fund.

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

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Loans, the amount of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 (and shall be in integral multiples of \$1,000,000 in excess thereof) unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default under Section 7.1(a) has occurred and is continuing;

(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;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with (unless waived by the Administrative Agent in its sole discretion, or unless such assignment is to an Affiliate or an Approved Fund of such assignor) a processing and recordation fee of \$3,500;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their related parties or their respective securities) will be made available and who may receive such



information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws;

- (E) no such assignment shall be made to a natural person; and
- (F) such assignment does not violate Section 9.4(e).

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.18, 2.19, 2.20 and 9.3). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.4 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.4(c).

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount and stated interest of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, and, if an Event of Default has occurred and is continuing, any Lender (but only with respect to the entries related to such Lender), at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section (unless waived by the Administrative Agent in its sole discretion) and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.8(b), 2.21(d) or 8.7, the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No

assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) On or after the Final DIP Order Entry Date, the New Money Loans on the one hand, and the Roll-up Loans, on the other hand, may be assigned or transferred separately and such Loans are not “stapled to” each other. Prior to the Final DIP Order Entry Date, the right to receive Roll-up Loans is on account of such Lender’s New Money Loans and New Money Loan Commitment.

(b) (i) Subject to compliance with Section 9.4(e), any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement 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, modification or waiver described in the first proviso to Section 9.2(b) that (1) requires the consent of each Lender or each directly and adversely affected Lender and (2) directly and adversely affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.18, 2.19 and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.8 as though it were a Lender, provided such Participant agrees to be subject to Section 2.21(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under this Agreement (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant’s interest in any Loans, or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Loan or other obligation is in registered form under Section 5f.103-1(c) and Proposed Section 1.163-5(b) (and any amended or successor version) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. The portion of the Participant Register relating to any Participant requesting payment from the Borrower under the Loan Documents shall be made available to the Borrower upon request.

(i) A Participant shall not be entitled to receive any greater payment under Section 2.18, 2.19 or 2.20 than the applicable Lender would have been entitled to

receive with respect to the participation sold to such Participant, unless (A) the Borrower is notified of the participation sold to such Participant and the sale of the participation to such Participant is made with the Borrower's prior written consent or (B) such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.20 unless such Participant agrees, for the benefit of the Borrower, to comply (and actually complies) with Section 2.20(e) as though it were a Lender.

(ii) No participation may be sold to an Affiliated Lender.

(c) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(d) (i) No assignment or participation shall be made to any Person that is a Disqualified Institution to the extent the list thereof has been provided to any Lender requesting the same as of the date (the "Trade Date") on which such Lender entered into a binding agreement to sell and assign or participate all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any Assignee that becomes a Disqualified Institution after the applicable Trade Date, (x) such Assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Acceptance with respect to such Assignee will not by itself result in such Assignee no longer being considered a Disqualified Institution. Any assignment in violation of this paragraph (e) shall not be void, but the other provisions of this paragraph (e) shall apply.

(ii) If any assignment or participation is made to any Disqualified Institution without the Borrower's prior written consent in violation of clause (e)(i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) purchase or prepay the outstanding Term Loans of such Disqualified Institution by paying the lower of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans or (B) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.4), all of its interest, rights and obligations under this Agreement to one or more Assignees at the lower of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations.

(iii) Notwithstanding anything to the contrary contained in this Agreement, (A) Disqualified Institutions will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, any other Loan Party, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any plan of reorganization, each Disqualified Institution party hereto hereby agrees (1) not to vote on such plan of reorganization, (2) if such Disqualified Institution does vote on such plan of reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such plan of reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to provide the list of Disqualified Institutions to each Lender requesting the same and to post such list to the Platform. Each Lender shall have the right, and the Borrower hereby authorizes each Lender, to provide the list of Disqualified Institutions to any of such Lender’s actual or prospective transferees (including any actual or prospective assignee or participant).

(v) The Administrative Agent, in its capacity as such, shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions; provided that without limiting the generality of the foregoing, the Administrative Agent, in its capacity as such, shall not (a) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Institution or (b) have any liability with respect to or arising out of any assignment or participation of loans, or disclosure of confidential information in connection therewith, to any Disqualified Institution; it being agreed that the foregoing shall not relieve the Administrative Agent, to the extent constituting a Lender, from its obligations in respect of Disqualified Institutions in connection with assignments and participations, and disclosure of confidential information in connection therewith, by it.

9.5 Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with

or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement (excluding Obligations in respect of contingent reimbursement and indemnification obligations that are not then due and payable at the time all other Obligations hereunder are discharged) is outstanding and unpaid. The provisions of Sections 2.18, 2.19, 2.20 and 9.3 and Section 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans or the termination of this Agreement or any provision hereof.

9.6 Counterparts; Integration. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

9.7 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

9.8 Right of Setoff. Subject to the terms of the Bankruptcy Court DIP Order, the Canadian Court DIP Recognition Order and the Carve Out, if an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time with the prior written consent of the Administrative Agent, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) (excluding payroll, tax withholding and trust accounts maintained in the ordinary course of business) at any time held and other obligations at any time owing by such Lender to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have but subject to the terms of the Bankruptcy Court DIP Order, the Canadian Court DIP Recognition Order and the Carve Out. Each Lender shall notify the Administrative Agent and the Borrower promptly after any such setoff.

9.9 Governing Law; Jurisdiction; Consent to Service of Process. (a) EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY CODE, THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

(a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE BANKRUPTCY COURT. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE BANKRUPTCY COURT AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH HEREIN. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE ADMINISTRATIVE AGENT AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN SUCH COURT AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(b) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.1. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(c) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER

LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

9.12 Confidentiality. (a) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (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), (ii) to the extent requested by any regulatory authority claiming jurisdiction over it, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (provided that the applicable Agent or such Lender, as applicable, shall notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority claiming jurisdiction over it) unless such notification is prohibited by applicable law, rule or regulation), (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) to any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to the Borrower and its obligations (provided, such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this Section 9.12 or other provisions at least as restrictive as this Section 9.12), (vii) with the prior written consent of the Borrower or (viii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section 9.12 or (B) becomes available other than as a result of a breach of this Section 9.12 to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower or any of its Affiliates. For the purposes of this Section, "Information" means all information received from Parent, the Borrower or any of their Affiliates relating to Parent or the Borrower or any of its Subsidiaries or businesses, other than any such information that is available other than as a result of a breach of this Section 9.12 to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section 9.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information which shall in no event be less than commercially reasonable care. To the extent the list of Disqualified Institutions has been

provided to any Lender requesting the same, Information shall not be disclosed to a Disqualified Institution that constitutes a Disqualified Institution at the time of such disclosure without the Borrower's prior written consent.

**(a) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.**

**(b) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS AND WARRANTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.**

9.13 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") and the Administrative Agent and the Collateral Agent (in each case for themselves and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Act, it may be required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or such Agent, as applicable, to identify the Borrower in accordance with the Act.

9.14 Release of Liens and Guarantees. (a) In the event that any Loan Party conveys, sells, leases, assigns, transfers or otherwise Disposes of all or any portion of any of the Capital Stock or assets of any Loan Party to a Person that is not (and is not required hereunder to become) a Loan Party in a transaction permitted under this Agreement, the Liens created by the Loan Documents in respect of such Capital Stock or assets shall automatically terminate and be released without the requirement for any further action by any Person, and the Collateral Agent shall promptly (and the Lenders hereby authorize the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower's expense to further document and evidence such termination and release of Liens created by any Loan Document in respect of such Capital Stock or assets, and, in the case of a transaction permitted under this Agreement the result of which is that a Loan Party would cease to be a Subsidiary or would become an Excluded Subsidiary, the Guarantee Obligations created



by the Loan Documents in respect of such Loan Party (and all security interests granted by such Guarantor under the Loan Documents) shall automatically terminate and be released without the requirement for any further action by any Person, and the Administrative Agent and the Collateral Agent shall promptly (and the Lenders hereby authorize the Administrative Agent and the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower's expense to further document and evidence such termination and release of such security interests and such Loan Party's Guarantee Obligations in respect of the Obligations (including, without limitation, its Guarantee Obligations under the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement). Any representation, warranty or covenant contained in any Loan Document relating to any such Capital Stock, asset or subsidiary of any Loan Party shall no longer be deemed to be made with respect thereto once such Capital Stock or asset or Subsidiary is so conveyed, sold, leased, assigned, transferred or disposed of.

(a) Upon the payment in full of the Obligations (excluding contingent reimbursement and indemnification obligations that are not then due and payable), all Liens created by the Loan Documents shall automatically terminate and be released without the requirement for any further action by any Person, and the Collateral Agent shall promptly (and the Lenders hereby authorize the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower's expense to further document and evidence such termination and release of Liens created by the Loan Documents, and the Guarantee Obligations created by the Loan Documents in respect of the Guarantors shall automatically terminate and be released without the requirement for any further action by any Person, and the Collateral Agent shall promptly (and the Lenders hereby authorize the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower's expense to further document and evidence such termination and release of the Guarantors' Guarantee Obligations in respect of the Obligations (including, without limitation, the Guarantee Obligations under the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement).

9.15 Enforcement Matters. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against Parent, the Borrower, any of its Restricted Subsidiaries or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 7.1 for the benefit of the Required Lenders; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the Collateral Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Collateral Agent) hereunder and under the other Loan Documents (c) any Lender from exercising setoff rights in accordance with Section 9.8 (subject to the terms of Section 2.21(c)), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then the Required Lenders (and no other

Person) shall have the rights otherwise ascribed to the Administrative Agent at the instruction of the Required Lenders pursuant to Section 7.1.

9.16 No Fiduciary Duty. Each Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the “Lender Parties”) may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender Parties, on the one hand, and such Loan Party, its stockholders or its affiliates, on the other. The Loan Parties acknowledge and agree that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lender Parties, on the one hand, and the Loan Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender Parties have assumed any advisory, agent (other than to the extent set forth in Section 9.4(b)(iv)) or fiduciary responsibility in favor of any Loan Party, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender Parties have advised, are currently advising or will advise any Loan Party, its stockholders or its Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents, (y) the Administrative Agent, the Collateral Agent, their respective Affiliates and the Lenders may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Collateral Agent, any of their respective Affiliates nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates and (z) the Lender Parties are acting solely as principals and not as the agents or fiduciaries of any Loan Party, its management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate, that it is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party agrees that it will not claim that the Lender Parties have rendered advisory services of any nature or respect, or owe a fiduciary or similar duty to such Loan Party, in connection with such transaction or the process leading thereto. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Collateral Agent, any of their respective Affiliates or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

9.17 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any

payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

9.18 Canadian Anti-Money Laundering Legislation. (a) Each Loan Party acknowledges that, pursuant to Canadian Anti-Money Laundering Legislation and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws (collectively, including any guidelines or orders thereunder, “AML Legislation”), the Lenders may be required to obtain, verify and record information regarding the Loan Parties and their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Loan Parties, and the transactions contemplated hereby. Each Loan Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any prospective assignee or participant of a Lender or any Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(a) If the Administrative Agent has ascertained the identity of any Loan Party or any authorized signatories of the Loan Parties for the purposes of applicable AML Legislation, then the Administrative Agent:

(i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a “written agreement” in such regard between each Lender and the Administrative Agent within the meaning of the applicable AML Legislation; and

(ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that neither the Administrative Agent nor any other Agent has any obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any Loan Party or any such authorized signatory in doing so.

9.19 Judgment Currency. If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the “Original Currency”) into another currency (the “Second Currency”), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. The Borrower agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following the date the Administrative Agent receives payment of any sum so adjudged to be due hereunder in the Second Currency, the Administrative Agent may, in accordance with normal banking procedures, purchase, in the New York foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if

the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency, the Borrower agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify the Administrative Agent against such loss; and if the amount of the Original Currency so purchased or could have been so purchased is greater than the amount originally due in the Original Currency, the Administrative Agent agrees to remit such excess amount to the Borrower. The term “rate of exchange” in this Section 9.19 means the spot rate at which the Administrative Agent, in accordance with normal practices, is able on the relevant date to purchase the Original Currency with the Second Currency, and includes any premium and costs of exchange payable in connection with such purchase.

9.20 Electronic Execution. The words “delivery,” “execute,” “execution,” “signed,” “signature,” and words of like import in any Loan Document or any other document executed in connection herewith shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, 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, physical delivery thereof 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; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided further, without limiting the foregoing, upon the request of the Administrative Agent, any electronic signature shall be promptly followed by such manually executed counterpart.

9.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including (without limitation), if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such

shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

9.22 Conflicts. If any provision in this Agreement or any other Loan Document expressly conflicts with any provision in the Interim DIP Order or Final DIP Order, the provisions in the Bankruptcy Court DIP Order shall govern and control.

9.23 Operating Account. The parties hereto acknowledge and agree that the Operating Account does not constitute (a) ABL Priority Collateral or (b) collateral for the Prepetition ABL Agreement or the Prepetition ABL/FILO Amendment and Restatement.

## SECTION 10. SECURITY AND PRIORITY

### 10.1 Collateral; Grant of Lien and Security Interest.

(a) Pursuant to, and otherwise subject to the terms of, the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order and in accordance with the terms thereof and subject to the Carve Out, as security for the full and timely payment and performance of all of the Obligations, the Loan Parties hereby pledge and grant to the Collateral Agent (for the benefit of the Secured Parties), a security interest in and to, and a Lien on, all of the Collateral.

(b) Notwithstanding anything herein to the contrary (i) all proceeds received by the Collateral Agent and the Lenders from the Collateral subject to the Liens granted in this Section 10.1 and in each other Loan Document and by the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order shall be subject in all respects to the Carve Out and (ii) no Person entitled to amounts in respect of the Carve Out shall be entitled to sell or otherwise dispose, or seek or object to the sale or other disposition, of any Collateral.

### 10.2 Priority and Liens Applicable to Loan Parties.

(a) Upon entry of the Interim DIP Order or Final DIP Order and subject to the terms thereof, as the case may be, the Obligations, Liens and security interests in favor of the Secured Parties shall, subject in all respects to the Carve Out, at all times, pursuant to the Bankruptcy Code, be secured by a perfected Lien on and security interest in all of the Collateral of the Loan Parties.

(b) The relative priorities of the Liens with respect to the Collateral shall be as set forth in the Interim DIP Order (and, when entered, the Final DIP Order) and each party hereto consents to such relative priorities of the Liens.

(c) Each Loan Party hereby confirms and acknowledges that, pursuant to the Interim DIP Order (and, when entered, the Final DIP Order), the Liens in favor of the Collateral Agent on behalf of and for the benefit of the Secured Parties in all of the Collateral shall be created and perfected, to the maximum extent permitted by law, without the execution or the

recordation or filing in any land records or filing offices of, any mortgage, assignment, security agreements, mortgages, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Collateral Agent of, or over, any Collateral, as set forth in the Interim DIP Order (and, when entered, the Final DIP Order).

10.3 Grants, Rights and Remedies. The Liens and security interests granted pursuant to Section 10.1 hereof and the administrative claim priority and lien priority granted pursuant to Section 10.2 hereof may be independently granted in the Loan Documents. This Agreement, the Bankruptcy Court DIP Order and such other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Agents and the Lenders hereunder and thereunder are cumulative; provided that to the extent of conflict the Bankruptcy Court DIP Order controls.

10.4 No Filings Required. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim DIP Order or the Final DIP Order, as the case may be, and entry of the Interim DIP Order shall have occurred on or before the date of the initial Borrowing hereunder. The Collateral Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, take possession or control of any Collateral, or take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, the Interim DIP Order or the Final DIP Order, as the case may be, or any other Loan Document.

10.5 Survival. Except as set forth in the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, the Liens, lien priority, administrative priorities and other rights and remedies granted to the Collateral Agent and the Lenders pursuant to this Agreement, the Bankruptcy Court DIP Orders, and the Canadian Court DIP Recognition Order and the other Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the Borrower (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever.

10.6 Amendment of Prepetition Term Loan Agreement and Agreement Regarding Method of Issuance of Roll Up Loans. The parties hereto, acting in their capacities as Parent under the Prepetition Term Loan Agreement, Borrower under the Prepetition Term Loan Agreement, Prepetition Term Loan Lenders, Prepetition Term Loan Agent and Prepetition Collateral Agent hereby amend the definition of “Eligible Assignee” in the Prepetition Term Loan Agreement by adding the following at the end thereof: Eligible Assignee shall also include any Loan Party that is a Wholly Owned Subsidiary and a Domestic Subsidiary and a disregarded entity for tax purposes. Roll-up Loans shall be initially issued to such Loan Party in escrow, which will thereupon assign such Roll-up Loan to the corresponding Roll-up Lender in consideration of assignment by such Roll-up Lender to such Loan Party of an equal amount of Prepetition Term Loans. All Prepetition Term Loans so assigned to such Loan Party shall be automatically extinguished upon completion of the assignment and assumption transactions described in this Section 10.6.

*(signature pages follow)*

**Annex B**

**EXIT TERM LOAN FACILITY TERM SHEET**

Set forth below is a summary of the principal terms and conditions for the Exit Term Loan Facility (as defined below). Unless otherwise noted below, capitalized terms used but not defined in this Annex B shall have the meanings set forth in the Restructuring Support Agreement or the DIP Credit Agreement, to which this Annex B is attached as Exhibit I thereto.

**Summary of Principal Terms and Conditions**

**Borrower:** Either (i) a new entity formed at the direction of the Required Consenting Term Lenders (as defined in the Restructuring Support Agreement) or (ii) reorganized General Nutrition Centers, Inc., a Delaware corporation, formerly a debtor and debtor-in-possession in the Chapter 11 Cases (the “*Company*” or the “*Borrower*”).

**Guarantors:** Either (i) new entities formed at the direction of the Required Consenting Term Lenders (as defined in the Restructuring Support Agreement) or (ii) each of the entities listed on Exhibit A-1 hereof (collectively, the “*Guarantors*” and, together with the Borrower, the “*Loan Parties*”). All obligations of the Borrower under the Exit Term Loan Facility (as defined below) will be unconditionally guaranteed on a joint and several basis by the Guarantors. [In addition, [TaxFilerCo] shall provide a limited guarantee and security agreement pledging Tax Refunds (as defined below) to the Agent for the benefit of the Secured Parties or, alternatively, shall enter into an exit tax sharing agreement].

For the avoidance of doubt, each of the affiliates of the Borrower listed on Exhibit A-2 hereof will not be a Guarantor.

**Exit Term Loan Facility:** A secured term loan credit facility (the “*Exit Term Loan Facility*” and the lenders thereunder, the “*Exit Lenders*”), comprised of:

(i) \$100 million of term loans, consisting of New Money Loans (as defined in the DIP Credit Agreement) (the “*DIP Loans*”) converted on a dollar-for-dollar basis on the Exit Date (as defined below) into “first-lien first out loans” under the Exit Term Loan Facility (the “*First-Lien First Out Loans*”, and the lenders thereof, the “*First-Lien First Out Lenders*”); and

(ii) \$150 million of term loans, comprised of (x) \$100 million of Roll-up Loans (as defined in the DIP Credit Agreement) converted on a dollar-for-dollar basis on the Exit Date into “first-lien second out term loans” under the Exit Term Loan Facility and (y) \$50 million of other Prepetition Term Loans (as defined in the DIP Credit Agreement) of the Prepetition Term Loan Lenders (as defined in the DIP Credit Agreement), which will be converted into such first-lien second-out term loans on the Exit Date (the loans described in clauses (x) and (y), the “*First-Lien Second Out Loans*”, and the lenders thereof the “*First-Lien Second Out Lenders*”).

The “*Plan*” means the Chapter 11 Plan of Reorganization and the related disclosure statement of the Debtors to be filed with the Bankruptcy Court, in form and substance reasonably satisfactory to the Required Lenders (as



defined in the DIP Credit Agreement). The reorganization contemplated by the Plan is referred to herein as the “**Reorganization.**”

**Making and Allocation of Loans, Conversion of Claims and Use of Proceeds:**

On the Exit Date, (a) the DIP Loans will be converted dollar-for-dollar into First-Lien First Out Loans, (b) the Roll-up Loans will be converted dollar-for-dollar into First-Lien Second Out Loans, (c) \$50 million of First-Lien Second Out Loans will be allocated to Prepetition Term Loan Lenders on a ratable basis in accordance with their aggregate holdings of Prepetition Term Loans on the Exit Date and (d) all claims in respect of Prepetition Term Loans, DIP Loans and Roll-up Loans will be deemed cancelled and fully satisfied in accordance with and for the consideration set forth in the Plan and Confirmation Order.

**Exit Date:**

The date (the “**Exit Date**”) on which the First-Lien First Out Loans and the First-Lien Second Out Loans are issued under the Exit Term Loan Facility and all Closing Conditions (as defined below) have been satisfied or waived by lenders holding more than 50% of the loans under the Exit Term Loan Facility (the “**Required Exit Lenders**”).

**Maturity:**

With respect to the First-Lien First Out Loans, the date that is 4 years after the Exit Date.

With respect to the First-Lien Second Out Loans, the date that is 4.25 years after the Exit Date.

**Collateral:**

The Exit Term Loan Facility will be secured by a perfected lien on, with the priority described below under the caption “Priority,” substantially all of the Loan Parties’ tangible and intangible assets (collectively, the “**Collateral**”), including owned and ground leased real property, tax refunds, the equity interests of the Guarantors and other majority owned subsidiaries (subject to customary exclusions), all deposit and security accounts (which shall be subject to control agreements to the extent set forth in the Pre-Existing Facility Documentation (as defined below)), with materiality thresholds and exceptions to be agreed.

**Priority:**

The Exit Term Loan Facility will have (i) a first priority lien on Term Priority Collateral, subject to certain customary baskets and exceptions to be agreed (“**Permitted Liens**”), and (ii) a second priority lien on ABL Priority Collateral, subject to Permitted Liens, which Term Priority Collateral and ABL Priority Collateral shall be as defined in and subject to ranking and intercreditor arrangements substantially consistent with the Prepetition Intercreditor Agreement or otherwise reasonably satisfactory to the Required Exit Lenders, subject to any agreed post-closing perfection requirements and subject to thresholds, exceptions and exclusions substantially identical to the Pre-Existing Facility Documentation.

The New Revolver and Exit FILO Facility (as defined below) will have (i) a first priority lien on ABL Priority Collateral, subject to Permitted Liens, and (ii) a second priority lien on Term Priority Collateral, subject to Permitted Liens.

**Exit Facility  
Documentation:**

The loan documents governing the Exit Term Loan Facility shall contain terms substantially similar to the terms of that certain Amended and Restated Term Loan Credit Agreement dated as of February 28, 2018, as in effect on such date, among GNC Corporation, a Delaware corporation, as parent, General Nutrition Centers, Inc., a Delaware corporation, as borrower, the several banks and other financial institutions or entities from time to time parties thereto, JPMorgan Chase Bank, N.A., as administrative agent, and GLAS Trust Company LLC, as collateral agent (the “*Pre-Existing Facility Documentation*”), with modifications to reflect this term sheet and other adjustments reasonably satisfactory to the Borrower and the Required Exit Lenders (such loan documents, the “*Exit Facility Documentation*”).

**Conditions to  
Closing:**

Limited to the following (collectively, the “*Closing Conditions*”):

- A. The negotiation, execution and delivery of the Exit Facility Documentation by the Loan Parties.
- B. The following documents shall be reasonably satisfactory to the Borrower and the Required Exit Lenders:
  - the Plan;
  - the terms of an Exit FILO facility converting the loans under the Prepetition ABL/FILO Amendment and Restatement on a dollar-for-dollar basis on the Exit Date (the “*Exit FILO Facility*”, together with the New Revolver Facility (as defined below), the “*New Revolver and Exit FILO Facility*”) which terms shall be deemed reasonably satisfactory to the Required Exit Lenders if substantially consistent with the New Revolver Basket and Exit FILO Facility Term Sheet in the form attached hereto as Exhibit B; and
  - the confirmation order with respect to the Plan, and corresponding recognition order of the Canadian Court.
- C. To the extent that the Borrower or any Guarantor is a new entity formed at the direction of the Required Consenting Term Lenders (as defined in the Restructuring Support Agreement), all assets that are to be owned by such new entity under the Plan shall have been transferred to such new entity pursuant to documentation in form and substance reasonably acceptable to the Agent.
- D. Substantial consummation (as defined in Section 1101 of the Bankruptcy Code) of the Plan (all conditions precedent set forth therein having been satisfied or waived in accordance with the terms thereof).
- E. Immediately after the Exit Date, the Loan Parties shall have outstanding no indebtedness for borrowed money other than indebtedness outstanding under the Exit Term Loan Facility, the New Revolver and Exit FILO Facility and indebtedness contemplated by the Approved Plan of Reorganization.
- F. Accuracy in all material respects (or, in the case of representations and warranties that are qualified by materiality, in all respects) on the

Exit Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date) of representations and warranties contained in the Exit Facility Documentation which shall be no more burdensome to the Company than those set forth in the Pre-Existing Facility Documentation and absence of an Event of Default under the Exit Facility Documentation.

- G. Compliance with customary documentation conditions for a facility of this size, type, and purpose, including the delivery of customary legal opinions and closing certificates (including a customary solvency certificate in substantially the form provided under the Pre-Existing Facility Documentation), good standing certificates and certified organizational documents, in each case, in form and substance reasonably satisfactory to the Required Exit Lenders.
- H. The Agent shall have a perfected lien on the Collateral of the Loan Parties, subject to Permitted Liens and any post-closing perfection requirements, with the priority set forth under the heading “Priority” hereunder; *provided* that security interests will not be required to be perfected on the Exit Date other than by (A) filings of UCC and PPSA financing statements in the office of the secretary of state or provincial ministry (or similar central filing office) of the Loan Parties and (B) delivery to the Agent, for the benefit of the secured parties, of promissory notes representing material intercompany indebtedness for borrowed money and equity certificates representing equity issued by Loan Parties (other than equity issued by GNC Holdings, Inc.), in each case, together with customary transfer powers executed in blank.
- I. Receipt by the Agent of reasonably satisfactory results of customary lien searches.
- J. The Loan Parties shall have used commercially reasonable efforts to obtain a public corporate credit rating (but not a specific rating) from either Standard & Poor’s, a division of S&P Global, Inc., or Moody’s Investors Service, Inc. in respect of the Exit Term Loan Facility.
- K. All requisite governmental and material third party approvals shall have been obtained, and there shall be no litigation, governmental, administrative or judicial action against the Loan Parties, in each case, the failure to obtain or existence of which would reasonably be expected to restrain, prevent or impose materially burdensome restrictions on the substantial consummation of the Plan or the Exit Term Loan Facility; *provided*, that the consummation of the New Revolver Facility shall not be a condition precedent to effectiveness or consummation of the Plan or the Exit Term Loan Facility.
- L. Delivery of all documentation and other information required by bank regulatory authorities under applicable “know-your-customer”, anti-money laundering rules and regulations, and the Patriot Act that has been reasonably requested by the Exit Lenders at least ten (10) business days prior to the closing date of the Exit Term Loan Facility.

- M. Payment by the Borrower on the Exit Date of all reasonable and documented out-of-pocket costs, fees and expenses owed or otherwise required to be paid pursuant to the Exit Facility Documentation to the Agent and the Lenders (including reasonable and documented fees and expenses of counsel of the Agent and the Exit Lenders and one financial advisor (which shall be Houlihan Lokey, Inc.); *provided*, that legal fees shall be limited to the reasonable and documented fees and disbursements of one counsel for the Agent, one U.S. counsel for the Ad Hoc Committee (which shall be Milbank LLP) and one Canadian counsel for the Ad Hoc Committee (which shall be Cassels Brock & Blackwell LLP) and, in addition, local counsel in each appropriate jurisdiction), including reasonable and documented out-of-pocket costs and expenses of (a) the Agent administering the Exit Term Loan Facility and (b) preparing all documents relating to the Exit Term Loan Facility.
- N. The Company shall file with the SEC a Form 15 to deregister the outstanding securities of the Company under the Exchange Act and will not be a reporting company under the Exchange Act immediately following the effective date of the Plan.

**Interest Rate:**

With respect to the First-Lien First Out Loans, LIBOR + 10.00% *per annum* paid in cash.

With respect to the First-Lien Second Out Loans, either, at the option of the Borrower:

(i) LIBOR + 9.00% *per annum* paid in cash and paid-in-kind interest of 3.00% *per annum*, or

(ii) LIBOR + 11.50% *per annum* paid in cash;

Any paid-in-kind interest so elected to be paid will be added to the principal amounts outstanding under the First-Lien Second Out Loans.

LIBOR will be subject to a 1.00% “floor”.

During the continuance of a payment or bankruptcy Event of Default, past due amounts under the Exit Term Loan Facility will bear interest at an additional 2.00% *per annum* above the interest rate otherwise applicable.

The Borrower shall also have the right to elect that the First-Lien First Out Loans and the First-Lien Second Out Loans bear interest at a rate determined by reference to an “alternate base rate”, and the interest rate margin with respect to First-Lien First Out Loans and First-Lien Second Out Loans bearing interest at the alternate base rate shall be reduced by 1.00% *per annum*.

**Agency Fees:**

As agreed with the Agent.

**Scheduled  
Amortization:**

With respect to the First-Lien First Out Loans, 7.50% *per annum*, payable quarterly for the year beginning at the end of the third fiscal quarter of 2021, and 10.00% *per annum*, payable quarterly, beginning at the end of the third fiscal quarter of 2022 and thereafter.

With respect to the First-Lien Second Out Loans, 1.00% *per annum*, payable quarterly, beginning at the end of the third fiscal quarter of 2021 and thereafter.

**Call Protection:**

None.

**Lender Voting:**

Lenders holding a majority in principal amount of the First-Lien First Out Loans as of the date of determination (the “**Required First-Lien First Out Lenders**”).

Lenders holding a majority in principal amount of the First-Lien Second Out Loans as of the date of determination (the “**Required First-Lien Second Out Lenders**”).

Lender voting rights shall be as follows:

- A. The written consent of each Exit Lender directly and adversely affected by any amendment or modification to any provision relating to (i) principal, interest or fees (other than default interest), (ii) date of payments, (iii) the pro rata sharing of payments, (iv) the “waterfall”, or (v) any provision specifying the number or percentage of Exit Lenders, Required First-Lien First Out Lenders or Required First-Lien Second Out Lenders required to waive, amend or modify any rights or grant any consent shall be required;
- B. The consent of the Required First-Lien First Out Lenders shall be required for any waiver, amendment or modification unless such waiver, amendment or modification relates solely to the First-Lien Second Out Loans and does not directly or indirectly adversely affect the First-Lien First Out Lenders in any manner; and
- C. The consent of the Required First-Lien Second Out Lenders shall be required for any waiver, amendment or modification, unless such waiver, amendment or modification relates solely to the First-Lien First Out Loans and does not directly or indirectly adversely affect the First-Lien Second Out Lenders in any manner.

**Covenants:**

Subject to the immediately succeeding paragraph, to be substantially identical to the Pre-Existing Facility Documentation (including, without limitation, a covenant to use commercially reasonable efforts to obtain a public rating for the Exit Term Loan Facility (but no requirement to obtain or maintain a specific rating)) with such modifications as may be reasonably agreed by the Required Exit Lenders and the Company.

The negative covenant restricting incurrence of Indebtedness shall include a “basket” that permits incurrence of a new revolving credit facility (the “**New Revolver Facility**”), if, after giving effect to the incurrence thereof, (a) the New Revolver Facility availability (not the commitments therefor) does not exceed the remainder of (x) the Borrowing Base (as defined in the Prepetition ABL/FILO Amendment and Restatement, but without giving effect to the “Availability Cushion” described in the New Revolver Basket and Exit FILO Facility Term Sheet (the “**Availability Cushion**”)) less (y)

the aggregate principal amount of Exit FILO Loans then outstanding and (b) as a condition to drawing on the New Revolver Facility, the Borrower shall be in compliance with the Borrowing Base (as defined in the Prepetition ABL/FILO Amendment and Restatement, but without giving effect to the Availability Cushion) after giving effect to such borrowing.

**Financial Covenant:** A maximum total net leverage ratio at a single level to be agreed, tested quarterly beginning with the fiscal quarter ending on June 30, 2022.

Liquidity (as defined below) of \$30 million, tested quarterly beginning with the fiscal quarter ending on June 30, 2022.

**Events of Default:** To be substantially identical to the Pre-Existing Facility Documentation (collectively, the “*Events of Default*”).

**Mandatory Prepayments:** Mandatory prepayments of the borrowings under the Exit Term Loan Facility shall be made at par, without premium or penalty, subject to certain provisions, including rights with respect to ABL Priority Collateral, substantially similar to those under the Pre-Existing Facility Documentation and others to be agreed, modified as appropriate to reflect the proposed exit facility, with respect to:

(i) certain asset sales, including net cash proceeds received in connection with the sale of Nutra to IVC (the “*Nutra Proceeds*”) at the end of the fiscal quarter in which such proceeds are received; *provided* that with respect to Nutra Proceeds received during the first three fiscal quarters of 2021 or 2022 (1) the amount of such payment at such quarter end shall be limited to the lesser of (x) the amount of net cash proceeds so received and (y) the amount that would not cause Liquidity (after giving effect to such prepayment) to be less than the Applicable Liquidity Amount (the difference between clauses (x) and (y), the “*IVC Holdback Amount*”), (2) if there is an IVC Holdback Amount, then at the end of each subsequent fiscal quarter in 2021 or 2022 (other than the fourth fiscal quarter), as applicable, a mandatory prepayment shall be made in an amount equal to the lesser of (i) the IVC Holdback Amount less any portion of the IVC Holdback Amount so applied in prior fiscal quarters and (ii) the amount that would not cause Liquidity (after giving effect to such prepayment) to be less than the Applicable Liquidity Amount (any such prepayment pursuant to this clause (2), an “*IVC Holdback Prepayment*”) and (3) if there is any IVC Holdback Amount remaining as of the end of the fourth fiscal quarter of 2021 or 2022, as applicable, then at the end of such fiscal quarter a mandatory prepayment shall be made in respect of such remaining amount. “*Applicable Liquidity Amount*” shall mean \$75 million for each of fiscal year 2021 and 2022. Any Nutra Proceeds received after 2022 shall be used to prepay borrowings under the Exit Term Loan Facility and there shall be no IVC Holdback Amount after the end of the 2022 calendar year.

(ii) insurance proceeds,

(iii) incurrences of indebtedness not otherwise permitted to be incurred, and

(iv) subject to the following paragraph, receipts of tax refunds by the Loan Parties (the “*Tax Refunds*”) at the end of the fiscal quarter in which such proceeds are received; *provided* that (1) the amount of such Tax Refunds

prepayment at such quarter end shall be limited to the lesser of (x) the amount of net cash proceeds so received and (y) the amount that would not cause Liquidity (after giving effect to such prepayment and any prepayment of the Exit FILO Facility) to be less than \$75 million (the difference between clauses (x) and (y), the “**Tax Holdback Amount**”; and the difference between clause (x) and the Tax Holdback Amount, the “**Tax Refund Prepayment**”) and (2) if there is a Tax Holdback Amount, then at the end of each subsequent fiscal quarter a mandatory prepayment shall be made in an amount equal to the lesser of (i) the Tax Holdback Amount less any portion of the Tax Holdback Amount so applied pursuant to this clause (2) in prior fiscal quarters and (ii) the amount that would not cause Liquidity (after giving effect to such prepayment and any prepayment of the Exit FILO Facility) to be less than \$75 million (any such prepayment pursuant to this clause (2), a “**Tax Holdback Prepayment**”; Tax Holdback Prepayments and Tax Refund Prepayments are collectively referred to herein as “**Tax Prepayments**”).

Mandatory prepayments pursuant to clauses (i) through (iii) above shall be applied *first* to First-Lien First Out Loans and *second* to First-Lien Second Out Loans. Mandatory prepayments pursuant to clause (iv) above shall be applied as follows: a percentage to be agreed to prepay loans under the Exit FILO Facility; and a percentage to be agreed to prepay First-Lien First Out Loans and First-Lien Second Out Loans (with such percentages to be agreed among the Borrower, the Required Exit Lenders and the “Required FILO Lenders” (as defined the New Revolver Basket and Exit FILO Facility Term Sheet)).

The Exit Term Loan Facility shall provide for an excess cash flow sweep substantially consistent with that set forth in the Pre-Existing Facility Documentation (except that (i) for the avoidance of doubt, no Tax Refund nor Nutra Proceeds shall be included in the calculation of excess cash flow in the year received and (ii) excess cash flow shall be reduced by any Tax Holdback Prepayments made during the applicable period and the sweep will be applied on the remaining excess cash flow amount at the applicable percentage set forth below) of (i) 75.00% for the fiscal year ending 2021 to be applied ratably to prepay First-Lien First Out Loans and First-Lien Second Out Loans and (ii) 50.00% for the fiscal year ending 2022 and thereafter to prepay the First-Lien Second Out Loans (but not the First-Lien First Out Loans), in the case of each of clauses (i) and (ii), measured annually and payable within five (5) business days following the delivery of audited financial statements of such fiscal year, but only so long as Liquidity as of the date of such payment is greater than \$40,000,000 after giving pro forma effect to such excess cash flow payment.

Mandatory prepayments will be applied to payments due on the loans in direct order of maturity.

Mandatory prepayments and the application of such proceeds at all times will be subject to the intercreditor arrangements consistent with the Prepetition Intercreditor Agreement, the Pre-Existing Facility Documentation, and the Prepetition ABL Loan Documents, or otherwise

reasonably satisfactory to the Borrower, the Required Exit Lenders and the “required lenders” under the New Revolver and Exit FILO Facility.

For purposes hereof, “*Liquidity*” shall mean unrestricted cash of the Loan Parties and their restricted subsidiaries (other than cash held by foreign subsidiaries that are not Guarantors, cash included in the Borrowing Base and cash supporting letters of credit) and amounts available to be drawn under any revolving credit facility.

**Application of Payments:**

If at any time (x) insufficient funds are received by and available to the Agent to pay fully all amounts of principal, interest and fees and other obligations then due under the Exit Term Loan Facility or (y) during the continuation of an Event of Default and the enforcement of remedies in connection therewith, the Agent receives proceeds of Collateral pledged by the Loan Parties, such funds shall be applied:

- (i) *first*, toward payment of any expenses, fees and indemnities due to the Agent;
- (ii) *second*, toward payment of interest and fees then due from the Borrower with respect to any First-Lien First Out Loans, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;
- (iii) *third*, toward payment of principal then due from the Borrower with respect to any First-Lien First Out Loans, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties;
- (iv) *fourth*, toward payment of interest and fees then due from the Borrower with respect to any First-Lien Second Out Loans, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;
- (v) *fifth*, toward payment of principal then due from the Borrower with respect to any First-Lien Second Out Loans, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties;
- (vi) *sixth*, to payment of all other obligations of the Borrower and the Loan Parties then due and payable under the Exit Term Loan Facility, ratably among the parties entitled thereto in accordance with the amounts of such obligations then due to such parties; and
- (vii) *seventh*, to the Borrower or as otherwise required pursuant to any intercreditor agreement.



**Voluntary Prepayments:** Voluntary prepayments of the borrowings under the Exit Term Loan Facility will be permitted at any time at par, without premium or penalty, subject to the reimbursement of the Exit Lenders' redeployment costs in the case of a prepayment of LIBOR borrowings other than on the last day of the relevant interest period; *provided*, that no voluntary prepayment shall be made on account of the First-Lien Second Out Loans until the First-Lien First Out Loans have been repaid in full.

**Governing Law:** State of New York.

**Agent:** Unless the Required Exit Lenders and the Borrower otherwise elect, GLAS Trust Company LLC will serve as the administrative agent and collateral agent under the Exit Term Loan Facility and will perform duties customarily associated with such capacities (the "*Agent*").

**Expenses and Indemnification:** To be substantially consistent with the Pre-Existing Facility Documentation.

EXHIBIT A-1  
TO  
EXIT TERM LOAN FACILITY TERM SHEET

Guarantor Entities

GNC Holdings, Inc.

GNC Parent LLC

GNC Corporation

General Nutrition Corporation

General Nutrition Investment Company

Lucky Oldco Corporation

GNC Funding, Inc.

GNC International Holdings, Inc.

GNC Canada Holdings, Inc.

General Nutrition Centres Company

GNC Government Services, LLC

GNC China Holdco LLC

GNC Headquarters LLC

Gustine Sixth Avenue Associates, Ltd.

GNC Puerto Rico Holdings, Inc.

GNC Puerto Rico, LLC

EXHIBIT A-2  
TO  
EXIT TERM LOAN FACILITY TERM SHEET

Non-Guarantor Entities

Nutra Insurance Company

GNC Korea Limited

GNC Hong Kong Limited

GNC (Shanghai) Trading Co., Ltd.

GNC China JV Holdco Limited

GNC (Shanghai) Food Technology Limited

GNC South Africa (Pty) Ltd.

GNC Jersey One Limited

GNC Jersey Two Unlimited

THSD

GNC Live Well Ireland

GNC Colombia SAS

GNC Newco Parent, LLC

Nutra Manufacturing, LLC

GNC Supply Purchaser, LLC

GNC Intermediate IP Holdings, LLC

GNC Intellectual Property Holdings, LLC

EXHIBIT B  
TO  
EXIT TERM LOAN FACILITY TERM SHEET  
New Revolver Basket and Exit FILO Facility Term Sheet

[See attached].

**EXHIBIT C**

**Form of DIP ABL FILO Credit Agreement**

**DEBTOR-IN-POSSESSION**

**AMENDED AND RESTATED ABL CREDIT AGREEMENT**

**dated as of June [●], 2020**

**among**

**GNC CORPORATION,**

**as Parent,**

**GENERAL NUTRITION CENTERS, INC.,**

**as Borrower,**

**The Several Lenders  
from Time to Time Parties Hereto,**

**and**

**JPMORGAN CHASE BANK, N.A.  
as Administrative Agent and Collateral Agent**

**(amending and restating the ABL Credit Agreement dated as of February 28, 2018, as amended)**

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**JPMORGAN CHASE BANK, N.A.  
as Sole Lead Arranger and Bookrunner**

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DEBTOR-IN-POSSESSION AMENDED AND RESTATED ABL CREDIT AGREEMENT, dated as of June [ ● ], 2020, among GNC CORPORATION, a Delaware corporation (“Parent”), GENERAL NUTRITION CENTERS, INC., a Delaware corporation (the “Borrower”), GNC Holdings, Inc., a Delaware corporation (“Holdings”), GNC Parent LLC, a Delaware limited liability company (“GNC Parent LLC”), the several banks and other financial institutions or entities from time to time parties to this Agreement (the “Lenders”), and JPMORGAN CHASE BANK, N.A., as administrative agent (together with its successors in such capacity, the “Administrative Agent”) and as collateral agent (together with its successors in such capacity, the “Collateral Agent”).

W I T N E S S E T H:

**WHEREAS**, the Loan Parties have commenced voluntary cases (the “Chapter 11 Cases”) under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), and the Loan Parties continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

**WHEREAS**, GNC Holdings, Inc., in its capacity as foreign representative on behalf of the Loan Parties, commenced a recognition proceeding under Part IV of the *Companies’ Creditors Arrangement Act* (the “CCAA”) in the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”) to recognize in Canada the Chapter 11 Cases as “foreign main proceedings” (the “Recognition Proceedings”);

**WHEREAS**, in connection with the filing of the Chapter 11 Cases and the occurrence of the Interim DIP Order Entry Date, the Borrower, in its role as “ABL Administrative Borrower” under the Prepetition ABL Agreement, has terminated the “Revolving Credit Commitments” (as defined in the Prepetition ABL Agreement), repaid all Prepetition Revolving Loans, and cash collateralized the outstanding “Letters of Credit” (as defined in the Prepetition ABL Agreement) (such termination, repayment and cash collateralization, the “Revolver Termination”);

**WHEREAS**, the Borrower and the Lenders have agreed that Prepetition FILO Loans in an aggregate principal amount of \$275,000,000 shall be “rolled up” pursuant to Section 2.1 hereof through an amendment and restatement the Prepetition ABL Agreement pursuant to this Agreement. All indebtedness, Obligations and liabilities outstanding under the Prepetition ABL Agreement after giving effect to the Revolver Termination, as amended and restated hereby, and all Liens existing under the Prepetition ABL Agreement and the other Loan Documents (as defined in the Prepetition ABL Agreement) will continue in full force and effect, uninterrupted and unimpaired, as amended as set forth herein and in the Loan Documents delivered or otherwise continued in connection herewith; and

**WHEREAS**, to provide security for the repayment of the Loans, and the payment of the other Obligations of the Loan Parties hereunder and under the other Loan Documents, the Loan Parties will grant to the Collateral Agent, for its benefit and the benefit of the Lenders, certain security interests, liens, and other rights and protections pursuant to the terms hereof and pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, and super-priority

administrative expense claims pursuant to Section 364(c)(1) of the Bankruptcy Code, all as more fully described herein.

The Lenders are willing to amend and restate the Prepetition ABL Agreement on the terms and subject to the conditions set forth herein. Accordingly, in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree to amend and restate the Prepetition ABL Agreement as follows:

## DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

“ABL Priority Collateral”: the “ABL Priority Collateral” as defined in the Prepetition Intercreditor Agreement.

“ABR”: when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Acceptable Appraiser”: Tiger Valuation Services, LLC or any other experienced and reputable appraiser reasonably acceptable to the Borrower (it being understood that the Borrower’s consent shall not be unreasonably withheld, delayed or conditioned) and the Administrative Agent.

“Account”: with respect to a Person, any of such Person’s now owned and hereafter acquired or arising (1) accounts (as defined in the UCC and/or the PPSA) and, whether or not constituting “accounts” (as defined in the UCC and/or the PPSA), any rights to payment for the sale or lease of goods or rendition of services, whether or not they have been earned by performance or arising out of the use of a credit or charge card or information contained on or used with such card (and whether same is an “Account” (as defined in the UCC and/or the PPSA) or “General Intangible” or “Intangible” (as defined in the UCC or the PPSA, respectively)), (2) all Credit Card Processor Accounts, and (3) all Gift Card Accounts.

“Account Debtor”: any Person who is obligated on an Account, chattel paper, or a “General Intangible” or “Intangible” (as defined in the UCC or the PPSA, respectively).

“Acquired Asset ABL Priority Collateral”: any Accounts, Inventory, Borrowing Base Cash and/or Acquired Asset Borrowing Base Cash acquired by any Loan Party in a Qualifying Acquisition; provided that the Acquired Asset ABL Priority Collateral shall at no time comprise more than 10.0% of the Borrowing Base.

“Acquired Asset Borrowing Base Calculation”: 66 $\frac{2}{3}$ % of the applicable advance rates set forth in the definitions of “Borrowing Base” with respect to the relevant Acquired Asset ABL Priority Collateral, calculated against the book value (or, with respect to Inventory, of the Net Orderly Liquidation Value (based on the Net Orderly Liquidation Value for comparable Inventory pursuant to the most recent Appraisal if inventory appraisals therefor do not exist)) of the relevant Acquired Asset ABL Priority Collateral as set forth in the consolidated balance

sheets of the relevant acquired entities (or, in the case of an asset acquisition, the seller's balance sheet) as of the date with respect to which the most recent Borrowing Base Certificate has been delivered, and applying eligibility and reserve criteria consistent with those applied to Accounts, Inventory and Borrowing Base Cash included in the Borrowing Base, until the delivery to the Administrative Agent of an appraisal and field examination in respect thereof that, in each case, is reasonably satisfactory to the Administrative Agent and addressed to the Administrative Agent.

"Acquired Asset Borrowing Base Cash": Unrestricted Cash that is (i) acquired by any Loan Party in any Qualifying Acquisition and (ii) held by the Loan Parties, in each case (A) in deposit accounts or securities accounts with the Administrative Agent or (B) if JPMorgan Chase Bank, N.A. is no longer the Administrative Agent, held in deposit accounts or securities accounts with any national bank reasonably acceptable to Required Lenders which are subject in each case to a control agreement in form and substance reasonably satisfactory to the Administrative Agent, and (iii) not subject to any other Liens other than non-consensual Liens, Liens permitted by Section 6.3(m) and (q) and Liens that are junior in priority to the Liens securing the Obligations, in each case, permitted under Section 6.3.

"Ad Hoc Committee": collectively, the groups of ad hoc holders of the Prepetition FILO Loans represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP and AlixPartners, on the one hand, and Milbank LLP and Houlihan Lokey, on the other hand.

"Ad Hoc Committee Advisors": Paul, Weiss, Rifkind, Wharton & Garrison LLP, AlixPartners, Milbank LLP and Houlihan Lokey.

"Adjusted LIBO Rate": with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the greater of (a)(i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate, and (b) with respect to Eurodollar Loans, 1.00%.

"Administrative Agent": as defined in the preamble hereto.

"Administrative Questionnaire": an administrative questionnaire in a form supplied by the Administrative Agent.

"Affiliate": as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"Agents": the collective reference to the Administrative Agent and the Collateral Agent.

"Agreement": this Credit Agreement, as amended, amended and restated, supplemented or otherwise modified from time to time.

"Alternate Base Rate": for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus  $\frac{1}{2}$  of 1%,

(c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1% and (d) with respect to ABR Loans, 2.00%; provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the Screen Rate (or if the Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 am London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.17 hereof, then the Alternate Base Rate shall be the greatest of clauses (a), (b) and (d) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Anti-Corruption Laws”: all laws, rules and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Margin”: (i) for FILO Term Loans that are Eurodollar Loans, 9.00% per annum, and (ii) for FILO Term Loans that are ABR Loans, 8.00% per annum.

“Approved Fund”: any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit as its primary activity and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Approved Plan of Reorganization”: a Chapter 11 plan of reorganization, having the terms set forth in the Restructuring Support Agreement and otherwise in form and substance reasonably satisfactory to the Borrower and to Lenders holding at least 66 $\frac{2}{3}$ % of the aggregate amount of the FILO Term Loans and filed by the Loan Parties with the Bankruptcy Court in connection with the Chapter 11 Cases, as may be amended, supplemented or otherwise modified from time to time.

“Arranger”: JPMorgan Chase Bank, N.A.

“Assignment and Assumption”: an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.4), and accepted by the Administrative Agent, in the form of Exhibit C or any other form approved by the Administrative Agent and the Borrower.

“Attributable Indebtedness”: when used with respect to any Sale and Leaseback Transaction, as at the time of determination, the present value (discounted at a rate equivalent to the Borrower’s then-current weighted average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such Sale and Leaseback Transaction.

“Avoidance Actions”: all causes of action arising under Chapter 5 of the Bankruptcy Code and similar statutes of the relevant states.

“Backup Withholding Tax”: United States federal withholding Taxes imposed pursuant to Section 3406 of the Code, as in effect on the date of this Agreement, or any successor provision that is substantially the equivalent thereof, and any regulations or official interpretations thereof (including any revenue ruling, revenue procedure, notice or similar guidance issued by the Internal Revenue Service thereunder as a precondition to relief or exemption from Taxes under such provisions).

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

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

“Bankruptcy Code”: Title 11 of the United States Code, as amended from time to time.

“Bankruptcy Court”: as defined in the recitals hereto.

“Bankruptcy Court DIP Order”: the Interim DIP Order or the Final DIP Order, as applicable.

“Bankruptcy Event”: with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, interim receiver, monitor, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Board”: the Board of Governors of the Federal Reserve System of the United States of America (or any successor).

“Borrower”: as defined in the preamble hereto.

“Borrower Materials”: as defined in Section 5.2.



“Borrowing”: Loans of the same Type, made, deemed made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Borrowing Base”: at any time as set forth in the most recently delivered Borrowing Base Certificate, the sum of:

1. 93% of the value of Eligible Credit Card Receivables held by the Loan Parties; plus
2. 88% of the book value of Eligible Accounts Receivable held by the Loan Parties attributable to wholesale accounts receivable; plus
3. 88% of the book value of Eligible Accounts Receivable held by the Loan Parties attributable to domestic franchisees; provided that at any time the amount of the Borrowing Base consisting of Eligible Accounts Receivable attributable to domestic and foreign franchisees shall not exceed 20% of the Borrowing Base in the aggregate; plus
4. 88% of the book value of Eligible Accounts Receivable held by the Loan Parties attributable to foreign franchisees in each case backed by a letter of credit reasonably acceptable to the Administrative Agent; provided that at any time (i) the amount of the Borrowing Base consisting of Eligible Accounts Receivable attributable to foreign franchisees shall not exceed 15% of the Borrowing Base in the aggregate and (ii) the amount of the Borrowing Base consisting of Eligible Accounts Receivable attributable to domestic (as set out in clause (3) above) and foreign franchisees shall not exceed 20% of the Borrowing Base in the aggregate; plus
5. 98% of the Net Orderly Liquidation Value of Eligible Inventory held by the Loan Parties consisting of finished goods and bulk Eligible Inventory; plus
6. 98% of the Net Orderly Liquidation Value of Eligible Inventory held by the Loan Parties consisting of raw materials Eligible Inventory; plus
7. 100% of the Borrowing Base Cash held by the Loan Parties; plus
8. Upon the occurrence of the Roll-Up Effective Time, an amount equal to \$17,500,000; less
9. Reserves.

Notwithstanding anything to the contrary contained herein, any Acquired Asset ABL Priority Collateral held by a Loan Party will immediately be included in the Borrowing Base at a value equal to the Acquired Asset Borrowing Base Calculation thereof; provided that if the Loan Parties have not delivered, at their expense, a customary field examination and inventory appraisal reasonably acceptable to Administrative Agent within 90 days of the acquisition of such Acquired Asset ABL Priority Collateral (or such longer period as the Administrative Agent may reasonably agree), such Acquired Asset ABL Priority Collateral will cease to be eligible for inclusion in the Borrowing Base until completion of a customary field examination and inventory appraisal reasonably acceptable to Administrative Agent.

“Borrowing Base Cash”: Unrestricted Cash held by the Loan Parties, in each case that is (i) (A) held in deposit accounts or securities accounts with the Administrative Agent or (B) if JPMorgan Chase Bank, N.A. is no longer the Administrative Agent, held in deposit accounts or securities accounts with any national bank reasonably acceptable to Required Lenders which are in each case subject to a control agreement in form and substance reasonably satisfactory to the Administrative Agent and (ii) not subject to any other Liens other than non-consensual Liens, Liens permitted by Section 6.3(m) and (q) and Liens that are junior in priority to the Liens securing the Obligations, in each case, permitted under Section 6.3; provided that, prior to withdrawing Borrowing Base Cash from any account described above in an amount in excess of \$5,000,000 in the aggregate for all withdrawals since the most recent delivery of a Borrowing Base Certificate, the Loan Parties shall deliver an updated Borrowing Base Certificate as of the date of such withdrawal and giving pro forma effect to such withdrawal.

“Borrowing Base Certificate”: a certificate by a Responsible Officer of the Borrower, substantially in the form of Exhibit H (or another form acceptable to the Administrative Agent and the Borrower) setting forth the calculation of the Borrowing Base, including a calculation of each component thereof (including Reserves), all in such detail as is reasonably satisfactory to the Administrative Agent. All calculations of the Borrowing Base in connection with the preparation of any Borrowing Base Certificate will be made by the Borrower and certified to the Administrative Agent.

“Borrowing Request”: a request by the Borrower for a Borrowing substantially in the form of Exhibit F.

“Budget”: the 13-week statement of the Loan Parties’ anticipated cash receipts and Budget Disbursements for the first 13 weeks of the Chapter 11 Cases, set forth on a weekly basis, including the anticipated uses of the proceeds from the Facility for such period and attached hereto as Exhibit I, as updated pursuant to Section 5.1(B)(a) from time to time.

“Budget Disbursements”: in any period, the Loan Parties’ operating disbursements and Capital Expenditures (excluding Professional Fees and restructuring charges arising on account of the Chapter 11 Cases (including U.S. Trustee fees and professional fees and expenses incurred by any official committee appointed in the Chapter 11 Cases or the Agents, the Lenders and/or the Loan Parties or paid by the Loan Parties as adequate protection)).

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

“Canadian Anti-Corruption Laws”: the *Corruption of Foreign Public Officials Act* (Canada), *Special Economic Measures Act* (Canada), the *Freezing Assets of Corrupt Foreign Officials Act* (Canada), Part II.1 of the *Criminal Code* (Canada) and the *Export and Import Permits Act* (Canada), and any related regulations.

“Canadian Anti-Money Laundering Legislation”: the *Criminal Code* (Canada), the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and the *United Nations Act* (Canada), and any regulations thereunder.

“Canadian Defined Benefit Plan”: a Canadian Pension Plan which contains a “defined benefit provision,” as defined in subsection 147.1(1) of the *Income Tax Act* (Canada).

“Canadian Court”: as defined in the recitals hereto.

“Canadian Court DIP Recognition Order”: the Interim DIP Recognition Order and the Final DIP Recognition Order, as applicable.

“Canadian Dollars” and “C\$”: lawful currency of Canada.

“Canadian Guarantee and Collateral Agreement”: the Amended and Restated Canadian Guarantee and Collateral Agreement, dated as of the Closing Date, executed and delivered by the Canadian Guarantor, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Canadian Guarantor”: General Nutrition Centres Company, an unlimited liability company organized under the laws of Nova Scotia.

“Canadian Pension Plan”: any pension plan maintained or sponsored by the Canadian Guarantor that is subject to the funding requirements of the Pension Benefits Act (Ontario), the *Income Tax Act* (Canada) or applicable pension benefits legislation in any other Canadian jurisdiction and is applicable to employees resident in Canada and to which the Canadian Guarantor is making or accruing an obligation to make contributions or has within the preceding five years made or accrued such contributions.

“Canadian Pension Termination Event”: (a) the withdrawal of the Canadian Guarantor from a Canadian Defined Benefit Plan which is “multi-employer pension plan”, as defined under applicable pension standards legislation, during a plan year, or (b) the filing of a notice of interest to terminate in whole or in part a Canadian Defined Benefit Plan or the filing of an amendment with the applicable Governmental Authority which terminates a Canadian Defined Benefit Plan, in whole or in part, or the treatment of an amendment as a termination or partial termination of a Canadian Defined Benefit Plan, (c) the institution of proceedings by any Governmental Authority to terminate a Canadian Defined Benefit Plan in whole or in part or have a replacement administrator or trustee appointed to administer a Canadian Defined Benefit Plan or (d) any other event or condition or declaration or application which might constitute grounds for the termination or winding up of a Canadian Defined Benefit Plan, in whole or in part, or the appointment by any Governmental Authority of a replacement administrator or trustee to administer a Canadian Defined Benefit Plan.

“Canadian Welfare Plan”: any medical, health, hospitalization, insurance or other employee benefit or welfare plan or arrangement of the Canadian Guarantor applicable to employees resident in Canada.

“Capital Expenditures”: for any period, with respect to any Person, the aggregate of all expenditures by such Person for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that are required to be capitalized under GAAP on a balance sheet of such Person, it being understood that Capital Expenditures do not include amounts expended to purchase assets constituting an on-going business.

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

“Capital Stock”: any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing, including convertible securities but excluding debt securities convertible or exchangeable into any of the foregoing.

“Carve Out” has the meaning specified in the Bankruptcy Court DIP Order.

“Cash Equivalents”: (a) United States and Canadian dollars; (b) in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business and not for speculation; (c) securities and other obligations issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (provided that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than one year from the date of acquisition; (d) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, demand deposits, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any Lender or with any domestic or foreign bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia or any U.S. branch of a foreign bank having, capital and surplus of not less than \$500,000,000; (e) repurchase obligations for underlying securities of the types described in clauses (c) and (d) above or clause (g) below entered into with any financial institution meeting the qualifications specified in clause (d) above; (f) commercial paper rated at least P-2 by Moody’s or at least A-2 by S&P (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) and, in each case, maturing within one year after the date of acquisition; (g) marketable short-term money market and similar highly liquid funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency); (h) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an investment grade rating from either Moody’s or S&P (or, if at any time neither Moody’s nor S&P shall be

rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) with maturities of one year or less from the date of acquisition; (i) Investments with average maturities of one year or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency); (j) short-term obligations of, or fully guaranteed by, the government of Canada, (k) short-term obligations of, or fully guaranteed by, the government of a Province of Canada, in each case having a rating of "A-" (or the then equivalent grade) or better by a nationally recognized rating agency and (l) investment funds investing substantially all of their assets in Cash Equivalents of the kinds described in clauses (a) through (k) of this definition.

In the case of Investments by the Canadian Guarantor or by any Foreign Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a) through (l) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by the Canadian Guarantor or by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (l) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents shall also include amounts denominated in currencies other than those set forth in clause (a) above, provided that such amounts are converted into Dollars as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

"Cash Management Obligations": obligations owed by any Loan Party to any Qualified Counterparty in respect of or in connection with Cash Management Services and designated by the Qualified Counterparty and the Borrower in writing to the Administrative Agent as "Cash Management Obligations" and includes any and all Cash Management Obligations in respect of or in connection with Cash Management Services that were so designated in accordance with the Prepetition ABL Agreement.

"Cash Management Order": as defined in Section 4.1(j).

"Cash Management Services": any treasury, depositary, pooling, netting, overdraft, stored value card, purchase card (including so-called "procurement cards" or "P-cards"), debit card, credit card, cash management and similar services and any automated clearing house transfer of funds.

"CCAA": as defined in the recitals hereto.

"CFC": a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"Change in Law": (a) the adoption of any law, rule or regulation after the date of this Agreement or, if later, the date on which the applicable Lender becomes a Lender hereunder

(a “Later Date”), (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or, if later, the date on which the applicable Lender becomes a Lender hereunder, or (c) compliance by any Lender (or, for purposes of Section 2.18(b), by any lending office of such Lender or by such Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement or, if later, the date on which the applicable Lender becomes a Lender hereunder. Notwithstanding anything herein to the contrary (i) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by United States or foreign regulatory authorities, in each case pursuant to Basel III, and (ii) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a Change in Law, regardless of the date enacted, adopted, issued or implemented.

“Change of Control”: the occurrence of any of the following events: (a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of Holdings or any of its Subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) shall become the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of Capital Stock representing more than 51% of the ordinary voting power for the election of directors of Holdings (determined on a fully diluted basis but not giving effect to contingent voting rights which have not vested); (b) Parent shall cease to own and control, of record and beneficially, directly, 100% of each class of outstanding Capital Stock of the Borrower free and clear of all Liens (except Permitted Liens); or (c) Holdings shall cease to beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly) and control, directly or indirectly, 100% of each class of outstanding Capital Stock of the Parent.

“Chapter 11 Cases”: as defined in the recitals hereto.

“Closing Date”: the first date all the conditions in Section 4.1 have been satisfied or waived, which shall not be later than three Business Days after the Interim DIP Order Entry Date.

“Code”: the Internal Revenue Code of 1986, as amended from time to time.

“Collateral”: all Property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement and the “DIP Collateral” as defined in the Bankruptcy Court DIP Orders. The term “Collateral” shall not include any Excluded Assets.

“Collateral Account”: as defined in Section 2.15(k).

“Collateral Agent”: as defined in the preamble hereto.

“Commitment”: with respect to any Lender, such Lender’s FILO Term Loan Commitment.

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

“Commonly Controlled Entity”: an entity, whether or not incorporated, that is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a group that includes the Borrower and that is treated as a single employer under Sections 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“Company Intellectual Property”: as defined in Section 3.9.

“Confirmation Date”: the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

“Confirmation Order”: an order of the Bankruptcy Court, in form and substance acceptable to the Required Lenders, confirming the Approved Plan of Reorganization.

“Contractual Obligation”: with respect to any Person, any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

“Cost”: the calculated cost of purchases, based upon the Borrower’s accounting practices as reflected in the most recent financial statements delivered pursuant to Section 5.1(a).

“Credit Card Processor”: any Person (other than a Loan Party or any Affiliate of any Loan Party) who issues or whose members or Affiliates issue credit or debit cards, including MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club and Carte Blanche.

“Credit Card Processor Accounts”: accounts, receivables and/or payment intangibles owing to a Loan Party from a Credit Card Processor, which shall include in any event payments owing to any Loan Party from a Credit Card Processor that constitute proceeds from the sale or disposition of Inventory of the Loan Parties in the ordinary course of business.

“Credit Party”: the Administrative Agent or any other Lender.

“Crossover Ad Hoc Group”: the ad hoc group of holders of the FILO Term Loans represented by Milbank LLP.

“Customs Broker Agreement”: an agreement, in form reasonably satisfactory to the Administrative Agent, in which the customs broker or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Administrative Agent and agrees, upon notice from the Administrative Agent, to hold and dispose of such Inventory solely as directed by the Administrative Agent.

“Debtor Relief Laws”: the Bankruptcy Code of the United States, the Bankruptcy and Insolvency Act (Canada), the Companies’ Creditors Arrangement Act (Canada), the Winding Up and Restructuring Act (Canada) and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States, Canada or other applicable jurisdictions from time to time in effect.

“Default”: any of the events specified in Section 7, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Defaulting Lender”: any Lender that (a) has failed, within three Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or the Administrative Agent in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after written request by the Administrative Agent, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans (unless such Lender indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan under this Agreement cannot be satisfied) under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the Administrative Agent’s receipt of such certification in form and substance reasonably satisfactory to the Administrative Agent, or (d) has become the subject of a Bankruptcy Event or Bail-in Action. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

“Designated Disbursement Account”: as defined in Section 5.17(c).

“DIP Superpriority Claim”: allowed superpriority administrative expense claims granted by the Bankruptcy Court DIP Order to the Administrative Agent, on behalf of itself and the Lenders, pursuant to Bankruptcy Code sections 364(c)(1), as set forth in the Bankruptcy Court DIP Order (a) with priority over any and all administrative expense claims and unsecured claims against the Loan Parties or their estates in any of the Chapter 11 Cases or in any other



proceedings superseding or related to any of the foregoing, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code or any other provision of the Bankruptcy Code and (b) which shall at all times be senior to the rights of the Loan Parties and their estates, and any successor trustee or other estate representative to the extent permitted by law.

“Disposition”: with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof (excluding Liens); and the terms “Dispose” and “Disposed of” shall have correlative meanings.

“Disqualified Capital Stock”: any Capital Stock which, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Capital Stock which is not otherwise Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Capital Stock which is not otherwise Disqualified Capital Stock), in whole or in part, (iii) provides for the scheduled payments or dividends in cash, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the date that is 91 days after the Maturity Date at the time of issuance, except, in the case of clauses (i) and (ii), if as a result of a change of control event or asset sale or other Disposition or casualty event, so long as any rights of the holders thereof to require the redemption thereof upon the occurrence of such a change of control event or asset sale or other Disposition or casualty event are subject to the prior payment in full of the Obligations; provided that if such Capital Stock is issued pursuant to a plan for the benefit of employees of Parent, the Borrower or any of its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by Parent, the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Disqualified Institution”:

(a) any Person that is or controls a competitor of the Borrower or any of its Subsidiaries and is identified by the Borrower in writing to the Administrative Agent from time to time prior to, on or after the Closing Date; or

(b) any Affiliate of any of the foregoing Persons that is (i) reasonably identifiable solely on the basis of the similarity of such Affiliate’s name (but excluding any such Affiliate that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and with respect to which such foregoing Person does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such Affiliate) or (ii) identified by the Borrower to the Administrative Agent in writing from time to time prior to, on or after the Closing Date;

provided that any updates, modifications, deletions and/or supplements to the list of Disqualified Institutions, including the designation of any Disqualified Institution after the Closing Date pursuant to clause (a) or clause (b) above, (x) shall not apply retroactively to disqualify any Lender that has previously acquired an assignment or participation interest in any FILO Term Loan (or that is a party to a pending assignment or participation as of the date of such designation), (y) shall be delivered by the Borrower to [JPMDQ\\_Contact@jpmorgan.com](mailto:JPMDQ_Contact@jpmorgan.com) (and failure to so deliver any such update, modification, deletion and/or supplement shall render such update, modification, deletion and/or supplement not received and ineffective) and (z) shall become effective three Business Days after such update, modification, deletion and/or supplement is delivered in accordance with the foregoing clause (y).

“Dollars” and “§”: lawful currency of the United States of America.

“Domestic Subsidiary”: a Restricted Subsidiary that is incorporated, organized or otherwise formed under the laws of the United States, any State thereof or the District of Columbia.

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

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

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

“Electronic Signature”: an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“Eligible Accounts Receivable”: all Accounts (other than Credit Card Processor Accounts and Gift Card Accounts) of the Loan Parties that constitute proceeds from the sale or disposition of Inventory (net of volume rebates) in the ordinary course of business and that are reflected in the most recent Borrowing Base Certificate, except that no Account will be an Eligible Account Receivable if:

- (1) such Account has been outstanding for more than 90 days after the original invoice date or more than 60 days after the original due date relating to such invoice;
- (2) such Account is owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (1) above;

(3) such Account is owed by an Account Debtor that is an Affiliate of any Loan Party or an employee or agent of any Loan Party or any Affiliate of any Loan Party;

(4) such Account is owed by an Account Debtor who is either (i) the United States or any department, agency, or instrumentality of the United States or the federal government of Canada or any department, agency, crown corporation or instrumentality thereof (exclusive, however, of Accounts with respect to which Loan Parties have complied, to the reasonable satisfaction of the Administrative Agent, with the Assignment of Claims Act, 31 USC §3727 or the Financial Administration Act (Canada), as applicable), or (ii) any state of the United States or province or territory of Canada or any other Governmental Authority not covered by the preceding clause (i) (exclusive, however, of Accounts with respect to which (x) the Loan Parties have complied with any applicable State, provincial or local laws comparable to the foregoing) or (y) provincial or local law does not restrict or render ineffective assignment of such Accounts;

(5) such Account is owed by an Account Debtor whose total obligations together with those of its Affiliates owing to Loan Parties exceed 15% of all Eligible Accounts Receivable, to the extent of the obligations owing by such Account Debtor and its Affiliates in excess of such percentage; provided, that in each case, the amount of Eligible Accounts Receivable that are excluded because they exceed the foregoing percentage shall be determined by Administrative Agent based on all of the otherwise Eligible Accounts Receivable of all types prior to giving effect to any eliminations based upon the foregoing concentration limit;

(6) such Account is not subject to the first priority (other than a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y)), valid and perfected Lien of the Administrative Agent as to such Account;

(7) a Loan Party does not have good, valid and marketable title thereto, free and clear of any Lien (other than (a) Liens granted to the Administrative Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Security Documents, (b) a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y) or other Permitted Lien arising by operation of law, or (c) a Lien that is permitted under Section 6.3(g), 6.3(n)(iii), 6.3(p), 6.3(x) or 6.3(aa) and, in each case, junior in priority to the Liens securing the Obligations);

(8) (i) such Account does not constitute the legal, valid and binding obligation of the applicable Account Debtor enforceable in accordance with its terms or (ii) such Account arises in a transaction wherein the goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional;

(9) such Account is owing by a supplier or creditor or is otherwise disputed, or a claim, counterclaim, discount, deduction, reserve, allowance, recoupment or offset has been asserted with respect thereto by the applicable Account Debtor (in each case, only to the extent of the relevant dispute, claim, counterclaim, discount, deduction, reserve, allowance, recoupment or offset);

(10) such Account is owed by an Account Debtor that is subject to a bankruptcy proceeding of the type specified in Section 7.1(f) of the Prepetition ABL Agreement or that is

liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Administrative Agent in its Permitted Discretion;

(11) such Account does not conform with a covenant or representation contained in this Agreement or the Guarantee and Collateral Agreement as to such Account;

(12) such Account is evidenced by Chattel Paper or an Instrument (each as defined in the Guarantee and Collateral Agreement) of any kind, or has been reduced to judgment;

(13) such Account includes a billing for interest, fees or late charges, but ineligibility will be limited to the extent thereof;

(14) such Account arises out of the Pfizer prepaid customer stability program (for so long as the revenue related thereto constitutes deferred revenue);

(15) such Account is owed by an Account Debtor which is owed sums by the Borrower and its Restricted Subsidiaries (with ineligibility limited to the amount owed to such Account Debtor by the Borrower and its Restricted Subsidiaries);

(16) such Account is owed by a franchisee which is in default under its franchise agreement;

(17) such Account represents amounts owed by the national advertising fund related to marketing activities of the Borrower and its Subsidiaries;

(18) such Account represents interest, principal or finance charges owed by franchisees;

(19) such Account represents rent due from franchisees;

(20) such Account is owed by an Account Debtor that is a Sanctioned Person or on any specially designated nationals list maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or a similar list maintained by the Government of Canada, or, to the knowledge of the Borrower or the applicable Guarantor is not able to bring suit or enforce remedies against the Account Debtor through judicial or arbitral process;

(21) such Account is owed by an Account Debtor that is organized outside of the United States or Canada, unless (x) such Account is supported by a letter of credit (delivered to and directly drawable by the Administrative Agent) reasonably satisfactory to the Administrative Agent, or (y) the billing in respect of such Account is made to a branch or office of such Account Debtor that is located in the United States or Canada;

(22) the goods giving rise to such Account have not been delivered to the Account Debtor or to a third party (to the extent title passes to the Account Debtor upon delivery to such third party), the goods giving rise to such Account have been returned by the Account Debtor, or it otherwise does not represent a final sale (it being understood that the returnability of

good will not give rise to a transaction not representing a final sale) or title to the goods has not passed to the Account Debtor;

(23) its payment has been extended beyond the terms set forth in the invoice related thereto (and in any event if its payment has been extended beyond 90 days after the original invoice date or 60 days after the original due date relating to such invoice);

(24) such Account is an Account in respect of which there are unapplied collections (with ineligibility limited to the amount of such unapplied collections);

(25) such Account is owed by an Account Debtor with respect to which return reserves are maintained (with ineligibility limited to the amount of such reserve); or

(26) such account has been or is required to be charged or written off as uncollectible in accordance with GAAP.

If any Account at any time ceases to be an Eligible Accounts Receivable, then such Account will promptly be excluded from the calculation of the Borrowing Base.

Notwithstanding anything to the contrary herein, Eligible Accounts Receivable shall include Eligible Gift Card Receivables after the delivery to the Administrative Agent of a field examination in respect thereof that is reasonably satisfactory to the Administrative Agent and addressed to the Administrative Agent (and, for the avoidance of doubt, Eligible Accounts Receivable shall not include Eligible Gift Card Receivables at any time prior to the delivery of such field examination).

“Eligible Assignee”: (i) any Lender, any Affiliate of a Lender and any Approved Fund and (ii) any commercial bank, insurance company, investment or mutual fund or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933) and which extends credit or buys loans in the ordinary course, other than, in each case, a natural person, a Defaulting Lender or a Disqualified Institution. For the avoidance of doubt, (x) Disqualified Institutions shall be subject to Section 9.4(h) and (y) in no event shall Parent, the Borrower or any of their Subsidiaries or Affiliates be an Eligible Assignee.

“Eligible Credit Card Receivables”: all Credit Card Processor Accounts (net of all associated fees) of the Loan Parties that constitute proceeds from the sale or disposition of Inventory in the ordinary course of business and that are reflected in the most recent Borrowing Base Certificate, except that no Credit Card Processor Account will be an Eligible Credit Card Receivable if:

(1) such Credit Card Processor Account has been outstanding for more than five Business Days from the date of sale;

(2) such Credit Card Processor Account is not subject to the first priority (other than a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y)), valid and perfected Lien of the Collateral Agent as to such Credit Card Processor Account;

(3) a Loan Party does not have good, valid and marketable title thereto, free and clear of any Lien (other than (a) Liens granted to the Administrative Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Security Documents, (b) a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h) 6.3(i), 6.3(k), 6.3(w) or 6.3(y) or other Permitted Lien arising by operation of law, or (c) a Lien that is permitted under Section 6.3(g), 6.3(n)(iii), 6.3(p), 6.3(x) or 6.3(aa) and, in each case, junior in priority to the Liens securing the Obligations);

(4) such Credit Card Processor Account does not constitute the legal, valid and binding obligation of the applicable Credit Card Processor enforceable in accordance with its terms;

(5) such Credit Card Processor Account is disputed, or a claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback has been asserted with respect thereto by the applicable Credit Card Processor (but only to the extent of such dispute, claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback);

(6) such Credit Card Processor Account is owed by a Credit Card Processor that is subject to a bankruptcy proceeding of the type specified in Section 7.1(f) of the Prepetition ABL Agreement or that is liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Administrative Agent in its Permitted Discretion;

(7) such Credit Card Processor Account does not conform with a covenant or representation contained in this Agreement or the Guarantee and Collateral Agreement as to such Credit Card Processor Account;

(8) such Credit Card Processor Account is evidenced by Chattel Paper or an Instrument (each as defined in the Guarantee and Collateral Agreement) of any kind, or has been reduced to judgment;

(9) such Credit Card Processor Account includes a billing for interest, fees or late charges, but ineligibility will be limited to the extent thereof;

(10) such Credit Card Processor Account is owed by a Credit Card Processor that is organized outside of the U.S. or Canada; or

(11) such Credit Card Processor Account has been or is required to be charged or written off as uncollectible in accordance with GAAP.

Anything contained herein to the contrary notwithstanding, for purposes of determining the amount of Eligible Credit Card Receivables in the Borrowing Base at any time, any Credit Card Processor Account that otherwise meets the requirements for Eligible Credit Card Receivables may be included in such calculation even though the same does not constitute proceeds from the sale or disposition of Inventory; *provided* that such amount will be subject to adjustment as may be required by the Administrative Agent at any time and from time to time to reflect such fact. To the extent requested by the Administrative Agent, a notice reasonably satisfactory to the Administrative Agent and the Borrower shall be sent to each Credit Card Processor with respect to the Liens created under the Security Documents.

If any Credit Card Processor Account at any time ceases to be an Eligible Credit Card Receivable, then such Credit Card Processor Account will promptly be excluded from the calculation of the Borrowing Base.

“Eligible Gift Card Receivables”: all Gift Card Accounts of the Loan Parties that constitute proceeds from the sale or disposition of Loan Party gift cards pursuant to a Gift Card Agreement and that are reflected in the most recent Borrowing Base Certificate, except that no Gift Card Account will be an Eligible Gift Card Receivable if:

1. such Gift Card Account has been outstanding for more than 90 days from the date of sale of the relevant gift cards;
2. such Gift Card Account is not subject to the first priority (subject to a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y)), valid and perfected Lien of the Collateral Agent as to such Account;
3. a Loan Party does not have good, valid and marketable title thereto, free and clear of any Lien (other than (a) Liens granted to the Collateral Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Security Documents, (b) a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y), or other Permitted Lien arising by operation of law, or (c) a Lien that is permitted under Section 6.3(g), 6.3(n)(iii), 6.3(p), 6.3(x) or 6.3(aa) and, in each case, junior in priority to the Liens securing the Obligations);
4. such Gift Card Account does not constitute the legal, valid and binding obligation of the applicable Gift Card Administrator enforceable in accordance with its terms;
5. such Gift Card Account is disputed, or a claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback has been asserted with respect thereto by the applicable Gift Card Administrator (but only to the extent of such dispute, claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback);
6. such Gift Card Account is owed by a Gift Card Administrator that is subject to a bankruptcy proceeding of the type specified in Section 7.1(f) of the Prepetition ABL Agreement or that is liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Administrative Agent in its Permitted Discretion;
7. such Gift Card Account does not conform with a covenant or representation contained in this Agreement or the Guarantee and Collateral Agreement as to such Gift Card Account;
8. such Gift Card Account is evidenced by Chattel Paper or an Instrument (each as defined in the Guarantee and Collateral Agreement) of any kind, or has been reduced to judgment;
9. such Gift Card Account includes a billing for interest, fees or late charges, but ineligibility will be limited to the extent thereof; or

10. which the Administrative Agent otherwise determines is unacceptable for any reason whatsoever.

If any Gift Card Account at any time ceases to be an Eligible Gift Card Receivable, then such Gift Card Account will promptly be excluded from the calculation of the Borrowing Base.

“Eligible Inventory”: all Inventory of a Loan Party reflected in the most recent Borrowing Base Certificate, except that no item of Inventory will be Eligible Inventory if such item:

(1) is not subject to the first priority (other than a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y)), valid and perfected Lien of the Collateral Agent as to such Inventory;

(2) a Loan Party does not have good, valid and marketable title thereto, free and clear of any Lien (other than (a) Liens granted to the Collateral Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Security Documents, (b) a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y) or other Permitted Lien arising by operation of law, or (c) a Lien that is permitted under Section 6.3(g), 6.3(n)(iii), 6.3(p), 6.3(x) or 6.3(aa) and, in each case, junior in priority to the Liens securing the Obligations);

(3) is slow moving (other than Inventory located at a clearance center that has been appropriately priced consistent with the Loan Parties’ customary practices), obsolete, unmerchantable, defective, used or unfit for sale;

(4) does not conform in all material respects to the representations and warranties contained in this Agreement or the Guarantee and Collateral Agreement;

(5) is not owned only by one or more Loan Parties;

(6) is not finished goods or bulk inventory or raw materials, or which constitutes work-in-process, packaging and shipping material, supplies, samples, prototypes, bags, displays or display items, bill-and-hold goods, goods that are returned or marked for return (but not held for resale), or which constitutes goods held on consignment, or goods which are not of a type held for sale in the ordinary course of business;

(7) is not located in the United States or Canada (other than to the extent that it is in-transit to the United States or Canada and is not deemed ineligible in accordance with clause (12) of this definition);

(8) [reserved];

(9) [reserved];

(10) is being processed offsite at a third-party location or outside processor, or is in-transit to or from said third party location or outside processor;



(11) is the subject of a consignment by any Loan Party as consignor;

(12) is in transit, except that Inventory in transit will not be deemed ineligible if:

(a) it has been shipped (i) from a foreign location (other than Canada or the United States) for receipt by any Loan Party in Canada or the United States within forty-five (45) days of the date of shipment (and such shipment has not been delayed beyond such forty-five (45) day delivery time), or (ii) from a Canadian or United States location for receipt by any Loan Party in Canada or the United States within fifteen (15) days of the date of shipment (and such shipment has not been delayed beyond such fifteen (15) day delivery time), but, in either case, which has not yet been delivered to such Loan Party;

(b) it has been paid for in advance of shipment or is not being shipped by a carrier owned by or affiliated with the vendor;

(c) legal ownership thereof has passed to the applicable Loan Party or the Canadian Guarantor (or is retained by the applicable Loan Party) as evidenced by customary documents of title and such Inventory is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against such Inventory, or with respect to whom any Loan Party is in default of any obligations;

(d) either (i) such Inventory is subject to a negotiable document of title, in form reasonably satisfactory to the Administrative Agent, which shall, except as otherwise agreed by the Administrative Agent in its Permitted Discretion, have been endorsed to the Administrative Agent or an agent acting on its behalf or (ii) such Inventory is evidenced by a non-negotiable document of title, seaway bill, airway bill or other bill of lading in form reasonably acceptable to the Administrative Agent, or other shipping document reasonably acceptable to the Administrative Agent, which names the Administrative Agent as consignee (and/or if requested by the Administrative Agent, a Customs Broker Agreement shall have been delivered to Administrative Agent with respect thereto);

(e) it is insured to the reasonable satisfaction of the Administrative Agent; and

(f) it will be subject to the valid and perfected Lien of the Collateral Agent upon delivery to the applicable Loan Party.

(13) constitutes operating supplies, repair parts, labels or miscellaneous spare parts or other such materials not considered for sale in the ordinary course of business;

(14) is not reflected in a current perpetual inventory report (other than in transit Inventory that is otherwise Eligible Inventory) of the Loan Parties;

(15) is located at a closed store location;

(16) has an expiration date that has passed or that is estimated by the Borrower to occur within 30 days after the date of the applicable Borrowing Base Certificate;

(17) represents warehouse and merchandising supplies located at a distribution center;

(18) consists of loyalty program membership cards and media;

(19) constitutes promotional goods not intended for resale; or

(20) has been acquired from a Sanctioned Person on any specially designated nationals list maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or a similar list maintained by the Government of Canada.

If any Inventory at any time ceases to be Eligible Inventory, such Inventory will promptly be excluded from the calculation of the Borrowing Base.

“Environmental Laws”: any and all laws, rules, orders, regulations, statutes, ordinances, enforceable guidelines, codes, decrees, or other legally enforceable requirements of any international authority, foreign government, the United States or Canada, or any state, provincial, territorial, local, municipal or other governmental authority, regulating, relating to or imposing liability or standards of conduct for protection of the environment or of human health, or employee health and safety (as it relates to exposure to Hazardous Materials).

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

“Environmental Permits”: any and all permits, licenses, approvals, registrations, and other authorizations of a Governmental Authority required under any Environmental Law.

“ERISA”: the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Event” means (i) a Reportable Event with respect to any Single Employer Plan (excluding those for which the provision for 30 day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Single Employer Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Single Employer Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Single Employer Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination

described in Section 4041(c) of ERISA; (iv) the withdrawal by any Loan Party or Commonly Controlled Entity from any Single Employer Plan with two or more contributing sponsors or the termination of any such Single Employer Plan resulting in liability to any Loan Party or Commonly Controlled Entity pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Single Employer Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Single Employer Plan; (vi) the imposition of liability on any Loan Party or Commonly Controlled Entity pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of any Loan Party or Commonly Controlled Entity in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by any Loan Party or Commonly Controlled Entity of notice from any Multiemployer Plan that it is insolvent, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or Section 4068 of ERISA upon the property and rights to property belonging to any Loan Party or Commonly Controlled Entity; or (ix) a Canadian Pension Termination Event.

“Equivalent Amount”: as defined in Section 1.8(c).

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

“Eurodollar”: when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default”: any of the events specified in Section 7, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Exchange Act”: the Securities Exchange Act of 1934, as amended.

“Excluded Accounts”: as defined in the definition of “Excluded Assets”.

“Excluded Assets”: the collective reference to:

1. any licenses, franchises, charters and authorizations of a Governmental Authority to the extent a security interest therein under the Loan Documents is prohibited by or would require the consent, license or approval of any Governmental Authority (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition);
2. any asset if the granting of a security interest under the Loan Documents in such asset would be prohibited by any (x) law, treaty, rule or regulation (including all applicable regulations and laws regarding assignments of and security interests in, government receivables) or a court or other Governmental Authority or would require the consent, license or approval of any Governmental Authority (other than proceeds thereof, to the extent the assignment of such

proceeds is effective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition and the assignment of such proceeds is not prohibited by applicable law and does not require the consent, license or approval of any Governmental Authority) or (y) contractual obligation (only to the extent such restriction is binding on such asset (i) on the Closing Date or (ii) on the date of the acquisition thereof and not entered into in contemplation thereof) (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition);

3. any lease, license or other agreement to the extent that a grant of a security interest therein under the Loan Documents would violate or invalidate such lease, license or agreement (except any such lease, license or agreement among Holdings and its Wholly-Owned Subsidiaries and except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition);

4. Capital Stock (i) in any Person that is not a Wholly-Owned Subsidiary to the extent the pledge or other granting of a security interest under the Loan Documents in such Capital Stock would be prohibited by, or require a consent or approval under, organizational or governance documents or shareholders' or similar agreements of or with respect to such Person (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order, or other applicable law notwithstanding such prohibition) (ii) in Unrestricted Subsidiaries, broker-dealer Subsidiaries, not-for-profit Subsidiaries and captive insurance Subsidiaries;

5. any assets subject to a Lien permitted by Section 6.3(j) or 6.3(q) to the extent the documents governing such Lien prohibit, or require a consent or approval in order for, such assets to be subject to the Liens created by the Loan Documents (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP order or other applicable law notwithstanding such prohibition);

6. any United States (or Canadian) intent-to-use application for registration of a trademark or service mark prior to the acceptance by the United States Patent and Trademark Office (or the Canadian Intellectual Property Office) of a statement of use or an amendment to allege use, to the extent and for so long as the grant of a security interest therein would impair the validity or enforceability of, or render void or voidable or result in the cancellation of, a Loan Party's right, title or interest therein or any trademark or service mark registration issued therefrom;

7. assets sold or otherwise disposed of to a Person who is not a Loan Party in compliance with Section 6.5;

8. "margin stock" within the meaning of Regulation U;

9. segregated trust fund accounts, payroll accounts, accounts used solely for making payments in respect of withholding taxes and employee benefits, trust accounts, and escrow accounts for the benefit of unaffiliated third parties, the "Operating Account" (as defined

in the Term Loan DIP Credit Agreement), and the cash collateral account established pursuant to the LC Cash Collateral Agreement (collectively, the “Excluded Accounts”);

10. assets of broker-dealer Subsidiaries, not-for-profit Subsidiaries and captive insurance Subsidiaries;

11. “consumer goods” (as defined in the PPSA);

12. any Receivables for which the account debtor is incorporated or located in Iran; and

13. any Avoidance Actions (other than the proceeds thereof);

provided that (a) in the case of clauses 2(y), (3) and (5), such exclusion shall not apply (i) to the extent the prohibition or restriction is ineffective under Section 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code, the Bankruptcy Code or other applicable law or (ii) to proceeds of the assets referred to in such clause, the assignment of which is expressly deemed effective under Section 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code, the Bankruptcy Code or other applicable law and (b) assets described above shall no longer be “Excluded Assets” upon termination of the applicable prohibition or restriction described above that caused such assets to be treated as “Excluded Assets”; provided further that, Cash Equivalents shall not constitute Excluded Assets.

“Excluded Domestic Subsidiaries”: GNC Intermediate IP Holdings, LLC, GNC Intellectual Property Holdings, LLC, Nutra Insurance Company, GNC Newco Parent LLC and GNC Supply Purchaser, LLC.

“Excluded Subsidiary”: (a) [reserved], (b) [reserved], (c) [reserved], (d) [reserved], (e) the Excluded Domestic Subsidiaries, (f) any Restricted Subsidiary which is a limited partnership of which any Loan Party does not constitute the general partner, (g) [reserved], (h) any Subsidiary to the extent such Subsidiary’s guaranteeing any of the Obligations or otherwise becoming a Loan Party is prohibited or restricted by any Requirement of Law or requires the consent, approval, license or authorization of any Governmental Authority (unless such consent, approval, license or authorization has been obtained (it being agreed that no Loan Party shall be under any obligation to seek the same)), (i) not-for-profit Subsidiaries, (j) any Subsidiary which is not a Wholly-Owned Subsidiary of Parent, (k) captive insurance Subsidiaries, (l) broker-dealer Subsidiaries, (m) special purpose receivables Subsidiaries, (n) [reserved], and (o) any Subsidiary with respect to which (i) the Administrative Agent and the Borrower reasonably agree that the cost or other consequences of providing a guarantee or granting Liens to secure the Obligations are likely to be excessive in relation to the value to be afforded thereby or (ii) in the case of any Person that becomes a Subsidiary after the Closing Date, providing such a guarantee or granting such Liens would reasonably be expected to result in material adverse tax consequences as determined in good faith by the Borrower and consented to by the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed); provided that any Subsidiary described above shall be deemed not to be an Excluded Subsidiary if the Borrower has notified the Administrative Agent in writing that such Subsidiary should not be treated as an Excluded Subsidiary (and solely for purposes of Section 5.10(c) and

the Security Documents, such Subsidiary shall be deemed to have been acquired at the time such notice is received by the Administrative Agent).

“Excluded Taxes”: with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Loan Parties hereunder, (a) Taxes imposed on (or measured by) its overall net income (however denominated), franchise or similar Taxes imposed on it (in each case, in lieu of net income Taxes) and Backup Withholding Taxes imposed on it by (i) the United States of America, (ii) the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office or the office to which its interests, rights and obligations under this Agreement are assigned is located or (iii) any other jurisdictions (or any political subdivision thereof) as a result of a present or former connection between the Administrative Agent, such Lender or other recipient and such jurisdiction imposing such Tax other than a connection arising as a result of the execution or delivery of, receipt of any payments, exercise of any rights or performance of any obligations under, enforcement of or any transaction or other activities related to any Loan Document, (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction in which the Borrower is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.22(b)), any United States federal withholding Tax that is in effect and would apply to amounts payable (including, for the avoidance of doubt, commitment fees and other consent, amendment and similar fees) to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 2.20(a), (d) any Taxes that are attributable to a Foreign Lender’s failure to comply with Section 2.20(e)(i) and (e) any Taxes imposed under, or as a result of the failure of such recipient to satisfy the applicable requirements under, FATCA.

“Existing Credit Agreement”: as defined in the recitals hereto.

“Existing Letters of Credit”: the letters of credit set forth on Schedule 1.1(a).

“Exit Conversion”: as defined in Section 2.24(a).

“Exit ABL Credit Agreement”: as defined in Section 2.24(b)(i).

“Exit FILO Loans”: the loans under the Exit ABL Facility Credit Agreement.

“Exit ABL Term Sheet”: the Term Sheet attached hereto as Exhibit I.

“Facility”: the Loans and Commitments made or deemed made to the Borrower under this Agreement.

“FATCA”: Sections 1471 through 1474 of the Code, as in effect on the date of this Agreement or any successor provision that is substantially the equivalent thereof, any current or future regulations or official interpretations thereof (including any revenue ruling, revenue procedure, notice or similar guidance issued by the Internal Revenue Service thereunder as a

precondition to relief or exemption from Taxes under such provisions and including any agreements entered into pursuant to Section 1471(b)(1) of the Code) and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

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

“FILO Ad Hoc Group”: the ad hoc group of holders of the FILO Term Loans represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP.

“FILO Term Loan Commitment”: as to any FILO Term Loan Lender, the obligation of such Lender, if any, to make FILO Term Loans in an aggregate principal amount not to exceed the amount set forth under the heading “FILO Term Loan Commitment” opposite such Lender’s name on Schedule 2.1, or otherwise as set forth in or referred to on Schedule 2.1. The original aggregate amount of the total FILO Term Loan Commitments on the Closing Date is \$275,000,000, the entire amount of which consists of Rolled-Up Commitments.

“FILO Term Loan Lender”: prior to the Closing Date, each Lender that has a FILO Term Loan Commitment and, after the Closing Date, each Lender that is the holder of FILO Term Loans.

“FILO Term Loans”: Loans deemed made by any Lender pursuant to Section 2.1.

“Final DIP Recognition Order”: an order of the Canadian Court in the Recognition Proceedings, in form and substance satisfactory to the Required Lenders in their sole discretion, recognizing and enforcing the Final DIP Order in Canada.

“Final DIP Order”: the final order of the Bankruptcy Court, approving the Facility on a final basis, in form and substance satisfactory to the Required Lenders and subject to Required FILO Ad Hoc Group Approval, in each case as the same may be amended, modified or supplemented from time to time with the express written consent of the Required Lenders and subject to Required FILO Ad Hoc Group Approval.

“Final DIP Order Entry Date”: the date on which the Final DIP Order is entered on the docket of the Bankruptcy Court.

“Flood Insurance Laws”: collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Lender”: any Lender that is organized under the laws of a jurisdiction other than that of the United States of America. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary”: any Subsidiary of the Borrower (other than the Canadian Guarantor and other than GNC Puerto Rico LLC) that is not a Domestic Subsidiary.

“GAAP”: generally accepted accounting principles in the United States of America as in effect from time to time.

“GNC Parent LLC”: as defined in the preamble hereto.

“Gift Card Accounts”: accounts, receivables and/or payment intangibles owing to a Loan Party from a Gift Card Administrator pursuant to a Gift Card Agreement.

“Gift Card Administrator”: any Person (other than a Loan Party or any Affiliate of any Loan Party) who offers, sells, administers and/or distributes gift cards of one or more of the Loan Parties.

“Gift Card Agreement”: a gift card agreement between a Loan Party and a Gift Card Administrator.

“Governmental Authority”: any nation or government, any state, province, territory or other political subdivision thereof and any other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government.

“Guarantee and Collateral Agreement”: the Amended and Restated Guarantee and Collateral Agreement, dated as of the Closing Date executed and delivered by Parent and each Loan Party (other than the Canadian Guarantor), as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Guarantee Obligation”: with respect to any Person (the “guaranteeing person”), any obligation of the guaranteeing person guaranteeing or having the economic effect of guaranteeing any Indebtedness, lease payments, dividend payments or other economic obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security for such primary obligation, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, in each case, so as to enable the primary obligor to pay such primary obligation, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term



Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation (or portion thereof) in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"Guarantors": the collective reference to Holdings, GNC Parent LLC, Parent, the Canadian Guarantor, the Borrower (solely with respect to Cash Management Obligations between Qualified Counterparties and its Restricted Subsidiaries) and the Subsidiary Guarantors.

"Hazardous Materials": (i) petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and explosive or radioactive substances or (ii) any chemical, material, waste, substance or pollutant that is prohibited, limited or regulated pursuant to any Environmental Law.

"Hedge Agreements": all interest rate or currency swaps, caps or collar agreements, foreign exchange agreements, commodity contracts or similar arrangements entered into by the Borrower or its Restricted Subsidiaries providing for protection against fluctuations in interest rates, currency exchange rates, commodity prices or the exchange of nominal interest obligations, either generally or under specific contingencies.

"Holdings": as defined in the preamble hereto.

"Impacted Interest Period": as defined in the definition of "LIBO Rate".

"Indebtedness": of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of Property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out obligation unless such obligation is not paid after becoming due and payable or appears as a liability on the balance sheet of such Person and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property), but limited to the lesser of the fair market value of such Property and the principal amount of such Indebtedness if recourse is solely to such Property, (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under bankers' acceptances, letters of credit, surety bonds and similar instruments (except unsecured and unmatured reimbursement

obligations in respect thereof obtained in the ordinary course of business to secure the performance of obligations that are not Indebtedness pursuant to another clause of this definition), (g) the liquidation value of all Disqualified Capital Stock of such Person, to the extent mandatorily redeemable in cash prior to the date which is the 91<sup>st</sup> day after the Maturity Date (other than in connection with change of control events and asset sales and other Disposition and casualty events to the extent that the terms of such Capital Stock provide that such Person may not redeem any such Capital Stock in connection with such change of control event or asset sale or other Disposition or casualty event unless such redemption is subject to the prior payment in full of the Obligations), (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above; (i) all obligations of the kind referred to in clauses (a) through (h) above secured by any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligations (but limited to the lesser of the fair market value of such Property and the principal amount of such obligations) and (j) the net obligations of such Person in respect of Hedge Agreements solely for the purposes of Section 6.2 and Section 7.

“Indemnified Taxes”: Taxes other than Excluded Taxes.

“Initial Recognition Order” means an order of the Canadian Court, in form and substance acceptable to the Required Lenders in their sole discretion, among other things, recognizing the Chapter 11 Cases as foreign main proceedings under Part IV of the CCAA.

“Insolvency”: with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

“Insolvent”: pertaining to a condition of Insolvency.

“Intellectual Property”: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, Canadian, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, service marks, technology, know-how and processes, recipes, formulas, trade secrets, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Intercreditor Agreements”: the Prepetition Intercreditor Agreement and any other intercreditor agreement entered into by or among any Representatives and the Loan Parties, in each case as in effect from time to time.

“Interest Election Request”: a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.10.

“Interest Payment Date”: (a) with respect to any ABR Loan, the last day of each month, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and the Maturity Date of the Facility.

“Interest Period”: with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two or three months thereafter, provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim CCAA Order”: the order issued by the Canadian Court in form and substance acceptable to the Required Lenders in their sole discretion, which provides, among other things, an interim stay against the Loan Parties in Canada and which order shall have been entered by the Canadian Court as soon as practicable after the filing of the Chapter 11 Cases and before the “first day” hearing before the Bankruptcy Court.

“Interim DIP Order”: the order of the Bankruptcy Court, approving the Facility on an interim basis, substantially in the form of Exhibit J hereto.

“Interim DIP Order Entry Date”: the date on which the Interim DIP Order is entered on the docket of the Bankruptcy Court.

“Interim DIP Recognition Order” the order issued by the Canadian Court in form and substance acceptable to the Required Lenders in their sole discretion, which shall have been issued by the Canadian Court no later than three (3) Business Days after the entry of the Interim DIP Order and shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of the Required Lenders. For the avoidance of doubt the Interim DIP Recognition Order may be part of the Supplemental Order.

“Interpolated Rate”: as defined in the definition of “LIBO Rate”.

“Inventory”: with respect to a Person, all of such Person’s now owned and hereafter acquired inventory (as defined in the UCC and/or the PPSA), goods and merchandise, wherever located, in each case, to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials, and supplies of any kind, nature or description which are used or consumed in such Person’s business or used in connection with the packing, shipping, advertising, selling, or finishing of such goods, merchandise and other property, and all documents of title or other documents representing the foregoing.

“Investments”: as defined in Section 6.8.

“IRS”: the United States Internal Revenue Service.

“LC Cash Collateral Agreement”: the Cash Collateral Agreement, dated as of [ ● ], 2020 between General Nutrition Centers, Inc. and JPMorgan Chase Bank, N.A.

“Lender Parties”: as defined in Section 9.16.

“Lenders”: the Persons listed on Schedule 2.1 and any other Person that rolled up its Prepetition FILO Loans pursuant to Section 2.1, provided a FILO Term Loan Commitment or shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“LIBO Rate”: with respect to any Eurodollar Borrowing for any Interest Period, the London interbank offered rate as administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for Dollars for a period equal in length to such Interest Period as displayed on page LIBOR01 or LIBOR02 of the Reuters Screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; in each case, the “Screen Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the Screen Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement; provided, further that, if the Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”) with respect to Dollars, then the LIBO Rate shall be the Interpolated Rate at such time. “Interpolated Rate” means, at any time, the rate per annum (rounded to the same number of decimal places as the Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the Screen Rate for the longest period (for which that Screen Rate is available in Dollars) that is shorter than the Impacted Interest Period and (b) the Screen Rate for the shortest period (for which that Screen Rate is available for Dollars) that exceeds the Impacted Interest Period, in each case, at such time.

“Lien”: any mortgage, pledge, hypothecation, security assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing); provided that in no event shall an operating lease in and of itself constitute a Lien.

“Loan”: any FILO Term Loan deemed made by any Lender pursuant to this Agreement.

“Loan Documents”: this Agreement, the Security Documents, the Prepetition Intercreditor Agreement and the Notes.

“Loan Parties”: the Borrower and the Guarantors.

“Material Adverse Effect”: (a) a material adverse effect on the business, assets, liabilities, financial condition or results of operations of the Loan Parties and their Restricted Subsidiaries, taken as a whole, (b) a material and adverse effect on the rights and remedies of the Administrative Agent, the Collateral Agent and Lenders, taken as a whole, under the Loan Documents or (c) a material and adverse effect on the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents; provided that the Lenders agree that none of the following shall constitute a Material Adverse Effect under clause (a) hereof: (i) the COVID-19 pandemic and the direct and indirect effects of the COVID-19 pandemic upon the Loan Parties (provided that the exception in this clause (i) shall not apply to the extent that such pandemic and the direct and indirect effects thereof are disproportionately adverse to the Loan Parties, taken as whole, as compared to other companies in similar lines of business that the Loan Parties operate), (ii) the Chapter 11 Cases, Recognition Proceedings and/or the events and conditions related and/or leading up to or following the commencement of the Chapter 11 Cases and Recognition Proceedings, (iii) any defaults under agreements that are stayed under the Bankruptcy Code or CCAA, as applicable, as a result of the Chapter 11 Cases or Recognition Proceedings, (iv) reduction in payment terms by suppliers, reclamation claims, and any “going concern” or other qualification, exception or explanatory note in the Loan Parties’ audited financial statements, (iv) any matters publicly disclosed prior to the Closing Date, (v) any matters disclosed in the “first day orders” and “second day orders” entered by the Bankruptcy Court at the time of the commencement of the Chapter 11 Cases, and (vi) any matters disclosed in the Schedules hereto.

“Material Debt”: Indebtedness (other than Indebtedness constituting Obligations), or obligations in respect of one or more Hedge Agreements (other than to the extent constituting Obligations), of any one or more of Parent, the Borrower or any Restricted Subsidiary in an aggregate principal amount exceeding \$10,000,000. For purposes of determining Material Debt, the “obligations” of Parent, the Borrower or any Restricted Subsidiary in respect of any Hedge Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Parent, the Borrower or such Restricted Subsidiary would be required to pay if such Hedge Agreement were terminated at such time.

“Maturity Date”: the earliest to occur of (i) [●]<sup>1</sup>, (ii) the date that is 35 days (or such later date as the Required Lenders may agree) after the Petition Date if the Final DIP Order has not been entered prior to the expiration of such 35-day period, (iii) the date the Bankruptcy Court orders the conversion of the Chapter 11 Cases to a Chapter 7 liquidation or the dismissal of the Chapter 11 Cases, (iv) the acceleration of the Loans and the termination of the Commitment under the Facility, (v) the sale of all or substantially all of the Loan Parties’ assets and (vi) the consummation of a Chapter 11 plan of reorganization for the Loan Parties; provided that if the Exit Conversion occurs, the Loans shall not be paid in cash and shall convert in accordance with the terms and conditions set forth in Section 2.23.

“Maximum Rate”: as defined in Section 9.17.

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<sup>1</sup> To be date that is 6 months from Petition Date.

“Milestones”: the “DIP Term Milestones” as defined in the Bankruptcy Court DIP Order (which Milestones may be extended in writing by the Required Lenders).

“Moody’s”: Moody’s Investor Services, Inc.

“Multiemployer Plan”: a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower or any Commonly Controlled Entity contributes or has an obligation to contribute or with respect to which the Borrower or any Commonly Controlled Entity has any liability (including if such liability was imposed pursuant to Section 4212(c) of ERISA).

“Net Cash Proceeds”: (a) in connection with any Recovery Event, the proceeds thereof received by the Loan Parties in the form of cash and Cash Equivalents of such Recovery Event, net of the sum of (i) out-of-pocket attorneys’ fees, accountants’ fees and investment banking and advisory fees incurred by the Loan Parties in connection with such Recovery Event, (ii) principal, premium or penalty, interest and other amounts required to be paid in respect of Indebtedness secured by the asset subject to such Recovery Event and that is required to be repaid in connection with such Recovery Event (other than Indebtedness under the Loan Documents), (iii) other out-of-pocket fees and expenses actually incurred in connection therewith, (iv) taxes (and the amount of any distributions made pursuant to Section 6.6 to permit Parent or any direct or indirect parent company of the Parent to pay taxes) (including, without limitation, sales, transfer, deed or mortgage recording taxes) paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (v) in the case of any Recovery Event by a Restricted Subsidiary that is not a Wholly Owned Subsidiary, the pro-rata portion of the Net Cash Proceeds thereof (calculated without regard to this clause (v)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a Restricted Subsidiary that is a Wholly Owned Subsidiary as a result thereof and (vi) any reserve established in accordance with GAAP; provided that such reserved amounts shall be Net Cash Proceeds to the extent and at the time of any reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any such reserve, and (b) in connection with any issuance or incurrence of any Indebtedness or Capital Stock, the cash proceeds received by the Loan Parties from such issuance or incurrence, net of attorneys’ fees, investment banking and advisory fees, accountants’ fees, underwriting discounts and commissions and other customary fees, costs and expenses actually incurred in connection therewith, any swap breakage costs and other termination costs related to Hedge Agreements and any other fees and expenses actually incurred in connection therewith), in each case as determined reasonably and in good faith by a Responsible Officer of the Borrower.

“Net Orderly Liquidation Value”: with respect to Eligible Inventory, the net appraised liquidation value thereof (expressed as a percentage of the Cost of such Inventory) as determined from time to time by an Acceptable Appraiser in accordance with Section 5.6.

“Non-Consenting Lender”: as defined Section 2.22(c).

“Nonpublic Information”: information which has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD.

“Note”: any promissory note evidencing any FILO Term Loan substantially in the form of Exhibit D.

“NYFRB”: the Federal Reserve Bank of New York.

“NYFRB Rate”: for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement; provided, further, that the NYFRB Rate shall in no event be determined for any day to be lower than the Federal Funds Effective Rate for such day (to the extent that the Federal Funds Effective Rate is published for such day or for the immediately preceding Business Day).

“Obligations”: the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower or any other Loan Party, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans (including, without limitation, the Rolled-Up Obligations) and all other obligations and liabilities of the Loan Parties to the Administrative Agent, the Collateral Agent or to any Lender, any Qualified Counterparty, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred or deemed incurred, which may arise under, out of, or in connection with, this Agreement or any other Loan Document, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to the Arranger, to the Administrative Agent, to the Collateral Agent or to any Lender that are required to be paid by the Borrower or any other Loan Party pursuant hereto), and any Cash Management Obligations; provided, that (i) obligations of the Borrower or any Restricted Subsidiary under any Cash Management Obligations shall be secured and guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (ii) any release of Collateral or Guarantors effected in the manner permitted by this Agreement or any Security Document shall not require the consent of holders of any Cash Management Obligations.

“Operating Account”: the deposit account at JPMorgan Chase Bank, N.A. maintained by the Borrower (as the “Borrower” under the Term Loan DIP Credit Agreement) as the “Operating Account” under the Term Loan DIP Credit Agreement and having an account number with the last four digits 9152.

“Organizational Documents”: with respect to any Person, (i) in the case of any corporation, the certificate of incorporation or articles of incorporation and by-laws (or similar constitutive documents) of such Person, (ii) in the case of any limited liability company, the certificate or articles of formation or organization and operating agreement (or similar constitutive documents) of such Person, (iii) in the case of any limited partnership, the certificate

of formation and limited partnership agreement (or similar constitutive documents) of such Person, (iv) in the case of any general partnership, the partnership agreement (or similar constitutive document) of such Person, (v) in the case of any unlimited liability company, the memorandum of association, and (vi) in any other case, the functional equivalent of the foregoing.

“Other Taxes”: any and all present or future recording, stamp or documentary or any other excise or property Taxes, charges or similar levies imposed by any Governmental Authority arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

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

“Parent”: as defined in the preamble hereto.

“Participant”: as defined in Section 9.4(b)(vi).

“PBGC”: the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

“Permitted Discretion”: the reasonable credit judgment in good faith and in accordance with customary business practices for comparable asset-based lending transactions, and as it relates to the modification of eligibility standards and criteria shall require that (a) such modification after the Closing Date be based on the analysis of facts or events (i) first occurring or first discovered by the Administrative Agent after the Closing Date or (ii) that are materially different from the facts or events occurring or known to the Administrative Agent on the Closing Date, unless the Borrower and the Administrative Agent otherwise agree in writing, and (b) the effect of any adjustment or imposition of exclusionary criteria be a reasonable quantification (as reasonably determined by the Administrative Agent) of the incremental dilution of the applicable Borrowing Base attributable to such contributing factors.

“Permitted Liens”: Liens permitted by Section 6.3.

“Person”: an individual, partnership, corporation, limited liability company, unlimited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Petition Date”: [ ● ], 2020.

“Plan”: at a particular time, any employee benefit plan that is covered by ERISA and in respect of which the Borrower or a Commonly Controlled Entity is (or, if such Plan were terminated at such time, would under Section 4062 or Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.



“Platform”: as defined in Section 5.2.

“Pledged Capital Stock”: as defined in the Guarantee and Collateral Agreement.

“PPSA”: the Personal Property Security Act (Ontario) or the equivalent legislation (including the *Civil Code* (Quebec)) in any other applicable province or territory of Canada.

“Prepetition ABL Agent”: JPMorgan Chase Bank, N.A., in its capacity as administrative agent under any of the Prepetition ABL Loan Documents or any successor administrative agent.

“Prepetition ABL Agreement”: that certain ABL Credit Agreement, dated as of February 28, 2018 (the “Prepetition Credit Closing Date”) (as amended by that certain First Amendment, dated as of March 20, 2018, that certain Second Amendment, dated as of May 15, 2020, and that certain Third Amendment, dated as of June 12, 2020), among Parent, the Borrower, the Subsidiaries party thereto as borrowers, the several banks and other financial institutions or entities from time to time party thereto as lenders and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

“Prepetition ABL Loan Documents”: the Prepetition ABL Agreement and the other “Loan Documents” under and as defined in the Prepetition ABL Agreement.

“Prepetition ABL Loan Indebtedness”: Indebtedness of Parent, the Borrower or any Guarantor outstanding, or secured, under the Prepetition ABL Loan Documents.

“Prepetition Agents”: the Prepetition Term Loan Agent and the Prepetition ABL Agent.

“Prepetition Borrowing Base Certificate”: the “Borrowing Base Certificate” (as defined in the Prepetition ABL Agreement) most recently delivered by the Borrower under the Prepetition ABL Agreement prior to the Petition Date.

“Prepetition Convertible Notes Documents”: the Prepetition Convertible Notes Indenture and the other documents evidencing Indebtedness for borrowed money executed in connection therewith.

“Prepetition Convertible Notes Indenture”: as defined in the definition of “Prepetition Convertible Senior Notes”.

“Prepetition Convertible Senior Notes”: the 1.50% Convertible Senior Notes due August 15, 2020 issued under that certain indenture dated as of August 10, 2015, among Holdings, Parent, the Borrower and the other subsidiaries party thereto, and Bank of New York Mellon Trust Company, N.A., as trustee (such indenture, the “Prepetition Convertible Notes Indenture”).

“Prepetition Convertible Senior Note Indebtedness”: Indebtedness of Holdings, the Borrower or any Guarantor under the Prepetition Convertible Notes Documents.

“Prepetition Credit Closing Date”: as defined in the definition of “Prepetition ABL Agreement”.

“Prepetition FILO Lenders”: the lenders of the Prepetition FILO Loans.

“Prepetition FILO Loans”: the “FILO Term Loans” under and as defined in the Prepetition ABL Agreement.

“Prepetition Intercreditor Agreement”: the Intercreditor Agreement, dated as of February 28, 2018, by and among the Prepetition Term Loan Agent, the Prepetition Term Loan Collateral Agent, the Prepetition ABL Agent, Parent, the Borrower and its Restricted Subsidiaries parties thereto, as amended, restated, supplemented or otherwise modified from time to time.

“Prepetition Lenders”: the Prepetition Term Loan Lenders, the Prepetition FILO Lenders and the Prepetition Revolving Lenders.

“Prepetition Loan Documents”: the Prepetition ABL Loan Documents, the Prepetition Term Loan Documents and the Prepetition Convertible Notes Documents.

“Prepetition Obligations”: the Prepetition Term Loan Obligations, the Prepetition ABL Loan Indebtedness and the Prepetition Convertible Senior Note Indebtedness.

“Prepetition Revolving Lenders”: the lenders of the Prepetition Revolving Loans.

“Prepetition Revolving Loans”: the “Revolving Credit Loans” under and as defined in the Prepetition ABL Agreement.

“Prepetition Term Loan Agent”: JPMorgan Chase Bank, N.A., in its capacity as administrative agent under the Prepetition Term Loan Documents or any other successor administrative agent.

“Prepetition Term Loan Agreement”: that certain Amended and Restated Term Loan Credit Agreement, dated as of February 28, 2018 (as amended by that certain First Amendment, dated as of May 15, 2020, and that certain Second Amendment, dated as of June 12, 2020, and as may be further amended, amended and restated, supplemented or otherwise modified from time to time), among Parent, the Borrower, the several banks and other financial institutions or entities from time to time party thereto as lenders, the Prepetition Term Loan Collateral Agent and the Prepetition Term Loan Agent.

“Prepetition Term Loan Collateral Agent”: GLAS Trust Company LLC, in its capacity as collateral agent under any of the Prepetition Term Loan Documents or any successor collateral agent.

“Prepetition Term Loan Documents”: the “Loan Documents” as defined in the Prepetition Term Loan Agreement.

“Prepetition Term Loan Lenders”: the lenders of the Prepetition Term Loans.

“Prepetition Term Loan Obligations”: the “Obligations” under and as defined in the Prepetition Term Loan Agreement.

“Prepetition Term Loans”: the “Loans” under and as defined in the Prepetition Term Loan Agreement.

“Primary Related Party”: as defined in Section 9.3(b).

“Prime Rate”: the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent in its reasonable discretion) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent in its reasonable discretion). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Property”: any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

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

“Qualified Counterparty”: with respect to any Cash Management Obligations, (i) each counterparty that constituted a “Qualified Counterparty” under and as defined in the Prepetition ABL Agreement as of the Petition Date and (ii) any counterparty thereto that, at the time such Cash Management Obligations were entered into or on the Closing Date, was a Lender or an affiliate of a Lender.

“Qualified Capital Stock”: Capital Stock that is not Disqualified Capital Stock.

“Qualifying Acquisition”: any acquisition of all or substantially all assets of a Person, a line of business, or other bulk purchase transaction not prohibited under this Agreement so long as such acquisition or bulk purchase transaction is in respect of the same or like businesses (or a generally related or ancillary line of business or a reasonable extension thereof) as those carried on by a Loan Party as of the Closing Date.

“Receivable”: as defined in the Guarantee and Collateral Agreement.

“Recognition Proceedings” has the meaning specified in the recitals hereto.

“Recovery Event”: any settlement of, or payment in respect of, any property or casualty insurance claim or any condemnation proceeding relating to any asset of the Borrower or any of its Restricted Subsidiaries (other than assets consisting of Term Priority Collateral or otherwise subject to a Permitted Lien).

“Register”: as defined in Section 9.4(b)(iv).

“Regulation FD”: Regulation FD as promulgated by the US Securities and Exchange Commission under the Securities Act and Exchange Act as in effect from time to time.

“Regulation U”: Regulation U of the Board as in effect from time to time.

“Reinvestment Deferred Amount”: with respect to any Reinvestment Event, the aggregate amount of Net Cash Proceeds received by the Borrower or any of its Restricted Subsidiaries in connection therewith that are not applied to prepay the Loans pursuant to Section 2.15(b) as a result of the delivery of a Reinvestment Notice.

“Reinvestment Event”: any Recovery Event in respect of which the Borrower has delivered a Reinvestment Notice.

“Reinvestment Notice”: a written notice executed by a Responsible Officer stating that the Borrower (or a Restricted Subsidiary) intends and expects to use all or a portion of the amount of Net Cash Proceeds of a Recovery Event to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets useful in its or such Restricted Subsidiary’s business.

“Reinvestment Prepayment Amount”: with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets useful in the Borrower’s or a Restricted Subsidiary’s business.

“Reinvestment Prepayment Date”: with respect to any Reinvestment Event, the earlier of (a) the date occurring six months after such Reinvestment Event and (b) the date on which the Borrower shall have determined not to, or shall have otherwise ceased to, restore, rebuild, repair, construct, improve, replace or otherwise acquire assets useful in the Borrower’s or the applicable Restricted Subsidiary’s business with all or any portion of the relevant Reinvestment Deferred Amount.

“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.

“Replacement Liens”: with respect to any Lien, any modification, replacement, renewal or extension of such Lien; provided that (i) such modification, replacement, renewal or extension of such Lien does not extend to any additional property other than (A) after-acquired property (to the extent such after-acquired property would have been subject to such Lien prior to such modification, replacement, renewal or extension) and (B) proceeds and products thereof, and (ii) any Indebtedness secured by such Liens is permitted by Section 6.2.

“Reportable Event”: any of the “reportable events” set forth in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Single Employer Plan, other than those events as to which notice is waived pursuant to PBGC Regulation § 4043 as in effect on the Closing Date (no matter how such notice requirement may be changed in the future).

“Representative”: with respect to Indebtedness permitted to be incurred pursuant to Section 6.2 (and permitted to be secured by all or any portion of the Collateral pursuant to Section 6.3), the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“Required FILO Ad Hoc Group Approval”: as defined in Section 1.9.

“Required Lender Representative”: as defined in Section 1.5.

“Required Lenders”: at any time, the holders of more than 50% of the aggregate unpaid principal amount of the FILO Term Loans then outstanding; provided that at no time will FILO Term Loans held by Defaulting Lenders be included in determining whether the “Required Lenders” threshold is met.

“Requirement of Law”: as to any Person, the Certificate of Incorporation and By Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Requirement of Tax Law”: as to any Person, any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority relating to Taxes, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Reserves”: reserves against the Borrowing Base consisting of, and limited to, one or more of the categories of “Reserves” set forth in the Prepetition ABL Agreement. On or before the date of delivery of each Borrowing Base Certificate, the Borrower and the Required Lender Representative shall establish in good faith the amount in Dollars corresponding to each such category of Reserves to be set forth in such Borrowing Base Certificate (i) employing methodology and criteria consistent with that employed by the Prepetition ABL Agent in establishing the reserves set forth in the Prepetition Borrowing Base Certificate and (ii) based upon information provided to the Required Lender Representative by the Borrower; provided that (x) imposition of Reserves in categories that are not listed on Schedule 1.1(c)<sup>2</sup> shall require the written consent of Lenders holding at least 66 $\frac{2}{3}$ % of the aggregate amount of the FILO Term Loans, (y) amounts of “Landlord Lien Reserves” and “Collateral Access Reserves” may only increase from the respective amounts set forth for such Reserves in the Prepetition Borrowing Base Certificate with the written consent of Lenders holding at least 66 $\frac{2}{3}$ % of the aggregate

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<sup>2</sup> NTD: Such categories to consist of Landlord Lien Reserve, Collateral Access Reserve, Gift Cards (50% of G/L Liability), Customer Deposits (100% of G/L Liability), Canadian Sales Tax (in USD), Canadian Priority Payroll – WEPPA (in USD), Canadian 3PL, Royalties on Licensed Product, Designated Hedging Reserves (i.e., if company obtains swaps in the future), Reserves for any judgment Liens that encumber Collateral included in the Borrowing Bases not to exceed the amount of such judgment.

amount of the FILO Term Loans, and (z) any reduction in the amounts of “Landlord Lien Reserves” and “Collateral Access Reserves” shall be made only by written request from the Borrower to the Required Lender Representative and shall require the written consent of Lenders holding at least 66⅔% of the aggregate amount of the FILO Term Loans. The amount of any Reserve or change in any Reserve shall have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve or such change. No Reserves or changes in Reserves shall be duplicative of Reserves or changes already accounted for through exclusions in the definitions of Eligible Accounts Receivable, Eligible Inventory, Eligible Gift Card Receivables and Eligible Credit Card Receivables (including advance rates) or shall constitute a general reserve applicable to all Eligible Inventory, all Eligible Accounts Receivable, Eligible Gift Card Receivables and/or all Eligible Credit Card Receivables that is the functional equivalent of a decrease in advance rates. In the event of a dispute between the Borrower and the Required Lender Representative regarding the amount of any such Reserve, the Borrower shall submit such dispute to the Bankruptcy Court for determination, and a Reserve shall be established in the amount (if any) so determined by the Bankruptcy Court. At any time that no Required Lender Representative has been appointed, each reference to the Required Lender Representative in this defined term shall be deemed to refer to the Required Lenders, which shall be deemed to have agreed to the amount of each category of fluctuating Reserves so established by the Borrower in the applicable Borrowing Base Certificate unless objected to by the Required Lenders in writing within three (3) Business Days following delivery of such Borrowing Base Certificate to the Lenders and (to the extent named in Section 9.1) the Ad Hoc Committee Advisors).

“Resignation Effective Date”: as defined in Section 8.9.

“Responsible Officer”: as to any Person, the chief executive officer, president, chief financial officer, chief accounting officer, comptroller, treasury manager, treasurer or assistant treasurer of such Person, but in any event, with respect to financial matters, the chief financial officer, chief accounting officer, comptroller, treasurer or assistant treasurer of such Person. Unless otherwise qualified, all references to a “Responsible Officer” shall refer to a Responsible Officer of the Borrower.

“Restricted Payments”: as defined in Section 6.6.

“Restricted Subsidiary”: any Subsidiary other than an Unrestricted Subsidiary

“Restructuring Support Agreement”: that certain Restructuring Support Agreement dated as of June [●], 2020 among the Borrower, the other Loan Parties party thereto, and the Prepetition Term Loan Lenders and Prepetition FILO Lenders that are “Consenting FILO Lenders” thereunder.

“Returns”: with respect to any Investment, any dividends, distributions, return of capital and other amounts received or realized in respect of such Investment.

“Revolver Termination”: as defined in the recitals hereto.

“Roll-Up Effective Time”: the moment in time immediately following the entry by the Bankruptcy Court of the Bankruptcy Court DIP Order approving the roll-up of the Prepetition FILO Loans pursuant to Section 2.1.

“Rolled-Up Commitments”: as defined in Section 2.1.

“Rolled-Up Obligations”: as defined in Section 2.1.

“Sale and Leaseback Transaction”: as defined in Section 6.11.

“Sales Report”: as defined in Section 5.1(B)(c).

“Sanctioned Country”: at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, for purposes of Sanctions imposed, administered or enforced by the U.S. government, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person”: at any time, (a) any Person listed in any Sanctions-related list of “designated Persons” maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom, (b) any Person listed in any Sanctions-related list of “designated Persons” maintained by the federal government of Canada, (c) any Person operating, organized or resident in a Sanctioned Country or (d) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a), (b) or (c).

“Sanctions”: economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government or the Canadian government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom.

“S&P”: Standard & Poor’s Financial Services LLC.

“Screen Rate”: as defined in the definition of “LIBO Rate”.

“SEC”: the Securities and Exchange Commission (or successors thereto or an analogous Governmental Authority).

“Secured Parties”: as defined in the Guarantee and Collateral Agreement.

“Security Documents”: the collective reference to the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement.

“Single Employer Plan”: any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

“Specified Event of Default”: (i) any Event of Default pursuant to Section 7.1(a) or (ii) any Event of Default pursuant to Section 7.1(k).

“Statutory Reserve Rate”: a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subsidiary”: as to any Person, a corporation, partnership, limited liability company, unlimited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantor”: as of the Closing Date, each Subsidiary of the Borrower listed on Schedule 1.1(b), together with each Restricted Subsidiary of the Borrower that becomes a Subsidiary Guarantor after the Closing Date pursuant to Section 5.11(c).

“Supplemental Order” means an order of the Canadian Court, in form and substance acceptable to the Required Lenders in their sole discretion, among other things, granting customary additional relief in the Recognition Proceedings.

“Taxes”: any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Loan Administrative Agent”: as defined in the definition of “Term Loan DIP Credit Agreement”.

“Term Loan Collateral Agent”: as defined in the definition of “Term Loan DIP Credit Agreement”.

“Term Loan DIP Credit Agreement”: that certain Debtor-in-Possession Credit Agreement, dated as of June [ ● ], 2020, among Holdings, GNC Parent LLC, Parent, the Borrower, JPMorgan Chase Bank, N.A. as administrative agent (in such capacity, together with any successor thereto, the “Term Loan Administrative Agent”) on behalf of itself and the lenders



party thereto and GLAS Trust Company LLC as collateral agent (in such capacity, together with any successor thereto, the “Term Loan Collateral Agent”).

“Term Loan Documents”: the Term Loan DIP Credit Agreement and the other “Loan Documents” under and as defined in the Term Loan DIP Credit Agreement.

“Term Loan Lender”: each “Lender” as defined in the Term Loan DIP Credit Agreement.

“Term Loan Obligations”: the “Obligations” (under and as defined in the Term Loan DIP Credit Agreement).

“Term Priority Collateral”: the “Term Priority Collateral” (under and as defined in the Prepetition Intercreditor Agreement).

“Term Loans”: any term loans made or deemed made (by the Bankruptcy Court DIP Order) pursuant to the Term Loan DIP Credit Agreement.

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

“UCC” or “Uniform Commercial Code”: the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“Unrestricted Cash”: cash or Cash Equivalents of the Loan Parties that are not subject to any express contractual restrictions on the application thereof (it being expressly understood and agreed that, for the avoidance of doubt, affirmative and negative covenants and events of default that do not expressly restrict the application of such cash or Cash Equivalents shall not constitute express contractual restrictions for purposes of this definition) and not subject to any Lien (other than (i) Liens created by the Loan Documents, the Bankruptcy Court DIP Order, or the Prepetition Loan Documents in effect on the Petition Date, (ii) Liens securing the Term Loan DIP Credit Agreement, the LC Cash Collateral Agreement, the Existing Letters of Credit, or the Carve Out, (iii) non-consensual Liens permitted by Section 6.3, and (iv) Liens (whether or not consensual) permitted by Sections 6.3(k) or 6.3(n)).

“Unrestricted Subsidiary”: each of GNC Intermediate IP Holdings, LLC, a Delaware limited liability company and GNC Intellectual Property Holdings, LLC, a Delaware limited liability company.

“Variance Report”: as defined in Section 5.1(B)(b).

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

“Withholding Agent”: any Loan Party or the Administrative Agent, as applicable.

“Wholly Owned Subsidiary”: as to any Person, any other Person all of the Capital Stock of which (other than (a) directors’ qualifying shares and (b) nominal shares issued to foreign nationals to the extent required by any applicable Requirement of Law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

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

## 1.2 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, unless otherwise specified herein or in such other Loan Document:

(i) the words “hereof”, “herein” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Documents as a whole and not to any particular provision of thereof;

(ii) Section, Schedule and Exhibit references refer to (A) the appropriate Section, Schedule or Exhibit in this Agreement or (B) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears;

(iii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;

(iv) the word “will” shall be construed to have the same meaning and effect as the word “shall”;

(v) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings);

(vi) unless the context requires otherwise, the word “or” shall be construed to mean “and/or”;

(vii) unless the context requires otherwise, (A) any reference to any Person shall be construed to include such Person’s legal successors and permitted assigns, (B) any reference to any law or regulation shall refer to such law or regulation as amended, modified or supplemented from time to time, and any successor law or regulation, (C) the words “asset” and “property” shall be construed to have the same

meaning and effect, and (D) references to agreements (including this Agreement) or other Contractual Obligations shall be deemed to refer to such agreements or Contractual Obligations as amended, restated, amended and restated, supplemented or otherwise modified from time to time;

(viii) references to any direct or indirect parent company of the Parent shall refer to Holdings and any of its Wholly Owned Subsidiaries which are parent companies of the Parent; and

(ix) 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 Québec, (q) “personal property” shall be deemed to include “movable property”, (r) “real property” shall be deemed to include “immovable property”, (s) “tangible property” shall be deemed to include “corporeal property”, (t) “intangible property” shall be deemed to include “incorporeal property”, (u) “security interest” and “mortgage” shall be deemed to include a “hypothec”, (v) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication under the Civil Code of Québec, (w) all references to “perfection” of or “perfected” Liens shall be deemed to include a reference to the “opposability” of such Liens to third parties, (x) any “right of offset”, “right of setoff” or similar expression shall be deemed to include a “right of compensation”, (y) “goods” shall be deemed to include “corporeal movable property” other than chattel paper, documents of title, instruments, money and securities, and (z) an “agent” shall be deemed to include a “mandatary”.

(c) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including”.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) The expressions “payment in full,” “paid in full” and any other similar terms or phrases when used herein with respect to the Obligations shall mean the payment in full, in immediately available funds, of all of the Obligations (excluding Obligations in respect of any Cash Management Obligations and contingent reimbursement and indemnification obligations that are not then due and payable).

1.3 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Eurodollar Loan”).

1.4 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time (provided that, notwithstanding anything to the contrary herein, (i) all accounting or financial terms used herein shall be construed, and all financial computations pursuant hereto shall be made, without giving effect to any election under

Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Holdings or any Subsidiary at “fair value”, as defined therein, (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein shall be disregarded, and such Indebtedness shall at all times be valued at the full stated principal amount thereof), (iii) [reserved] and (iv) notwithstanding anything to the contrary herein, only those leases that would result or would have resulted in Capital Lease Obligations or Capital Expenditures under GAAP as in effect on the Prepetition Credit Closing Date (assuming for purposes hereof such leases were in existence on the Prepetition Credit Closing Date) will be considered capital leases and all calculations under this Agreement will be made in accordance therewith. In the event that any “Accounting Change” as defined below shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then upon the written request of the Borrower or the Administrative Agent, the Borrower, the Administrative Agent and the Lenders shall enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrower’s financial condition shall be the same after such Accounting Change as if such Accounting Change had not occurred; provided that provisions of this Agreement in effect prior to the date of such Accounting Change shall remain in effect until the effective date of such amendment. “Accounting Change” refers to any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants.

1.5 Required Lender Representative; Agent Determinations. (a) On or prior to the date that is ten (10) Business Days after the Closing Date (or such later date as agreed by the Administrative Agent in its sole discretion), Lenders holding at least 66⅔% of the aggregate amount of the FILO Term Loans shall appoint a representative (which may consist of more than one entity, but not more than three entities, and which shall be reasonably acceptable to the Borrower) to act as set forth in in this Section 1.5 (such representative(s) collectively, together with their respective successors in such capacity, the “Required Lender Representative”) and agree that the Required Lender Representative may provide such directions and consents as expressly set forth in this Agreement and the other Loan Documents (including, without limitation, as set forth in Section 1.5(b) below) as the Required Lender Representative on instruction of Required Lenders deems appropriate and the Lenders shall be obligated by the terms of any such direction or consent. Any Required Lender Representative may resign upon prior written notice delivered to the Borrower, each Agent and the Lenders; provided that Lenders holding at least 66⅔% of the aggregate amount of FILO Term Loans shall appoint a successor Required Lender Representative as soon as possible, and in no event later than ten (10) Business Days (or such later date as agreed to by the Administrative Agent in its sole discretion), after the date such notice of resignation is delivered; provided further that such resignation shall become effective ten (10) Business Days after the date such notice of resignation is delivered if a successor Required Lender Representative is not appointed on or prior to the date that is ten (10) Business Days after the date such notice of resignation is delivered; provided further that so long as at least one Required Lender Representative remains appointed after giving effect to any such

resignation of a Required Lender Representative, Lenders holding at least 66 $\frac{2}{3}$ % of the aggregate amount of FILO Term Loans may elect not to appoint a successor for such resigning Required Lender Representative by providing written notice to the Administrative Agent and the Borrower on or prior to the date that is ten (10) Business Days after the date such notice of resignation is delivered.

(b) Any express references in this Agreement or any other Loan Document to actions, requests, determinations or decisions being made at the Permitted Discretion of or at the discretion of (or any like or similar term, but not “sole” discretion of an Agent) any Agent shall, in each case, mean (or be deemed to mean) such Agent acting at the written direction of, or with the written consent of, the Required Lender Representative (which written direction or consent may be provided via email); provided that if at any time no Required Lender Representative has been appointed, any such reference described in the foregoing provisions of this Section 1.5(b) shall, in each case, mean (or be deemed to mean) such Agent acting at the written direction of, or with the written consent of, the Required Lenders (which written direction or consent may be provided via email and shall be deemed given if the Required Lenders do not object thereto within three (3) Business Days of notice thereof to the Lenders and (to the extent named in Section 9.1) the Ad Hoc Committee Advisors (or if the Bankruptcy Court shall have so approved the matter in question)); provided further that if there is more than one Required Lender Representative and the Required Lender Representatives provide conflicting direction or consent to any Agent, (i) at any time that there are three Required Lender Representatives and a majority of the Required Lender Representatives provide the same direction or consent, such Agent shall act based on the direction or consent provided by such majority of the Required Lender Representatives and (ii) at all other times, such Agent shall not be required to take or make any such action, request, determination or decision without the written direction of, or with the written consent of, the Required Lenders (which written direction or consent may be provided via email and shall be deemed given if the Required Lenders do not object thereto within three (3) Business Days of notice thereof to the Lenders and (to the extent named in Section 9.1) the Ad Hoc Committee Advisors (or if the Bankruptcy Court shall have so approved the matter in question)). The Lenders agree that each Agent may accept, and be permitted to rely on, any direction or consent provided by the Required Lender Representative or the Required Lenders, as applicable, pursuant to this Section 1.5(b) without any obligation or duty to ascertain or to inquire as to the validity, enforceability, effectiveness or genuineness of any such direction or consent provided by the Required Lender Representative.

(c) Any references in this Agreement to matters, calculations or documentation being satisfactory or acceptable (or any like or similar term) to any Agent shall mean (or be deemed to mean) such Agent, as applicable, acting at the written direction of, or with the written consent of, the Required Lenders; provided that the Required Lenders shall be deemed to be satisfied with or to have accepted (or any like or similar term) any such matter, calculation or documentation unless objected to by the Required Lenders in writing within three (3) Business Days after notice of such matter, calculation or documentation is delivered to the Lenders and (to the extent named in Section 9.1) the Ad Hoc Committee Advisors. The Lenders agree that each Agent may accept, and be permitted to rely on, any direction or consent provided by the Required Lenders pursuant to this Section 1.5(b) without any obligation or duty to ascertain or to inquire as to the validity, enforceability, effectiveness or genuineness of any such direction or consent provided by the Required Lenders.

(d) The provisions of this Agreement in respect of the Required Lender Representative shall apply only during such time as JPMorgan Chase Bank, N.A. shall be an Agent hereunder unless otherwise agreed to by the Borrower and the Required Lenders.

1.6 Classification of Permitted Items. For purposes of determining compliance at any time with Sections 6.2, 6.3, 6.5, 6.6, 6.8, 6.9, 6.14 or 6.15, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, Contractual Obligation, encumbrance or restriction or payment, prepayment, repurchase, redemption, defeasance or amendment, modification or other change in respect of Indebtedness meets the criteria of more than one of the categories of transactions permitted pursuant to any clause of such Sections 6.2, 6.3, 6.5, 6.6, 6.8, 6.9, 6.14 or 6.15, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower in its sole discretion at such time of determination. For the avoidance of doubt, the Borrower may at any time classify and reclassify Indebtedness (or any portion thereof) incurred under Section 6.2 and Liens (or any portion thereof) incurred under Section 6.3 among applicable exceptions to such covenants.

1.7 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.8 Currency Equivalents Generally.

(a) For purposes of determining compliance with Sections 6.2, 6.3, 6.8 and 6.9 with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder).

(b) [Reserved]

(c) Principal, interest, reimbursement obligations, fees, and all other amounts payable under this Agreement and the other Loan Documents to Agents and the Lenders shall be payable in the currency in which such Obligations are denominated. Unless stated otherwise, all calculations, comparisons, measurements or determinations under this Agreement shall be made in Dollars. For the purpose of such calculations, comparisons, measurements or determinations, amounts or proceeds denominated in other currencies shall be converted to the Equivalent Amount (as defined below) of Dollars on the date of calculation, comparison, measurement or determination. In particular, without limitation, for purposes of valuations or computations under Section 2, Section 3, Section 5, Section 6 and Section 7 and calculating the Borrowing Base, eligibility criteria including Eligible Accounts Receivable, Eligible Inventory, Eligible Credit Card Receivables, or Eligible Gift Card Receivables, unless expressly provided otherwise, where a reference is made to a Dollar amount, the amount is to be considered as the amount in Dollars and, therefore, each other currency shall be converted into the Equivalent Amount thereof in Dollars. As used herein, “Equivalent Amount” means, on any date, the amount of

Dollars into which an amount of any foreign currency may be converted at the Administrative Agent's spot buying rate in New York City as at approximately 12:00 noon (New York City time) on such date.

1.9 FILO Ad Hoc Group. The terms of the Interim DIP Order, the Final DIP Order, the Interim DIP Recognition Order and the Final DIP Recognition Order, including any amendment, modification, waiver, forbearance, or supplement thereto, shall, to the extent such orders, or any amendments, modification, waivers, forbearances, or supplements thereto, relate to the this Agreement and are adverse to the Lenders, be subject to the approval of the Required FILO Ad Hoc Group Members (as defined in the Restructuring Support Agreement), such approval not to be unreasonably withheld, delayed or conditioned (such approval right, the "Required FILO Ad Hoc Group Approval").

## SECTION 2. AMOUNT AND TERMS OF COMMITMENTS

2.1 FILO Term Loan Roll-Up. Effective upon the occurrence of the Roll-Up Effective Time, without any further action by any party to this Agreement, the Bankruptcy Court or any other Person, to the extent set forth in the Bankruptcy Court DIP Order, (a) all Prepetition FILO Loans owing to each Lender in its capacity as a "FILO Term Loan Lender" under the Prepetition ABL Agreement (the "Rolled-Up Obligations" and such loans, the "FILO Term Loans", and such commitments, the "Rolled-Up Commitments") shall be deemed made hereunder and shall constitute a portion of the outstanding amount of the Obligations owing to the Lenders hereunder. The principal amount of each Lender's FILO Term Loans is set forth on Schedule 2.1. The aggregate principal amount of FILO Term Loans is \$275,000,000.

2.2 [Reserved].

2.3 Repayment of FILO Term Loans. The FILO Term Loans of each FILO Term Loan Lender shall mature and be payable in full on the Maturity Date, and the principal amount of the FILO Term Loans repaid on the Maturity Date shall be, in any event, an amount equal to the aggregate principal amount of all FILO Term Loans outstanding on such date. The FILO Term Loans will not amortize.

2.4 [Reserved].

2.5 Loans and Borrowings. (a) The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder.

(b) Subject to Section 2.17, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the applicable Lender to make such Loan and the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$2,500,000. At the time each ABR Borrowing is made, such

Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$1,000,000. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of 15 Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the applicable Maturity Date for such Borrowing.

2.6 [Reserved].

2.7 [Reserved].

2.8 [Reserved].

2.9 [Reserved].

2.10 Interest Elections. (a) Each Borrowing initially shall be of the Type specified by the Borrower to the Administrative Agent prior to the Roll-Up Effective Time and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such notice. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone not later than 11:00 a.m., New York City time, on the day of a conversion to or continuation of ABR Loans or 11:00 a.m., New York City time, three Business Days before the day of a conversion to or continuation of Eurodollar Loans. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or electronic transmission to the Administrative Agent of a written Interest Election Request signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;



(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (x) no such outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (y) unless repaid, each such Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

2.11 [Reserved].

2.12 Repayment of Loans; Evidence of Debt. (a) Except as otherwise set forth in Section 2.24 hereof, the Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan of such Lender on the Maturity Date either in cash or as set forth in Section 2.24.

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

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

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence absent manifest error of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner

affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement. To the extent any such accounts are inconsistent with the Register, the Register shall govern.

(e) Any Lender may request through the Administrative Agent that Loans deemed made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns and in the form of Exhibit D. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.4) be represented by one or more promissory notes in such form payable to such payee and its registered assigns.

2.13 Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (but subject to Section 2.19) subject to prior notice in accordance with paragraph (c) of this Section.

(b) Prior to any optional or mandatory prepayment of Borrowings hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (c) of this Section.

(c) The Borrower shall notify the Administrative Agent by telephone (confirmed by written notice (which may be by email)) of any voluntary prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of an ABR Borrowing, not later than 10:00 a.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, any notice of prepayment of FILO Term Loans may be conditioned upon the effectiveness of other credit facilities or any other financing or a sale transaction, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial voluntary prepayment pursuant to Section 2.13(a) of any Borrowing shall be in an integral multiple of \$500,000 and not less than \$2,500,000 (or, if less, the remaining outstanding amount of such Borrowing). Prepayments shall be accompanied by accrued interest to the extent required by Section 2.16. Each prepayment of FILO Term Loans pursuant to Section 2.13(a), shall be applied ratably to the FILO Term Loans then outstanding. In the event the Borrower fails to specify the Borrowings to which any voluntary prepayment shall be applied, such prepayment shall be applied to prepay FILO Term Loans ratably.

2.14 Fees. (a) [Reserved].

(b) [Reserved]

(c) The Borrower agrees to pay to the Administrative Agent and to the Collateral Agent, for their own account, fees payable in the amounts and at the times separately agreed upon between Parent and each of the Administrative Agent and the Collateral Agent.

2.15 Mandatory Prepayments. (a) If Indebtedness is incurred by a Loan Party (other than Indebtedness permitted under Section 6.2), then no later than two Business Days after the date of such issuance or incurrence, an amount equal to 100% of the Net Cash Proceeds thereof shall be applied to the prepayment of the FILO Term Loans as set forth in Section 2.15(d) together with accrued and unpaid interest thereon. The provisions of this Section do not constitute a consent to the incurrence of any Indebtedness by any Loan Party.

(b) If on any date a Loan Party shall receive Net Cash Proceeds from any Recovery Event then, unless a Reinvestment Notice shall be delivered in respect thereof, no later than three Business Days (or, if a Default or Event of Default has occurred and is continuing, one Business Day) after the date of receipt by such Loan Party of such Net Cash Proceeds, an amount equal to 100% of such Net Cash Proceeds shall be applied to the prepayment of the Term Loans as set forth in Section 2.15(d) together with accrued and unpaid interest thereon; provided that (i) notwithstanding the foregoing, on each Reinvestment Prepayment Date an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event shall be applied to the prepayment of the FILO Term Loans (together with accrued interest thereon), and (ii) if the Net Cash Proceeds from any Recovery Event exceed \$1,000,000, then no Reinvestment Notice with respect thereto may be delivered without the consent of the Required Lenders; provided further that to the extent that the Net Cash Proceeds of any such Recovery Event result from any settlement of, or payment in respect of, any property or casualty insurance claim or any condemnation proceeding relating to Term Priority Collateral, such Net Cash Proceeds shall first be applied as required pursuant to Section 2.15(d) of the Term Loan DIP Credit Agreement before being applied to the mandatory prepayment of the FILO Term Loans pursuant to this Section 2.15(a).

(c) In the event the aggregate amount of outstanding FILO Term Loans exceeds the Borrowing Base, then the Borrower will immediately repay outstanding FILO Term Loans in an aggregate amount equal to such excess.

(d) Amounts to be applied pursuant to this Section 2.15 shall be applied first to prepay outstanding ABR Loans and then to prepay Eurodollar Loans, and shall be applied ratably to the Loans then outstanding.

2.16 Interest. (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Margin.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default pursuant to Section 7.1(a), any overdue amount payable by the Borrower hereunder shall bear interest, after as well as before judgment, at a rate per annum

equal to (i) in the case of overdue principal of or interest on any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other overdue amount, 2% plus the rate applicable to FILO Term Loans that are ABR Loans as provided in paragraph (a) of this Section prior to giving effect to any increase in such rate pursuant to this paragraph (c).

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error. Notwithstanding the forgoing, solely for the purposes of the Interest Act (Canada) and disclosure under such Act, whenever interest to be paid under this Agreement is to be calculated on the basis of a year of 365 days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by either 365 or such other period of time, as the case may be.

2.17 Alternate Rate of Interest. (a) If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means (including, without limitation, by means of an Interpolated Rate) do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including because the Screen Rate is not available or published on a current basis), for such Interest Period; or

(ii) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period, then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or electronic transmission as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (B) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

(b) If at any time the Administrative Agent (in consultation with the Required Lenders and the Borrower) determines (which determination shall be conclusive absent manifest error) that either (i) the circumstances set forth in clause (a)(i) of this Section 2.17 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i) of this Section 2.17 have not arisen but the supervisor for the administrator of the Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Screen Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent (in consultation with the Required Lenders) and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Margin); provided that, if such alternate rate of interest as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 9.2, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this clause (b) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 2.17(b), only to the extent the Screen Rate for such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (y) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

2.18 Increased Costs. (a) If any Change in Law shall:

- (i) subject the Administrative Agent or any Lender to any Taxes (other than (A) Indemnified Taxes covered under Section 2.20, (B) Excluded Taxes or (C) Other Taxes) on its Loans Commitments or other obligations hereunder, or its deposits, reserves or other liabilities or capital attributable thereto;
- (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); or
- (iii) impose on any Lender or the London interbank market any other condition, cost or expense (excluding any condition relating to Taxes) affecting this Agreement or Eurodollar Loans made by such Lender;

and the result of any of the foregoing shall be to (x) increase the cost to such Lender (or in the case of clause (i), to the Administrative Agent or such Lender) of making, converting to, continuing or maintaining any Eurodollar Loan (or in the case of clause (i), any Loan) (or of

maintaining its obligation to make any such Loan) or (y) reduce the amount of any sum received or receivable by the Administrative Agent or such Lender hereunder (whether of principal, interest or otherwise), then, upon request of such Lender, the Borrower will pay to the Administrative Agent or such Lender, as the case may be, such additional amount or amounts as will compensate the Administrative Agent or such Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital or liquidity requirements or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital or liquidity requirements (whether or not having the force of law) from any Governmental Authority made subsequent to the Closing Date has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth in reasonable detail the matters giving rise to a claim under this Section 2.18 by such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) If any Lender reasonably determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Eurodollar Loans, or to determine or charge interest rates based upon the Adjusted LIBO Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower may at its option revoke any pending request for a borrowing of, conversion to or continuation of Eurodollar Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to

ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

2.19 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.13(c) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.22(c), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event (other than loss of profit). Such loss, cost or expense to any Lender shall consist of an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. Absent manifest error in the determination of such amount, the Borrower shall pay such Lender the amount shown as due on any such certificate within 15 days after receipt thereof.

2.20 Taxes. (a) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the applicable Withholding Agent shall be required by Requirement of Tax Law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased by the applicable Loan Party as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.20(a)) the Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable Withholding Agent shall make or cause to be made such deductions and (iii) the applicable Withholding Agent shall pay or cause to be paid the full amount deducted to the relevant Governmental Authority in accordance with Requirement of Tax Law.

(b) In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with Requirement of Tax Law.

(c) The Loan Parties shall indemnify the Administrative Agent and each Lender within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of any Loan Party hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto; provided that the Loan Parties shall not be obligated to make payment to the Administrative Agent or any Lender pursuant to this Section in respect of penalties, interest and other liabilities attributable to any Indemnified Taxes or Other Taxes if (i) written demand therefor has not been made by the Administrative Agent or such Lender within 30 days from the date on which the Administrative Agent or such Lender knew of the imposition of such Indemnified Taxes or Other Taxes by the relevant Governmental Authority, (ii) such penalties, interest and other liabilities have accrued after the Loan Parties have indemnified or paid any additional amount pursuant to this Section or (iii) such penalties, interest and other liabilities are attributable to the gross negligence, bad faith or willful misconduct of the Administrative Agent or such Lender as determined by a court of competent jurisdiction by final and non-appealable judgment. A certificate setting forth in reasonable detail the basis for such claim and the calculation of the amount of any such payment or liability shall be delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, and shall be conclusive absent manifest error.

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

(e) (i) Each Lender other than a Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly executed copies of IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal withholding tax. Each Foreign Lender shall deliver to the Borrower and the Administrative Agent (i) two properly completed and duly executed copies of IRS Form W-8BEN or Form W-8BEN-E, Form W-8ECI or, to the extent a Foreign Lender is not the beneficial owner, Form W-8IMY (together with any applicable underlying IRS forms), or any subsequent versions thereof or successors thereto, (ii) in the case of a Foreign Lender claiming exemption from United States Federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of “portfolio interest,” a certificate in the form attached hereto as Exhibit E-1, E-2, E-3 or E-4, as applicable, and two properly completed and duly executed copies of the applicable IRS Form W-8BEN or Form W-8BEN-E, or any subsequent versions thereof or successors thereto, or (iii) any other form prescribed by applicable requirements of U.S. federal income tax law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable requirements of law to permit the Borrower and the Administrative Agent to determine the deduction required to be made, in each case, certifying such Foreign Lender’s entitlement to an exemption from or a reduction in United States Federal withholding tax with respect to payments of interest to be made hereunder or under any other Loan Documents. Such forms shall be delivered by each Lender on or before



the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation) and from time to time thereafter upon the request of the Borrower or the Administrative Agent. In addition, each Lender shall promptly deliver such forms upon the obsolescence or invalidity of any form previously delivered by such Lender. Each Lender shall promptly notify the Borrower and the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the United States taxing authorities for such purpose). Any Lender, if requested by the Administrative Agent or the Borrower, shall deliver such other documentation prescribed by or reasonably requested by the Administrative Agent or the Borrower as will enable the Administrative Agent or the Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(ii) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed pursuant to FATCA if such Lender fails to comply with any requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the applicable Withholding Agent, on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation) and from time to time thereafter upon the request of the applicable Withholding Agent, such documentation prescribed by Requirement of Tax Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the applicable Withholding Agent as may be necessary for the applicable Withholding Agent to comply with its obligations under FATCA, to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and to determine the amount to deduct and withhold from such payment. To the extent that the relevant documentation provided pursuant to this paragraph is rendered obsolete or inaccurate in any material respect as a result of changes in circumstances with respect to the status of a Lender, such Lender shall, to the extent permitted by Requirement of Tax Law, deliver to the applicable Withholding Agent revised and/or updated documentation sufficient for the applicable Withholding Agent to confirm as to whether such Lender has complied with its respective obligations under FATCA. Solely for purposes of this clause (e)(ii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding any other provision of this Section 2.20, a Lender shall not be required to deliver any form pursuant to this Section 2.20 that such Lender is not legally able to deliver.

(f) Each Lender shall indemnify the Administrative Agent for the full amount of any Taxes imposed by any Governmental Authority that are attributable to such Lender and that are payable or paid by the Administrative Agent, together with all interest, penalties, reasonable costs and expenses arising therefrom or with respect thereto, as determined by the Administrative Agent in good faith. Should the applicable Withholding Agent not deduct or withhold any Taxes imposed by FATCA from a payment under any Loan Document based on the documentation provided by a Lender pursuant to Section 2.20(e)(ii), any amounts subsequently determined by a Governmental Authority to be subject to United States Federal

withholding Tax imposed pursuant to FATCA (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) shall be indemnified by such Lender. A certificate as to the amount of such payment or liability delivered to any Lender by the Withholding Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent under this paragraph (f).

(g) Solely for purposes of determining withholding Taxes imposed under FATCA, from and after the Closing Date, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Loans as not qualifying as a “grandfathered obligation” within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(h) If the Administrative Agent, or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section 2.20, it shall pay over such refund to the applicable Loan Party within a reasonable period (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.20 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party pursuant to this Section 2.20(h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the Administrative Agent or any Lender be required to pay any amount to a Loan Party pursuant to this paragraph (h) the payment of which would place the Administrative Agent or any Lender in a less favorable net after-Tax position than the such party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.20(h) shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

(i) Each party’s obligations under this Section 2.20 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

2.21 Payments Generally; Pro Rata Treatment; Sharing of Set-offs. (a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or amounts payable under Section 2.18, 2.19 or 2.20 or otherwise) prior to the time expressly required hereunder for such payment (or if no such time is expressly required, prior to 2:00 p.m. New York City time), on the date when due, in immediately available funds, without

set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, New York, except that payments pursuant to Sections 2.18, 2.19, 2.20 or 9.3 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under any Loan Document shall be made in Dollars. Any FILO Term Loans paid or prepaid may not be reborrowed.

(b) If at any time (x) insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees and other Obligations then due hereunder, or (y) during the continuation of an Event of Default and the enforcement of remedies in connection therewith in accordance with Section 7.1, the Administrative Agent or the Collateral Agent receives proceeds of Collateral pledged by the Loan Parties, such funds will be applied,

- (1) first, toward payment of any expenses, fees and indemnities due to the Administrative Agent or the Collateral Agent hereunder;
- (2) second, on a pro rata basis toward payment of any outstanding obligations owed to Cash Management Banks under any Cash Management Obligations ratably among the parties entitled thereto in accordance with the amounts of such Cash Management Obligations then due to such parties;
- (3) third, toward payment of interest, expenses and fees then due from the Borrower hereunder with respect to any FILO Term Loan (including amounts due under Section 9.3), ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;
- (4) fourth, on a pro rata basis, toward payment of principal then due from the Borrower hereunder with respect to any FILO Term Loans, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties;
- (5) fifth, to payment of all other Obligations of the Borrower and the Loan Parties then due and payable, ratably among the parties entitled thereto in accordance with the amounts of such Obligations then due to such parties; and

(6) sixth, to the Borrower or as otherwise required pursuant to any Intercreditor Agreement;

provided that the application of such proceeds at all times will be subject to the application of proceeds provisions contained in the Intercreditor Agreements.

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

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

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.21(d) or 8.7, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

2.22 Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.18, or if the Borrower is required to pay any amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section

2.20, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.18 or 2.20, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender (or any Participant in the Loans held by such Lender) requests compensation under Section 2.18, or if the Borrower is required to pay any amount to any Lender (or its Participant) or any Governmental Authority for the account of any Lender pursuant to Section 2.20, or if any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.4 (provided that, if the required Assignment and Assumption is not executed and delivered by such Lender, such Lender will be unconditionally and irrevocably deemed to have executed and delivered such Assignment and Assumption as of the date such Lender receives payment in full of the amounts set forth in clause (i) below)), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees, and all other amounts payable to it hereunder (but, for the avoidance of doubt, not any amounts in respect of contingent reimbursement and indemnification obligations which are not due and payable), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (ii) in the case of any such assignment resulting from a claim for compensation under Section 2.18 or payments required to be made pursuant to Section 2.20, such assignment will result in a reduction in such compensation or payments in the future. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

(c) If any Lender (such Lender, a “Non-Consenting Lender”) has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.2 requires the consent of all of the Lenders or all affected Lenders, then the Borrower may (unless such Non-Consenting Lender grants such consent), at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, replace such Non-Consenting Lender by requiring such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.4 (provided that, if the required Assignment and Assumption is not executed and delivered by such Non-Consenting Lender, such Non-Consenting Lender will be unconditionally and irrevocably deemed to have executed and delivered such Assignment and Assumption as of the date such Non-Consenting Lender receives payment in full of the amounts set forth in clause (i) below)), all of its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Non-Consenting Lender shall have received payment of an amount equal

to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (but, for the avoidance of doubt, not any amounts in respect of contingent reimbursement and indemnification obligations which are not due and payable), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (ii) the replacement Lender shall grant its consent with respect to the applicable proposed amendment, waiver, discharge or termination.

2.23 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then for so long as such Lender is a Defaulting Lender, the FILO Term Loans of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.2); provided, that this clause (a) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender affected thereby if such amendment, waiver or modification would adversely affect such Defaulting Lender compared to other similarly affected Lenders; provided further that no amendment, waiver or modification that would require the consent of a Defaulting Lender under clause (i), (ii) or (iii) of the first proviso of Section 9.2(b) may be made without the consent of such Defaulting Lender.

2.24 Conversion of Loans. (a) Upon the consummation of an Approved Plan of Reorganization, subject to the satisfaction, or waiver, of the conditions set forth in the Exit ABL Term Sheet and otherwise substantially in accordance with the terms set forth in the Exit ABL Credit Agreement, the Borrower may exercise an option to continue or convert the Loans into an exit FILO term facility financing on the effective date of such Approved Plan of Reorganization (the "Exit Conversion").

(b) If the Borrower elects to exercise the Exit Conversion, subject to the satisfaction or waiver of the conditions contained in the Exit ABL Term Sheet by Lenders holding at least 66 $\frac{2}{3}$ % of the aggregate amount of the FILO Term Loans:

(i) each Lender, severally and not jointly, hereby agrees to continue its Loans hereunder outstanding on the effective date of the Approved Plan of Reorganization as Exit FILO Loans under, and subject entirely and exclusively to the terms and provisions of, the definitive documentation to be mutually agreed (including a credit agreement governing the continuation and conversion of the Loans, the "Exit ABL Credit Agreement") and related documentation which documentation shall be substantially consistent with the Exit ABL Facility Term Sheet and is otherwise in form and substance reasonably satisfactory to Lenders holding at least 66 $\frac{2}{3}$ % of the aggregate amount of the FILO Term Loans; and

(ii) subject to Section 2.24(a), the Administrative Agent, the Lenders and the Loan Parties agree that, upon the effectiveness of the Exit ABL Credit Agreement:

(A) the Borrower, in its capacity as reorganized "Borrower" and each Guarantor that is a guarantor under the Prepetition Term Loan Agreement (subject to the Approved Plan of Reorganization), in its capacity as a reorganized Guarantor, shall assume all

the Obligations hereunder with respect to the Loans and all other obligations in respect thereof in the manner set forth in the Exit ABL Credit Agreement and related loan documents;

(B) the Loans hereunder shall be continued as or converted to, as the case may be, Exit FILO Loans under the Exit ABL Credit Agreement;

(C) each Lender hereunder shall be a lender under the Exit ABL Credit Agreement in respect of its Loans continued as or converted to, as the case may be, Exit FILO Loans;

(D) the administrative agent and collateral agent under the Exit ABL Credit Agreement shall be selected by the Required Lenders and the Borrower reasonably in advance of the Exit Conversion; and

(E) with respect to the Loans, this Agreement and all Obligations hereunder with respect thereto shall terminate and be superseded and replaced by the Exit ABL Credit Agreement.

### SECTION 3. REPRESENTATIONS AND WARRANTIES

To induce the Agents and the Lenders to enter into this Agreement, Parent and the Borrower hereby jointly and severally represent and warrant to Agent and each Lender that:

3.1 Financial Condition. The audited consolidated balance sheets of Holdings as at December 31, 2019, and the related consolidated statements of income and of cash flows for the fiscal years ended on such dates, reported on by and accompanied by an unqualified report from PricewaterhouseCoopers, present fairly in all material respects the consolidated financial condition of Holdings as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal years then ended. The unaudited consolidated balance sheet of Holdings as at March 31, 2020, and the related unaudited consolidated statements of income and cash flows for the three-month period ended on such date, present fairly in all material respects the consolidated financial condition of Holdings as at such date and the consolidated results of its operations and its consolidated cash flows for the three-month period then ended (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP (unless otherwise noted therein) applied consistently throughout the periods involved (except as disclosed therein).

3.2 No Change. Since the Petition Date there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

3.3 Corporate Existence; Compliance with Law. As of the Petition Date, each of the Loan Parties (a) is duly organized, validly existing and in good standing or in full force and effect under the laws of the jurisdiction of its organization (to the extent such concepts exist in such jurisdictions), (b) subject to the entry and terms of the Bankruptcy Court DIP Order and other orders of the Bankruptcy Court, as applicable, has the organizational power and authority, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign

organization and in good standing or in full force and effect under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification and (d) unless stayed by the Chapter 11 Cases, is in compliance with all Requirements of Law, except, in the case of the foregoing clauses (a) (solely with respect to Subsidiaries), (b), (c) and (d), as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.4 Organizational Power; Authorization; Enforceable Obligations. Subject to the entry and terms of the Bankruptcy Court DIP Order, each Loan Party has the corporate or other organizational power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to borrow hereunder. Each Loan Party has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party. Other than the Bankruptcy Court DIP Order, no material consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement or any of the other Loan Documents, except (i) consents, authorizations, filings and notices that have been obtained or made and are in full force and effect, (ii) the consents, authorizations, filings and notices described in Schedule 3.4, (iii) the filings referred to in Section 3.18, (iv) filings necessary to create or perfect Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (v) those consents, authorizations, filings and notices the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each Loan Document has been duly executed and delivered on behalf of each Loan Party that is a party thereto. Subject to the entry and the terms of the Bankruptcy Court DIP Order, this Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party that is a party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

3.5 No Legal Bar. Subject to the entry and terms of the Bankruptcy Court DIP Order, the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law applicable to, or any Contractual Obligation of, Parent, the Borrower or any of its Restricted Subsidiaries, except, in each case, as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any such Requirement of Law or any such Contractual Obligation (other than Permitted Liens).

3.6 No Material Litigation. As of the Petition Date, except as set forth on Schedule 3.6 and except for the Chapter 11 Cases (or matters arising therefrom) and Recognition Proceedings (or matters arising therefrom), no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of Parent or the Borrower, threatened in writing against any Loan Party or against any of their respective



properties or revenues (a) with respect to this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that would reasonably be expected to have a Material Adverse Effect (after giving effect to indemnification from certain manufacturers and applicable insurance).

3.7 No Default. None of the Loan Parties is in default under or with respect to any of its post-petition material Contractual Obligations in any respect that would reasonably be expected to have a Material Adverse Effect.

3.8 Ownership of Property; Liens. As of the Petition Date, each of the Loan Parties has good title to, or a valid leasehold interest in, all real property and other Property material to the conduct of its business except where the failure to have such title or interests would not reasonably be expected to have a Material Adverse Effect. None of the Pledged Capital Stock is subject to any Lien except for Permitted Liens.

3.9 Intellectual Property. As of the Petition Date, except as would not reasonably be expected to result in a Material Adverse Effect, to the knowledge of Parent and the Borrower, (i) each of the Loan Parties owns, or has a valid license to use, all Intellectual Property necessary for the conduct of its business as currently conducted ("Company Intellectual Property"); (ii) no claim has been asserted in writing and is pending by any Person challenging or questioning the use of any Company Intellectual Property or the validity or effectiveness of any Company Intellectual Property, nor does Parent or the Borrower know of any valid basis for any such claim; and (iii) the use of Company Intellectual Property by the Loan Parties does not infringe on the Intellectual Property rights of any Person.

3.10 Taxes. As of the Petition Date, each of the Loan Parties has filed or caused to be filed all income and all other material tax returns that are required to be filed and has paid all income and all other material Taxes, assessments, fees and other governmental charges levied or imposed upon it or its properties, income or assets due and payable by it (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the applicable Loan Party, as the case may be) except, in each case, where the failure to do so would not reasonably be expected to have a Material Adverse Effect. To the knowledge of Parent and the Borrower, no material written claim has been asserted with respect to any Taxes (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the applicable Loan Party, as the case may be, or the payment of which are stayed by the Chapter 11 Cases). No Loan Party is a party to any tax sharing, tax allocation or other similar agreement relating to taxes. No Loan Party has made an election pursuant to Section 965(h) of the Code.

3.11 Federal Regulations. No part of the proceeds of any Loans will be used by any Loan Party for "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect or for any purpose that violates the provisions of the Regulations of the Board. On the Closing Date, no Loan Party owns any "margin stock".

3.12 ERISA. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) no ERISA Event has occurred, and (ii) the present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Single Employer Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Single Employer Plan allocable to such accrued benefits by a material amount.

3.13 Investment Company Act. No Loan Party is an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

3.14 Subsidiaries. (a) The Subsidiaries listed on Schedule 3.14(a) constitute all the direct and indirect Subsidiaries of Holdings as of the Closing Date. Schedule 3.14(a) sets forth as of the Closing Date the exact legal name (as reflected on the certificate of incorporation (or formation)) and jurisdiction of incorporation (or formation) of each Subsidiary of Parent and, as to each such Subsidiary, the percentage and number of each class of Capital Stock of such Subsidiary owned by Parent and its Subsidiaries.

(a) As of the Closing Date, except as set forth on Schedule 3.14(b), there are no outstanding subscriptions, options, warrants, calls or similar rights (other than stock options granted to employees, directors, managers and consultants and directors’ qualifying shares) relating to any Capital Stock of any Loan Party.

3.15 [Reserved].

3.16 Environmental Matters. Other than exceptions to any of the following that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) the Loan Parties (i) are in compliance with all applicable Environmental Laws; (ii) hold all Environmental Permits required for any of their current operations or for any property owned, leased, or otherwise operated by any of them; and (iii) are in compliance with all of their Environmental Permits;

(b) to the knowledge of any Loan Party, Hazardous Materials are not present at, on, under or in any real property now or formerly owned, leased or operated by any Loan Party, or, to the knowledge of any Loan Party, at any other location (including, without limitation, any location to which Hazardous Materials have been sent by any Loan Party for re-use or recycling or for treatment, storage, or disposal) which would reasonably be expected to (i) give rise to the imposition of Environmental Liabilities on any Loan Party, (ii) materially interfere with any Loan Party’s continued operations, or (iii) materially impair the fair saleable value of any real property owned or leased by any Loan Party;

(c) there is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) pursuant to any Environmental Law to which any Loan Party is named as a party that is pending or, to the knowledge of any Loan Party, threatened in writing;

(d) none of the Loan Parties has received any written request for information, or been notified in writing that it is a potentially responsible party under or relating to the federal

Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law;

(e) no Loan Party has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with Environmental Law or Environmental Liability; and

(f) no Loan Party has assumed or retained by contract any Environmental Liability.

3.17 Accuracy of Information, etc. No written statement or written information (other than projections and other forward-looking information and information of a general economic nature or general industry nature) contained in this Agreement, any other Loan Document or any other document, certificate or written statement furnished to the Arranger, the Agents or the Lenders or any of them, by or at the direction and on behalf of any Loan Party for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, taken as a whole with all such other written statements, written information, documents and certificates, contained as of the date such written statement, written information, document or certificate was so dated or certified, any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were delivered, contained herein or therein not materially misleading (after giving effect to all written updates thereto delivered by or on behalf of any Loan Party).

3.18 Security. The provisions of the Interim DIP Order, the Final DIP Order, and the Canadian Court DIP Recognition Order, as applicable, are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest (subject, in the case of any Collateral, to Liens permitted by Section 6.3) on all right, title and interest of the respective Loan Parties in the Collateral described therein (with such priority as provided for in the Bankruptcy Court DIP Order (or, with respect to the Canadian Guarantor, in the Canadian Court DIP Recognition Order)). Except for the Interim DIP Order, the Final DIP Order and the Canadian Court DIP Recognition Order, as applicable, no filing or other action will be necessary to perfect the Liens on any Collateral under the Laws of the United States of America or Canada.

3.19 Budget and Financial Plan. The Budget was prepared in good faith based on assumptions believed by the Loan Parties to be reasonable at the time made and upon information believed by the management of the Borrower to have been accurate based upon the information available to the management of the Borrower at the time such Budget was furnished to the Administrative Agent. On and after the delivery of any Variance Report in accordance with this Agreement, such Variance Report shall be complete and correct in all material respects and fairly represent in all material respects the matters set forth therein for the period covered thereby.

3.20 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) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the “Act”).

3.21 Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance in all material respects by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, and the Borrower and its Subsidiaries, and to the knowledge of the Borrower, its directors, officers, employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower or any of its Subsidiaries or (b) to the knowledge of the Borrower, any director, officer, employee or agent of the Borrower or any of its Subsidiaries that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

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

3.23 Canadian Welfare and Pension Plans Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) each Loan Party has adopted all Canadian Welfare Plans required pursuant to applicable Requirements of Law and each of such plans has been maintained and each Loan Party is in compliance with such laws in all material respects including, without limitation, all requirements relating to employee participation, funding, investment of funds, benefits and transactions with the Loan Parties and persons related to them, (ii) no Loan Party has a material contingent liability with respect to any post-retirement benefit under a Canadian Welfare Plan, (iii) with respect to Canadian Pension Plans: (a) no Canadian Pension Termination Event has occurred and no steps have been taken to terminate any Canadian Pension Plan (wholly or in part) which could result in any Loan Party being required to make a material additional contribution to any Canadian Pension Plan, (b) no contribution failure has occurred with respect to any Canadian Pension Plan sufficient to give rise to a lien or charge under any applicable pension benefits laws of any other jurisdiction (for certainty, not including payments in respect of contributions payable but not yet due), and (c) no condition exists and no event or transaction has occurred with respect to any Canadian Pension Plan which is reasonably likely to result in any Loan Party incurring any material liability, fine or penalty, (iv) each Canadian Pension Plan is in compliance (other than immaterial non-compliance) with all applicable pension benefits and tax laws, (v) all contributions (other than immaterial amounts) (including employee contributions made by authorized payroll deductions or other withholdings) required to be made to the appropriate funding agency in accordance with all applicable Requirements of Law (other than immaterial non-compliance) and the terms of each such Canadian Pension Plan have been made in accordance with all applicable Requirements of Law (other than immaterial non-compliance) and the terms of such Canadian Pension Plan (other than immaterial non-compliance), (vi) all liabilities under each Canadian Pension Plan are funded in accordance with the terms of the respective Canadian Pension Plans, the requirements of applicable pension benefits laws and of applicable regulatory authorities (other than immaterial non-compliance), (vii) no event has occurred and no conditions exist with respect to any Canadian Pension Plan that has resulted or could reasonably be expected to result

in any such Canadian Pension Plan having its registration revoked or refused by any administration of any relevant pension benefits regulatory authority or being required to pay any taxes (other than taxes the amounts of which are immaterial) or penalties under any applicable pension benefits or tax laws and (viii) no Loan Party contributes to, sponsors or maintains, or has in the past 5 years contributed to, sponsored or maintained, a Canadian Defined Benefit Pension Plan.

3.24 Canadian Anti-Corruption and Canadian Anti-Money Laundering. The Canadian Guarantor has adopted and maintains adequate procedures designed to ensure that it is in compliance in all material respects with all Canadian Anti-Money Laundering Legislation and Canadian Anti-Corruption Laws.

3.25 Borrowing Base Certificate. At the time of delivery of each Borrowing Base Certificate, assuming that any eligibility criteria that requires the approval or satisfaction of the Administrative Agent has been approved by or is satisfactory to the Administrative Agent, each material Account reflected therein as eligible for inclusion in the Borrowing Base is an Eligible Accounts Receivable, an Eligible Credit Card Receivable or an Eligible Gift Card Receivable, the material Inventory reflected therein as eligible for inclusion in the Borrowing Base constitutes Eligible Inventory and the cash and Cash Equivalents reflected therein as eligible for inclusion in the Borrowing Base constitute Borrowing Base Cash.

#### SECTION 4. CONDITIONS PRECEDENT

4.1 Conditions to the Closing Date. The effectiveness of this Agreement is subject to the satisfaction of the following conditions on the Closing Date:

(a) Loan Documents. The Administrative Agent shall have received (i) this Agreement, executed and delivered by a duly authorized officer of Parent and the Borrower, (ii) an executed signature page from each Lender party to this Agreement on the Closing Date, and (iii) executed copies of the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement.

(b) Closing Certificate. The Administrative Agent shall have received a certificate of each Loan Party, dated the Closing Date, substantially in the form of Exhibit B hereto, with appropriate insertions and attachments as called for in such Exhibit B.

(c) Other Certifications. The Administrative Agent shall have received the following:

(i) if available, a copy of the charter or other similar organizational document of each Loan Party and each amendment thereto, certified (as of a date reasonably near the date of the initial extension of credit) as being a true and correct copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized (or, with respect to the Canadian Guarantor, by a Responsible Officer);

(ii) for Loan Parties other than the Canadian Guarantor, a copy of a certificate of the Secretary of State or other applicable Governmental Authority of the

jurisdiction in which each such Loan Party is organized, dated reasonably near the date of the initial extension of credit, listing the charter or other similar organizational document of such Loan Party and each amendment thereto on file in such office and, if available, certifying that (A) such amendments are the only amendments to such Person's charter on file in such office and (B) such Person is duly organized and (to the extent such certificate exists in the relevant jurisdiction) in good standing or full force and effect under the laws of such jurisdiction; and

(iii) a certificate of a duly authorized officer or director of each Loan Party certifying (i) that the 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 the Loan Documents; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents.

(d) [Reserved].

(e) "Know-Your-Customer". The Loan Parties shall have provided or caused to be provided the documentation and other information to the Administrative Agent required by United States and Canadian regulatory authorities under applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and Canadian Anti-Money Laundering Legislation, in each case, at least two Business Days prior to the Closing Date, to the extent reasonably requested in writing at least five Business Days prior to the Closing Date.

(f) Budget. The Administrative Agent shall have received the initial Budget, a monthly forecast for the period through the Maturity Date and an opening pro forma balance sheet for the Loan Parties.

(g) Term Loan DIP Credit Agreement. The Administrative Agent shall have received an executed copy of the Term Loan DIP Credit Agreement, and the Interim DIP Order shall have approved the funding to the Borrower by the Term Loan Lenders of at least \$30,000,000 in Term Loans.

(h) Commencement of Chapter 11 Cases. The Chapter 11 Cases shall have been commenced and all of the pleadings related to the "first day orders" and "second day orders" entered by the Bankruptcy Court at the time of the commencement of the Chapter 11 Cases and prior to the Interim DIP Order shall be in form and substance reasonably satisfactory to the Required Lenders.

(i) Commencement of Recognition Proceedings. The Recognition Proceedings shall have been commenced.

(j) Interim DIP Order. The Interim DIP Order, substantially in the form of Exhibit J hereto, shall have been entered by the Bankruptcy Court within three (3) Business Days after the Petition Date, subject to the discretion of the Bankruptcy Court, and the Administrative

Agent shall have received a true and complete copy of such order, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Lenders and subject to Required FILO Ad Hoc Group Approval and such order shall not be subject to a stay pending appeal or motion for leave to appeal or other proceeding to set aside any such order or the challenge to the relief provided for in such order, except as consented to by the Required Lenders and subject to Required FILO Ad Hoc Group Approval;

(k) Cash Management Order. An order entered by the Bankruptcy Court pertaining to the Loan Parties' cash management system ("Cash Management Order") and all motions and other documents filed with the Bankruptcy Court prior to the Closing Date in connection therewith shall be in form and substance reasonably satisfactory to the Required Lenders;

(l) No Appointment of Trustee. No trustee or other disinterested person with expanded powers pursuant to Section 1104(c) of the Bankruptcy Code shall have been appointed or designated in any of the Chapter 11 Cases, and no motion shall be pending in the Bankruptcy Court seeking any such relief;

(m) Adequate Protection. The Prepetition ABL Agent and the Prepetition FILO Lenders shall have each received adequate protection in respect of the Liens securing the Prepetition FILO Loans as set forth in the Interim DIP Order;

(n) DIP Financing Protections. The Collateral Agent, for its benefit and the benefit of each Lender, shall have been granted a perfected, valid, enforceable Lien on, and security interest in, the Collateral, in addition to the DIP Superpriority Claim, on the terms and conditions set forth herein and in the Interim DIP Order;

(o) Representations and Warranties. Each of the representations and warranties made by any Loan Party in the Loan Documents shall be true and correct in all material respects on and as of the Closing Date, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date (provided that, in each case, such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified by materiality or Material Adverse Effect);

(p) No Default. No Default or Event of Default shall have occurred and be continuing on the Roll-Up Effective Time or after giving effect to the roll-up of Prepetition FILO Loans on the Roll-Up Effective Time;

(q) Costs and Expenses. All reasonable and documented out-of-pocket costs, fees, expenses (including, without limitation, reasonable and documented legal fees and expenses) set forth in the Loan Documents and required to be paid to the Administrative Agent and the Lenders (and to counsel of the Administrative Agent and the Ad Hoc Committee Advisors) on or before such date shall have been paid; provided that, legal fees shall be limited to the reasonable and documented fees and disbursements of one U.S. counsel for the Administrative Agent (which shall be Simpson Thacher & Bartlett LLP), one Canadian counsel

for the Administrative Agent (which shall be Norton Rose Fulbright Canada LLP), one lead U.S. counsel for the Crossover Ad Hoc Group (which shall be Milbank LLP), one lead Canadian counsel for the Crossover Ad Hoc Group (which shall be Cassels Brock & Blackwell LLP), and one lead U.S. counsel for the FILO Ad Hoc Group (which shall be Paul, Weiss, Rifkind, Wharton & Garrison LLP) including reasonable and documented out-of-pocket costs and expenses of the Agents (including in connection with preparing all documents and enforcing any and all obligations relating to the Facility); and

(r) Responsible Officer Certificate. The Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower certifying compliance with the conditions set forth in clauses (o) and (p) above as of the Closing Date.

For purposes of determining whether the conditions specified in this Section 4.1 have been satisfied on the Closing Date, by executing this Agreement, the Administrative Agent and each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Administrative Agent or such Lender, as the case may be.

## SECTION 5. AFFIRMATIVE COVENANTS

Holdings, GNC Parent LLC, Parent and the Borrower each hereby jointly and severally agree that, so long as Loan or other amount (excluding Obligations in respect of Cash Management Obligations and contingent reimbursement and indemnification obligations which are not due and payable) is owing to any Lender or any Agent hereunder, it shall and shall cause each of the Loan Parties that are Subsidiary Guarantors to:

### 5.1 Financial Statements; Budget.

#### (A) Financial Statements.

Furnish to the Administrative Agent for further delivery to each Lender:

(a) within 90 days after the end of each fiscal year of the Borrower, a copy of the audited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such year and the related audited consolidated statements of income and of cash flows for such year, setting forth in each case in comparative form the figures as of the end of and for the previous year, all in reasonable detail and prepared in accordance with GAAP, reported on by PricewaterhouseCoopers or other independent certified public accountants of nationally recognized standing;

(b) within 45 days after the end of each of the first three quarterly periods of each fiscal year of the Borrower, the unaudited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures as of the end of and for the corresponding period in the previous year, all in reasonable detail and certified by a Responsible Officer as fairly presenting in all material respects the financial condition, results of



operations and cash flows of the Borrower and its consolidated Subsidiaries in accordance with GAAP (subject to normal year end audit adjustments and the absence of footnotes); and

(c) within 30 days after the end of each month (other than the third fiscal month of any fiscal quarter), a copy of the unaudited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such month and the related unaudited consolidated statements of income and of cash flows for such month.

(B) Budget and Other Information.

Furnish to the Administrative Agent for further delivery to each Lender:

(a) concurrently with delivery thereof under the Term Loan DIP Credit Agreement, an updated 13-week statement of the Loan Parties' anticipated cash receipts and Budget Disbursements for the subsequent 13-week period (a "Proposed Budget"). Such Proposed Budget shall on such Wednesday become the "Budget" for all purposes unless the Borrower notifies the Administrative Agent that, in accordance with the terms of the Term Loan DIP Credit Agreement, the Budget then in effect shall continue as the then-effective Budget;

(b) concurrently with delivery thereof under the Term Loan DIP Credit Agreement, a report (each, a "Variance Report") setting forth in reasonable detail (a) the Borrower's actual aggregate cash receipts and aggregate cash Budget Disbursements for the relevant Variance Statement Period (as defined in the Term Loan DIP Credit Agreement) and available cash on hand as of the end of such period and (b) the variance in dollar amounts of the actual aggregate receipts and aggregate cash Budget Disbursements for the relevant Variance Statement Period from those reflected for the corresponding period in the Budget;

(c) on Wednesday of each week (commencing after the first full week after the Petition Date), provide to the Administrative Agent and the Ad Hoc Committee Advisors a report with respect to the immediately prior week setting forth sales and same-store sales (in Dollar amounts) broken down by (i) retail (domestic and franchise), (ii) e-commerce, (iii) U.S. retail segment, (iv) wholesale segment and (v) international segment ("Sales Report");

(d) within seven days after the start of each month commencing after the Petition Date, provide to the Administrative Agent and Ad Hoc Committee Advisors the Sales Report with respect to the immediately prior month;

(e) on Wednesday of each week (commencing after the first full week after the Petition Date), provide to the Administrative Agent and Ad Hoc Committee Advisors a report setting forth, in Dollar amounts, sale proceeds and product margin achieved in the going-out-of-business sale with respect to the immediately prior week; and

(f) on Wednesday of every second week after the Petition Date (commencing after the second full week after the Petition Date), provide to the Administrative Agent and the Ad Hoc Committee Advisors a report containing an update on negotiations with landlords, including a written summary of lease modifications and related savings.

The Borrower shall, to the extent requested by the Ad Hoc Committee Advisors, weekly, at a time mutually agreed with the Administrative Agent that is promptly after the delivery of the information required pursuant to clause (B)(b) above, participate in a conference call for the Ad Hoc Committee Advisors to discuss the financial condition and results of operations of the Loan Parties and the Budget and Variance Report. The Agents and the Lenders acknowledge that the content of such calls will include Nonpublic Information.

Notwithstanding the foregoing, the obligations in paragraphs (A)(a) and (A)(b) of this Section 5.1 may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any direct or indirect parent company of the Borrower that directly or indirectly owns all of the Capital Stock of the Borrower or (B) the Borrower's (or any direct or indirect parent company thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; provided that, with respect to each of clauses (A) and (B), (i) to the extent such information relates to a parent of the Borrower and if requested by the Administrative Agent, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to the Borrower (or such parent), on the one hand, and the information relating to the Borrower and the Subsidiaries on a standalone basis, on the other hand (which consolidating information shall be certified by a Responsible Officer of the Borrower as fairly presenting such information unless such consolidating information is contained in the financial statements included in a Form 10-K or 10-Q filed with the SEC), and (ii) to the extent such information is in lieu of information required to be provided under Section 5.1(A)(a), the consolidated financial statements included in the materials provided pursuant to the foregoing clause (A) or (B) are accompanied by a report of PricewaterhouseCoopers or other independent public accountants of recognized national standing.

5.2 Certificates; Other Information. Furnish to the Administrative Agent in each case (other than in the case of clauses (c) and (h) below) for further delivery to each Lender, or, in the case of clause (g) below, to the relevant Lender:

(a) [reserved];

(b) concurrently with the delivery of any financial statements pursuant to Sections 5.1(A)(a), 5.1(A)(b) and 5.1(A)(c), a certificate of a Responsible Officer stating that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate;

(c) [reserved];

(d) to the extent that the Borrower (or a direct or indirect parent company of Borrower) is not otherwise required to file reports on form 10-K or 10-Q with the SEC, within 45 days after the end of each of the first three fiscal quarters of the Borrower in each fiscal year, or within 90 days after the fourth fiscal quarter of the Borrower in each fiscal year, a narrative discussion and analysis of the financial condition and results of operations of the Borrower and its Subsidiaries for such fiscal quarter and for the period from the beginning of the then current fiscal year to the end of such fiscal quarter, as compared to the comparable periods of the previous year;

(e) promptly after the furnishing thereof, copies of any material notices received by any Loan Party from, or material statement or material report furnished to, any holder (which is not an Affiliate of Parent) of Material Debt and not otherwise required to be furnished to the Administrative Agent or the Lenders pursuant to any other clause of this Section 5.2;

(f) within ten days after the same are sent, copies of all reports that Parent or the Borrower or any of its Restricted Subsidiaries sends to the holders of (x) any Material Debt or (y) any class of its public equity securities and, within ten days after the same are filed, copies of all reports that Parent or the Borrower or any of its Restricted Subsidiaries may make to, or file with, the SEC (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be furnished to the Administrative Agent or the Lenders pursuant to any other clause of this Section 5.2; in each case only to the extent such reports are of a type customarily delivered by borrowers to lenders in syndicated loan financings;

(g) promptly, such additional financial and other information regarding the business, legal, financial or corporate affairs of any Loan Party or any Restricted Subsidiary as the Administrative Agent may from time to time reasonably request (on its own behalf or on behalf of any Lender); and

(h) promptly after the same are available and to the extent feasible and reasonably practicable not later than three (3) days prior to the filing thereof with the Bankruptcy Court or the Canadian Court by or on behalf of the Loan Parties, proposed forms of the Bankruptcy Court DIP Order, all other proposed orders and pleadings related to the Facility, any plan of reorganization or liquidation, and any disclosure statement related to such plan.

Concurrently with the delivery of any document or notice required to be delivered pursuant to this Section 5.2 (collectively, the “Borrower Materials”), the Borrower shall indicate in writing whether such document or notice contains Nonpublic Information (which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof if such Borrower Materials may be distributed to “public-side” Lenders). Parent and the Borrower and each Lender acknowledge that certain of the Lenders may be “public-side” Lenders (Lenders that do not wish to receive material non-public information with respect to Holdings, Parent, the Borrower, its Subsidiaries or their securities) and, if documents or notices required to be delivered pursuant to this Section 5.2 or otherwise are being distributed through IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform (the “Platform”), any document or notice that the Borrower has indicated contains Nonpublic Information shall not be posted on that portion of the Platform designated for such public-side Lenders. All Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “public side”. If the Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.2 contains Nonpublic Information, the Administrative Agent shall post such document or notice solely on that portion of the Platform designated for Lenders who do not wish to receive material nonpublic information with respect to Parent, the Borrower, its Subsidiaries and their securities.

5.3 Payment of Obligations. Subject to the Bankruptcy Court DIP Order, pay, discharge or otherwise satisfy before they become delinquent, as the case may be, all its material tax obligations, except (a) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of Parent, the Borrower or its Restricted Subsidiaries, as the case may be or (b) where the failure to pay, discharge or otherwise satisfy the same would not reasonably be expected to have a Material Adverse Effect.

5.4 Conduct of Business and Maintenance of Existence, etc. (a) (i) Preserve, renew and keep in full force and effect its corporate or other organizational existence and (ii) take all reasonable action to maintain all rights, privileges, franchises, permits and licenses necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by Section 6.4 and except (other than in the case of the preservation of existence of Parent and the Borrower) to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect; (b) to the extent not in conflict with this Agreement or the other Loan Documents, comply with all applicable Requirements of Law, except to the extent that failure to comply therewith would not, in the aggregate, reasonably be expected to have a Material Adverse Effect; and (c) maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws.

5.5 Maintenance of Property; Insurance. (a) Except as would not reasonably be expected to have a Material Adverse Effect, keep all Property and systems necessary in its business (in the good faith belief of the Borrower) in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance (or, with respect to inventory and equipment at the retail store level, a program of self-insurance) on all its Property meeting the requirements of Section 5.3 of the Guarantee and Collateral Agreement and in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same geographic regions by companies of similar size engaged in the same or a similar business and as would be carried under similar circumstances; provided that such insurance shall not be required to cover ephedra products or other products for which insurance is not available or is not available on commercially reasonable terms.

5.6 Inspection of Property; Books and Records; Discussions. (a) (i) Keep proper books of records in conformity with GAAP and all material applicable Requirements of Law of all material dealings and transactions in relation to its business activities and (ii) permit representatives of the Administrative Agent, at reasonable business times and upon reasonable prior notice, to visit and inspect any of its properties and examine and, at the Borrower's expense, and make abstracts from any of its books and records as often as may reasonably be desired (subject to the immediately succeeding sentence) and to discuss the business, operations, properties and financial and other condition of Parent, the Borrower and its Restricted Subsidiaries with officers and employees of Parent, the Borrower and its Restricted Subsidiaries and with their respective independent certified public accountants (subject to such accountants' policies and procedures). Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing (in which case there shall be no limits on such visits, inspections and examinations) such visits, inspections and examinations shall be limited to two per fiscal year

(and, (x) so long as no Event of Default has occurred and is continuing, only one time at the Borrower's expense and (y) following the occurrence and during the continuance of an Event of Default, not more than two times at the Borrower's expense); provided, however, that unless an Event of Default exists, (i) such inspections for environmental matters shall be limited to no more than once per fiscal year and (ii) at all times such inspections for environmental matters shall be limited to non-intrusive and non-invasive visual observations. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 5.6, none of Parent, the Borrower or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by any Requirement of Law or any binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

(a) At the Administrative Agent's discretion, no more frequently than once per fiscal year, the Loan Parties will, at their expense and upon the Administrative Agent's request, permit any Persons designated by the Administrative Agent and reasonably satisfactory to the Borrower to conduct a field examination and an inventory appraisal, in each case with respect to Collateral contained in the Borrowing Base, at a reasonable business time and upon reasonable prior notice to the Borrower, and with respect to such inventory appraisal, to be conducted by an Acceptable Appraiser. The Loan Parties will reasonably cooperate with the Administrative Agent and such Persons in the conduct of such field examination and inventory appraisal. The Administrative Agent shall provide a copy of any field examination and/or inventory appraisal prepared after the Closing Date to any Lender upon such Lender's request. Notwithstanding the foregoing, at any time during the continuance of a Specified Event of Default, additional field examinations and inventory appraisals shall be permitted at the request of the Administrative Agent, in each case at the Borrower's expense. The Administrative Agent shall have the right, but not the obligation, from time to time at the Borrower's request and expense, to periodically update the inventory appraisal. With respect to each inventory appraisal made pursuant to this Section 5.6(b), (i) the Administrative Agent and the Loan Parties will each be given a reasonable amount of time to review and comment on a draft form of the inventory appraisal prior to its finalization and (ii) any adjustments to the Net Orderly Liquidation Value or the Borrowing Base hereunder as a result of such inventory appraisal shall be reflected in the Borrowing Base Certificate delivered immediately succeeding such inventory appraisal.

5.7 Notices. Promptly give notice to the Administrative Agent in each case for further delivery to the Collateral Agent and each Lender of:

(a) knowledge by the Borrower or Parent of the occurrence of any Default or Event of Default;

(b) any (i) default or event of default (or alleged default) under any Contractual Obligation (other than the Loan Documents) of any of the Loan Parties or (ii) litigation, investigation or proceeding which may exist at any time between any of the Loan

Parties and any Governmental Authority, that in the case of either of clause (i) or (ii), would reasonably be expected to have a Material Adverse Effect;

(c) any litigation or proceeding against any of the Loan Parties (other than the Chapter 11 Cases and the Recognition Proceedings) that would reasonably be expected to have a Material Adverse Effect;

(d) the following events to the extent such events would reasonably be expected to have a Material Adverse Effect, as soon as possible and in any event within 30 days after the Borrower or any Commonly Controlled Entity knows or has reason to know thereof: (i) the occurrence of any ERISA Event or Canadian Pension Termination Event with respect to any Plan or Canadian Defined Benefit Plan, a failure to make any required contribution to a Single Employer Plan or Multiemployer Plan or a Canadian Pension Plan that would reasonably be expected to give rise to a Lien in favor of the PBGC, the Financial Services Commission of Ontario (or other like provincial entities) (“FSCO”) or a Single Employer Plan or Multiemployer Plan or Canadian Pension Plan, the creation of any Lien in favor of any Person including the PBGC, the FSCO or a Single Employer Plan or Multiemployer Plan or Canadian Pension Plan or any withdrawal from, or the termination or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC or the FSCO or the Borrower or any Loan Party or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination or Insolvency of, any Plan or Canadian Defined Benefit Plan; and

(e) any other development or event that results in or would reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action (if any) Parent, the Borrower or the relevant Loan Party proposes to take with respect thereto.

5.8 Environmental Laws. (a) Comply in all respects with all applicable Environmental Laws, and obtain, maintain and comply with any and all Environmental Permits, except to the extent the failure to so comply with Environmental Laws or obtain, maintain or comply with Environmental Permits would not reasonably be expected to have a Material Adverse Effect.

(a) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other corrective actions required pursuant to Environmental Laws and promptly comply in all respects with all lawful orders and directives of all Governmental Authorities regarding any violation of or non-compliance with Environmental Laws and any release or threatened release of Hazardous Materials, except, in each case, to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect.

5.9 Borrowing Base Certificates. On the Closing Date and on the immediately following Wednesday after the end of each consecutive two-calendar-week period, commencing with Wednesday, July 8 (or, promptly following the Disposition of ABL Priority Collateral or the release of a Loan Party owning ABL Priority Collateral, in either case, constituting

\$7,500,000 or more for Collateral other than Borrowing Base Cash in the aggregate in any 30 day period, or \$5,000,000 in the case of Borrowing Base Cash as provided in the definition thereof), deliver a Borrowing Base Certificate to the Administrative Agent as of the close of business on Saturday of the immediately preceding week, and covering the period consisting of the two weeks ended on such Saturday (or if delivered pursuant to the preceding parenthetical, update the most recently-delivered Borrowing Base Certificate solely to give pro forma effect to such Disposition or release). Notwithstanding the foregoing, the Borrower may elect to deliver a Borrowing Base Certificate more frequently than every two weeks; provided that, if the Borrower makes such an election, the Borrower shall continue to deliver a Borrowing Base Certificate on such more frequent basis for at least 60 days.

5.10 Opposition to Motions. Promptly oppose (i) any motion filed by any third party in the Bankruptcy Court or Canadian Court to (x) lift the stay on the Collateral (other than motions filed by the Administrative Agent or the Lenders) or (y) terminate the exclusive ability of the Loan Parties to file a plan of reorganization, or (ii) any other motion that, if granted, could reasonably be expected to have a material adverse effect on the Administrative Agent or the Lenders or any Collateral.

5.11 Additional Collateral, etc.. Subject to any applicable limitation in any Intercreditor Agreement:

(a) [reserved].

(b) [reserved].

(c) With respect to any new Subsidiary created or acquired after the Closing Date (other than Excluded Subsidiaries) by the Borrower or a Subsidiary Guarantor promptly cause such new Subsidiary to become a party to the Guarantee and Collateral Agreement.

(d) Notwithstanding the foregoing provisions of this Section 5.11 or any other provision hereof or of any other Loan Document, (i) the Borrower and Guarantors shall not be required to grant a security interest in any Excluded Assets, (ii) Liens required to be granted pursuant to this Section 5.11, and actions required to be taken, including to perfect such Liens, shall be subject to exceptions and limitations consistent with those set forth in the Security Documents on the Closing Date (or as created or amended after the Closing Date with the approval of the Borrower), (iii) other than with respect to (A) the Canadian Guarantor and (B) any other Foreign Subsidiary that becomes a Guarantor after the Closing Date, and in such instance, only with respect to the stock of such Foreign Subsidiary and subject to customary exceptions, limitations and restrictions imposed by local law, no Loan Party shall be required to take any actions outside the United States or under non-United States law to create or perfect any Liens on the Collateral (including, without limitation, any Intellectual Property registered or applied for registration in any jurisdiction outside the United States) and no Security Document shall be governed by the laws of any jurisdiction outside the United States, (iv) the Loan Parties shall not be required to deliver any landlord waivers, estoppels, collateral access agreements or bailee letters, (v) the Loan Parties shall not be required to deliver control agreements or otherwise deliver perfection by “control” (within the meaning of the Uniform Commercial Code or the Securities Transfer Act (Ontario) (or equivalent in any other province or territory))

(including with respect to deposit accounts, securities accounts and commodities accounts), (vi) notices shall not be required to be sent by any Loan Party or any Subsidiary or permitted to be sent by any Secured Party to account debtors or other contractual third parties unless an Event of Default has occurred and is continuing, (vii) no perfection of security interests (except to the extent perfected by the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order) shall be required with respect to letter of credit rights and (viii) in no event shall perfection be required with respect to any Collateral by means other than the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order.

5.12 [Reserved].

5.13 Further Assurances. Upon the exercise by the Administrative Agent, the Collateral Agent or any Lender of any right or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, recording, qualification or authorization of any United States or Canadian Governmental Authority, the Borrower will execute and deliver, or will cause its Restricted Subsidiaries to execute and deliver all applications, certifications, instruments and other documents that such Agent or such Lender may be required to obtain from the Borrower or any of its Restricted Subsidiaries for such governmental consent, approval, recording, qualification or authorization, subject to the terms of Section 5.10 and other than with respect to any Excluded Assets.

5.14 Maintenance of Ratings. The Borrower shall use commercially reasonable efforts to obtain, within 90 days following the Closing Date, and if so obtained, will use commercially reasonable efforts to maintain thereafter a private rating (but not any specific rating) from either Moody's or S&P for the FILO Term Loans.

5.15 Fiscal Period. End the Fiscal Year of the Borrower on December 31 and maintain the Borrower's method of determining fiscal quarters as such method is in effect on the Closing Date.

5.16 [Reserved].

5.17 Anti-Corruption and Sanctions. Use, and cause the respective directors, officers, employees and agents of the Borrower and its Subsidiaries to use, the proceeds of any Loan in a manner not (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto. Notwithstanding the foregoing, the covenants in this Section 5.16 shall not be made by nor apply to any Person that qualifies as a corporation that is registered or incorporated under the laws of Canada or any province thereof and that carries on business in whole or in part in Canada within the meaning of Section 2 of the Foreign Extraterritorial Measures (United States) Order, 1992 passed under the Foreign Extraterritorial Measures Act (Canada) in so far as such covenants would result in a violation of or conflict with the Foreign Extraterritorial Measures Act (Canada) or any similar law.



## SECTION 6. NEGATIVE COVENANTS

Holdings, GNC Parent LLC, Parent and the Borrower each agree that, so long as any Loan or other amount (excluding Obligations in respect of Cash Management Obligations and contingent reimbursement and indemnification obligations which are not due and payable) is owing to any Lender or any Agent hereunder, it shall not, and shall not permit any of the Loan Parties that are Subsidiary Guarantors to:

6.1 [Reserved].

6.2 Limitation on Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of the Loan Parties under (i) the Loan Documents, (ii) the Prepetition Loan Documents in effect on the Petition Date, (iii) the Term Loan DIP Credit Agreement, (iv) the LC Cash Collateral Agreement and the Existing Letters of Credit and (v) the Carve Out;

(b) Indebtedness of any Loan Party to any other Loan Party or any Restricted Subsidiary, so long as any such Indebtedness owed to a non-Loan Party is subordinated to the Obligations pursuant to the Bankruptcy Court DIP Order;

(c) Indebtedness (including intercompany Indebtedness) and Guarantee Obligations outstanding on the Closing Date;

(d) Guarantee Obligations by Holdings, the Borrower or any of the Guarantors in respect of Indebtedness of the Borrower or any of the Guarantors otherwise permitted hereunder;

(e) Indebtedness in respect of Cash Management Services in the ordinary course of business and Indebtedness arising from the endorsement of instruments or other payment items for deposit and the honoring by a bank or other financial institution of instruments or other payments items drawn against insufficient funds;

(f) to the extent constituting Indebtedness, indemnification, deferred purchase price adjustments, earn-outs or similar obligations, in each case, incurred or assumed in connection with the acquisition of any business or assets or any Investment permitted to be acquired or made hereunder or any Disposition permitted hereunder;

(g) [reserved];

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

(i) Indebtedness in respect of Hedge Agreements entered into in the ordinary course of business, and not for speculative purposes, to protect against exposure to interest rates, commodity prices or foreign exchange rates;

(j) Indebtedness representing deferred compensation or similar obligations to employees of the Borrower and the Guarantors incurred in the ordinary course of business;

(k) Indebtedness incurred by the Borrower or any of the Guarantors in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims; provided that upon the drawing of such letter of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 90 days (or such longer period as may be agreed upon by the Administrative Agent) unless the amount or validity of such obligations are being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the Borrower or the Guarantors, as the case may be; provided further that such Indebtedness shall not exceed \$500,000 in the aggregate at any time outstanding;

(l) Indebtedness in respect of performance, bid, release, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of the Guarantors, in each case in the ordinary course of business;

(m) Indebtedness in respect of letters of credit issued for the account of the Borrower or any of the Guarantors to finance the purchase of inventory so long as (x) such Indebtedness is secured only by cash collateral and in accordance with the Budget and (y) the aggregate principal amount of such Indebtedness does not exceed \$1,500,000 at any one time outstanding;

(n) Indebtedness incurred in the ordinary course of business with respect to customer deposits and other unsecured current liabilities not the result of borrowing and not evidenced by any note or other evidence of Indebtedness;

(o) unsecured Indebtedness of the Borrower or any of the Guarantors owing to the Borrower or any other Guarantors to the extent expressly contemplated in the Budget and constituting an Investment permitted by Section 6.8;

(p) Indebtedness in an aggregate principal amount not to exceed \$2,000,000 at any one time outstanding; and

(q) to the extent constituting Indebtedness, all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in Section 6.2 (a) through (p) above; and

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would

cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus any undrawn commitments with respect thereto and the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing.

To the extent otherwise constituting Indebtedness, the accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall be deemed not to be Indebtedness for purposes of this Section 6.2. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

6.3 Limitation on Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

(a) Liens for Taxes, assessments or governmental charges that are not overdue for a period of more than 60 days or that are being contested in good faith by appropriate proceedings (provided that adequate reserves with respect to such proceedings are maintained on the books of the Borrower or its Subsidiaries, as the case may be, in conformity with GAAP);

(b) (i) carriers', warehousemen's, landlord's, mechanics', contractor's, materialmen's, repairmen's or other like Liens imposed by law or arising in the ordinary course of business which secure amounts that are not overdue for a period of more than 60 days or if more than 60 days overdue, are unfiled and no action has been taken to enforce such Lien, or that are being contested in good faith by appropriate proceedings (provided that adequate reserves with respect to such proceedings are maintained in the books of the Borrower or the applicable Subsidiary, as the case may be, in conformity with GAAP), (ii) Liens of customs and revenue authorities to secure payment of customs duties in connection with the importation of goods and (iii) Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or such other goods in the ordinary course of business;

(c) subject to the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order (i) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to any Loan Party or any Subsidiary;

(d) deposits by or on behalf of any Loan Party or any of its Subsidiaries to secure the performance of bids, trade contracts and governmental contracts (other than

Indebtedness for borrowed money), leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(e) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and title defects that, in the aggregate, do not materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries taken as a whole;

(f) Liens in existence on the Closing Date and Replacement Liens in respect thereof;

(g) Liens created pursuant to (i) the Loan Documents, (ii) the Prepetition Loan Documents in effect on the Petition Date, (iii) the Term Loan DIP Credit Agreement, (iv) the LC Cash Collateral Agreement and the Existing Letters of Credit, and (v) the Carve Out;

(h) any interest or title of a lessor or sublessor under any lease or sublease or real property license or sub-license entered into by the Borrower or any Guarantor in the ordinary course of its business and covering only the assets so leased, subleased, licensed or sub-licensed and any Liens on such lessor's, sublessor's, licensee's or sub-licensee's interest or title;

(i) Liens in connection with attachments or judgments or orders in circumstances not constituting an Event of Default under Section 7.1(f);

(j) Liens existing on property at the time of its acquisition or existing on the property of a Person which becomes a Subsidiary of the Borrower after the Closing Date; provided that (i) such Liens existed at the time such property was acquired or such Person became a Subsidiary of the Borrower, (ii) such Liens were not granted in connection with or in contemplation of the applicable acquisition or Investment, (iii) any Indebtedness secured thereby is permitted by Section 6.2 and (iv) such Liens are not expanded to cover additional Property (other than proceeds and products thereof); and Replacement Liens in respect thereof;

(k) Liens consistent with those arising by operation of law consisting of customary and ordinary course rights of setoff upon deposits of cash and Cash Equivalents in favor of banks or other financial or depository institutions in the ordinary course of business;

(l) Liens on insurance policies and the proceeds thereof securing insurance premium financing permitted hereunder;

(m) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Borrower or any Guarantor in the ordinary course of business;

(n) (i) Liens of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on the items in the course of collection, (ii) Liens attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and not for speculative purposes and (iii) bankers' Liens, rights of setoff and

other similar Liens existing solely with respect to accounts and cash and Cash Equivalents on deposit in accounts maintained by the Borrower or any Guarantor, in each case under this clause (iii) granted in the ordinary course of business in favor of the banks or other financial or depository institution with which such accounts are maintained, securing amounts owing to such Person with respect to Cash Management Services (including, without limitation, operating account arrangements and those involving pooled accounts and netting arrangements); provided that, in the case of this clause (iii), unless such Liens arise by operation of applicable law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness for borrowed money;

(o) non-exclusive licenses and sub-licenses of Intellectual Property granted by the Borrower or any of the Guarantors in the ordinary course of business (and, to the extent in existence on the Closing Date or granted by the Borrower or any of the Guarantors in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States and Canada);

(p) UCC or PPSA financing statements or similar public filings that are filed as a precautionary measure in connection with operating leases or consignment of goods in the ordinary course of business;

(q) Liens on property purportedly rented to, or leased by, the Borrower or any of the Guarantors pursuant to a Sale and Leaseback Transaction; provided, that (i) such Sale and Leaseback Transaction is permitted by Section 6.12, (ii) such Liens do not encumber any other property of the Borrower or the Guarantors, and (iii) such Liens secure only the Attributable Indebtedness incurred in connection with such Sale and Leaseback Transaction;

(r) Liens on the assets of Foreign Subsidiaries that secure only Indebtedness permitted pursuant to Section 6.2 and related obligations of Foreign Subsidiaries;

(s) good faith earnest money deposits made in connection with an Investment (other than Investments under Section 6.8(r)) or letter of intent or purchase agreement permitted hereunder;

(t) Liens in favor of a Loan Party or a Restricted Subsidiary securing intercompany Indebtedness permitted hereunder; provided, that such intercompany Indebtedness, to the extent owed from a Loan Party to a non-Loan Party, shall be subordinated to the Obligations pursuant to the Bankruptcy Court DIP Order;

(u) Liens (i) on an Investment permitted pursuant to Section 6.8 to be applied against the purchase price for such Investment or (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 6.5, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(v) Liens deemed to exist in connection with Investments in repurchase agreements under Section 6.8; provided such Liens do not extend to any assets other than those assets that are the subject of such repurchase agreement;

(w) Liens that are customary contractual rights of setoff relating to purchase orders and other agreements entered into with customers of the Borrower or any of the Subsidiaries in the ordinary course of business;

(x) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(y) Liens or rights of setoff against credit balances of the Borrower or any of the Guarantors with credit card issuers or credit card processors or amounts owing by such credit card issuers or credit card processors to the Borrower or any of the Guarantors in the ordinary course of business, to secure the obligations of the Borrower or any of the Guarantors to such credit card issuers and credit card processors as a result of fees and chargebacks;

(z) Liens with respect to Capital Stock in joint ventures that arise pursuant to the applicable underlying joint venture agreement;

(aa) Liens securing obligations in an amount not to exceed \$2,000,000 at any one time outstanding; and

(bb) Liens in favor of the Prepetition Lenders and Prepetition Agents granted pursuant to the Bankruptcy Court DIP Orders;

provided that, notwithstanding anything to the contrary contained herein, no Liens on ABL Priority Collateral that are senior to or *pari passu* with the Liens securing the Obligations shall be permitted under this Section 6.3 (other than any Lien permitted under Section 6.3(a), 6.3(b), 6.3(c), 6.3(d), 6.3(g) (other than with respect to Prepetition Term Loan Documents), 6.3(h), 6.3(i), 6.3(j), 6.3(k), 6.3(l), 6.3(m) (but only as to such acquired goods), 6.3(n), 6.3(q), 6.3(s), 6.3(u), 6.3(v), 6.3(w) or 6.3(y)).

6.4 Limitation on Fundamental Changes. Consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself, or Dispose of all or substantially all of its Property or business, except that so long as no approval of the Bankruptcy Court is required (or such approval is required and shall have been received):

(a) any Subsidiary of the Borrower may be merged or consolidated with or into the Borrower (provided that the Borrower shall be the continuing or surviving entity) and any Subsidiary of the Borrower may be merged, consolidated or amalgamated with or into any Guarantor (provided that if a Guarantor is a party thereto (i) a Guarantor shall be the continuing, surviving or resulting entity or (ii) simultaneously with such transaction, the continuing, surviving or resulting entity shall become a Guarantor and the Borrower shall comply with Section 5.10 in connection therewith);

(b) any Subsidiary of the Borrower may Dispose of all or substantially all of its Property or business (i) (upon liquidation, windup, dissolution or otherwise) to (x) if such Subsidiary is a Loan Party, the Borrower or any other Loan Party and (y) if such Subsidiary is not a Loan Party, the Borrower or any Subsidiary or (ii) pursuant to a Disposition permitted by Section 6.5;

(c) any Foreign Subsidiary may (i) be merged or consolidated or amalgamated with or into any other Foreign Subsidiary, or (ii) Dispose of any or all of its assets to (upon voluntary liquidation, windup, dissolution or otherwise) any other Foreign Subsidiary;

(d) any merger, amalgamation or consolidation the sole purpose of which is to reincorporate or reorganize a Loan Party or Subsidiary in another jurisdiction; provided that (x) in the case of any such merger, amalgamation or consolidation involving a Loan Party, a Loan Party is the surviving, continuing or resulting Person (or simultaneously with such transaction, the continuing, surviving or resulting entity shall become a Subsidiary Guarantor) and the Borrower shall comply with Section 5.10 in connection therewith and (y) in the case of any such merger or consolidation involving a Loan Party or Subsidiary that is domiciled within the United States (or in the case of the Canadian Guarantor, Canada), the continuing, surviving or resulting entity shall be domiciled within the United States (or in the case of the Canadian Guarantor, Canada);

(e) any Investment permitted by Section 6.8 may be structured as a merger, consolidation or amalgamation; provided that in the case of any such merger, consolidation or amalgamation of a Loan Party, the surviving, continuing or resulting legal entity of such merger, consolidation or amalgamation is a Loan Party (or simultaneously with such transaction, the continuing, surviving or resulting entity shall become a Subsidiary Guarantor) and the Borrower shall comply with Section 5.10 in connection therewith; and

(f) any Loan Party (other than the Borrower) may dissolve, liquidate or wind up its affairs at any time if such dissolution, liquidation or winding up would not reasonably be expected to have a Material Adverse Effect.

6.5 Limitation on Disposition of Property. Dispose of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or, in the case of any Restricted Subsidiary of the Borrower, issue or sell any shares of such Restricted Subsidiary's Capital Stock to any Person, except:

(a) the Disposition of obsolete or worn out property in the ordinary course of business;

(b) the sale of inventory and equipment held for sale in the ordinary course of business or pursuant to a "going out of business" sale;

(c) Dispositions permitted by Section 6.4 (other than Section 6.4(b)(ii));

(d) the sale or issuance of any Loan Party's or any Subsidiary's Capital Stock to the Borrower or any other Loan Party or the sale or issuance of any Excluded Subsidiary's Capital Stock to another Excluded Subsidiary; provided that any Guarantor's ownership interest therein is not diluted;

(e) the sale of assets in connection with the closure of stores and the Disposition of franchises and stores (and related assets) in the ordinary course of business or pursuant to a "going out of business" sale;

- (f) the Disposition of cash or Cash Equivalents;
- (g) (i) the non-exclusive license or sub-license of Intellectual Property in the ordinary course of business (and, to the extent in existence on the Closing Date or granted in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States and Canada) and (ii) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any immaterial Intellectual Property;
- (h) the lease, sublease, license or sublicense of property which is described in Section 6.3(h);
- (i) the Disposition of surplus or other property no longer used or useful in the business of the Borrower and its Subsidiaries in the ordinary course of business or pursuant to a “going out of business” sale;
- (j) the Disposition of other assets having a fair market value not to exceed \$2,000,000 in the aggregate; provided that to the extent all or a portion of such Disposition is composed of Eligible Accounts Receivable, Eligible Inventory, Eligible Gift Card Receivables, Eligible Credit Card Receivables, Borrowing Base Cash or Acquired Asset Borrowing Base Cash constituting \$750,000 or more for Collateral in the aggregate in any 30 day period, then as a condition precedent to such Disposition, the Borrower shall deliver to the Administrative Agent a Borrowing Base Certificate reflecting such Disposition (recalculating the Borrowing Base after giving effect to solely such Disposition);
- (k) the Disposition of assets subject to or in connection with any Recovery Event;
- (l) Dispositions consisting of Restricted Payments permitted by Section 6.6;
- (m) Dispositions consisting of Investments permitted by Section 6.8;
- (n) Dispositions consisting of Liens permitted by Section 6.3;
- (o) Dispositions of assets pursuant to Sale and Leaseback Transactions permitted pursuant to Section 6.12;
- (p) Dispositions of property to a Loan Party or a Subsidiary; provided that if the transferor of such property is a Loan Party (i) the transferee thereof must be a Loan Party or (ii) such Investment must be a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.8;
- (q) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;
- (r) Dispositions of accounts receivable in connection with the collection or compromise thereof in the ordinary course of business (and not for financing purposes); provided



that to the extent all or a portion of such Disposition is composed of Eligible Accounts Receivable, Eligible Gift Card Receivables or Eligible Credit Card Receivables in an aggregate amount exceeding \$7,500,000 or more for Collateral other than Borrowing Base Cash and Acquired Asset Borrowing Base Cash in the aggregate in any 30 day period, or \$5,000,000 in the case of Borrowing Base Cash and/or Acquired Asset Borrowing Base Cash, as provided in the definition of Borrowing Base Cash, then as a condition precedent to such Disposition, the Borrower shall deliver to the Administrative Agent a Borrowing Base Certificate reflecting such Disposition (recalculating the Borrowing Base after giving effect to solely such Disposition); and

- (s) the unwinding of any Hedge Agreement.

6.6 Limitation on Restricted Payments. Declare or pay any dividend on (other than dividends payable solely in Qualified Capital Stock of the Person making the dividend so long as the ownership interest of any Guarantor in such Person is not diluted), or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Loan Party, whether now or hereafter outstanding, or make any other distribution in respect thereof, whether in cash or property (collectively, "Restricted Payments"), except that:

- (a) any Loan Party may make Restricted Payments to any other Loan Party;
- (b) to the extent provided for in the Budget, any Loan Party may make Restricted Payments;
- (c) the Borrower may pay dividends to permit Parent or any direct or indirect parent company of Parent to (i) pay operating costs and expenses and other corporate overhead costs and expenses (including, without limitation, directors' fees and expenses and administrative, legal, accounting, filings and similar expenses and salary, bonus and other benefits payable to officers and employees of Parent or any direct or indirect parent company of Parent), in each case to the extent such costs, expenses, fees, salaries, bonuses and benefits are attributable to the ownership or operations of Parent, the Borrower and the Subsidiaries, are reasonable and incurred in the ordinary course of business, (ii) [reserved], (iii) pay taxes which are not determined by reference to income, but which are imposed on Parent or any direct or indirect parent company of Parent as a result of Parent's or such parent company's ownership of the equity of Parent or the Borrower or any direct or indirect parent company of Parent, as the case may be, but only if and to the extent that Parent or such parent company has not received cash or other property in connection with the events or transactions giving rise to such taxes, (iv) [Reserved], (v) pay franchise taxes and other fees, taxes and expenses required to maintain its corporate existence, (vi) finance any Investment permitted to be made hereunder (so long as (A) such dividends are made substantially concurrently with the closing of such Investment and (B) immediately following the closing thereof (1) all property acquired (whether assets or Capital Stock) shall be contributed to the Borrower or a Subsidiary Guarantor or (2) the Person formed or acquired shall be merged into the Borrower or a Subsidiary Guarantor in order to consummate such Investment (and subject to the provisions of Sections 5.10 and 6.4)), (vii) pay costs, fees and expenses related to any unsuccessful equity or debt offering permitted by this Agreement (other than any such offering intended to benefit Subsidiaries of any such parent company other than the Borrower and its Subsidiaries) and (viii) make payments permitted under Section 6.11

(but only to the extent such payments have not been and are not expected to be made directly by the Borrower or a Subsidiary Guarantor); provided that dividends paid pursuant to this Section 6.6(c) (other than dividends paid pursuant to clause (ii), (iii), or (iv) above) are used by Parent or any direct or indirect parent holding company of Parent for such purpose within 60 days of the receipt of such dividends or are refunded to the Borrower;

(d) any non-Wholly Owned Subsidiary of the Borrower may declare and pay cash dividends to its equity holders generally so long as the Borrower or its respective Subsidiary which owns the equity interests in the Subsidiary paying such dividends receives at least its proportionate share thereof (based upon the relative holding of the equity interests in the Subsidiary paying such dividends);

(e) repurchases of Capital Stock in any Loan Party deemed to occur upon exercise of stock options or warrants or similar rights if such Capital Stock represents a portion of the exercise price of such options or warrants or similar rights (as long as the Loan Parties make no payment in connection therewith that is not otherwise permitted hereunder);

(f) GNC Puerto Rico, LLC may make distributions to GNC Live Well Ireland in an aggregate amount not to exceed \$300,000 per fiscal year;

(g) to the extent constituting Restricted Payments, the Borrower and the Subsidiaries may enter into and consummate transactions permitted by Section 6.4 and Section 6.8 (other than Section 6.8(p)); and

(h) the Borrower or any of the Restricted Subsidiaries may pay cash in lieu of fractional Capital Stock in connection with any dividend, split or combination thereof.

6.7 [Reserved].

6.8 Limitation on Investments. Make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "Investments"), except:

(a) extensions of trade credit or the holding of receivables in the ordinary course of business and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(b) investments in cash and items that were Cash Equivalents at the time such Investment was made;

(c) Investments arising in connection with the incurrence of Indebtedness permitted by Section 6.2(b), 6.2(c) and 6.2(d), to the extent constituting intercompany Indebtedness;

(d) loans and advances to employees, officers, directors, managers and consultants of Parent (or any direct or indirect parent company thereof to the extent relating to the business of Parent, the Borrower and the Subsidiaries), the Borrower or any Subsidiaries of the Borrower in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate principal amount not to exceed \$1,000,000 at any one time outstanding;

(e) Investments (other than those relating to the incurrence of Indebtedness permitted by Section 6.8(c)) by any Loan Party in any Person that, prior to or concurrently with such Investment, is or becomes a Loan Party (including any such Investment consisting of the contribution by any Loan Party of Capital Stock held by such Loan Party in any other Person (including a Loan Party));

(f) Investments consisting of notes payable by franchisees to any Loan Party in an aggregate principal amount not to exceed \$1,000,000 at any one time outstanding;

(g) Investments received in connection with the bankruptcy or reorganization of, insolvency or liquidation of, or settlement of claims against and delinquent accounts of and disputes with, franchisees, customers and suppliers, or as security for any such claims, accounts and disputes, or upon the foreclosure with respect to any secured Investment;

(h) advances of payroll payments to employees, officers, directors and managers of Parent, the Borrower and the Subsidiaries in the ordinary course of business;

(i) Investments by the any Loan Party in Excluded Subsidiaries and joint ventures in an aggregate amount not to exceed \$2,500,000 at any time outstanding;

(j) Investments by any Loan Party in any Person that is a Foreign Subsidiary in an aggregate amount not to exceed \$2,500,000;

(k) [Reserved];

(l) Investments consisting of promissory notes and other deferred payment obligations and noncash consideration delivered as the purchase consideration for a Disposition permitted by Section 6.5;

(m) Investments existing on the Closing Date and any modification, replacement, renewal, reinvestment or extension thereof (provided that the amount of the original Investment is not increased except by the terms of such original Investment or as otherwise permitted by this Section 6.8);

(n) any Loan Party may endorse negotiable instruments and other payment items for collection or deposit in the ordinary course of business or make lease, utility and other similar deposits in the ordinary course of business;

(o) Investments consisting of obligations under Hedge Agreements permitted by Section 6.2;

(p) Investments consisting of Restricted Payments permitted by Section 6.6 (other than Section 6.6(e));

(q) Investments of any Person that becomes (or is merged or consolidated or amalgamated with) a Subsidiary of the Borrower on or after the Closing Date on the date such Person becomes (or is merged or consolidated or amalgamated with) a Subsidiary of the Borrower; provided that (i) such Investments exist at the time such Person becomes (or is merged or consolidated or amalgamated with) a Subsidiary, and (ii) such Investments are not made in anticipation or contemplation of such Person becoming (or merging or consolidating or amalgamated with) a Subsidiary;

(r) Investments consisting of good faith deposits made in accordance with Section 6.3(s);

(s) deposits made in the ordinary course of business consistent with past practices to secure the performance of leases or in connection with bidding on government contracts;

(t) advances in connection with purchases of goods or services in the ordinary course of business;

(u) Guarantee Obligations permitted under Section 6.2 and, to the extent not constituting Indebtedness, other Guarantee Obligations entered into in the ordinary course of business;

(v) Investments consisting of Liens permitted under Section 6.3;

(w) Investments consisting of transactions permitted under Section 6.4;

(x) Investments in assets useful in the business of the Borrower and its Restricted Subsidiaries made by the Borrower or any of its Restricted Subsidiaries with the proceeds of any Reinvestment Deferred Amount; provided that if the underlying Recovery Event was with respect to a Loan Party, then such Investment shall be consummated by the Borrower or a Subsidiary Guarantor;

(y) Investments by any Loan Party in any Foreign Subsidiary of such Loan Party to the extent each such Investment is made using assets received by such Loan Party as a distribution from a Foreign Subsidiary of such Loan Party; and

(z) Investments in an aggregate amount not to exceed \$2,000,000 at any time outstanding.

For purposes of covenant compliance, the amount of any Investment at any time shall be the amount actually invested (measured at the time made), without adjustment for subsequent changes in the value of such Investment, net of all Returns on such Investment up to the original amount of such Investment.

6.9 Prepayments of Indebtedness. Make any payment of principal or interest or otherwise on account of any Prepetition Obligations or payables under the Prepetition Loan Documents, other than (i) payments made in compliance in all material respects with the Budget (subject to Permitted Variances (as defined in the Term Loan DIP Credit Agreement)), (ii) the Revolver Termination, (iii) letter of credit reimbursement payments pursuant to the LC Cash Collateral Agreement in connection with draws under the Existing Letters of Credit, (iv) payments agreed to in writing by the Required Lenders and (v) payments authorized and approved by the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, including adequate protection payments set forth therein.

6.10 Limitation on Modifications of Organizational Documents. Amend, modify or otherwise change (pursuant to a waiver or otherwise), any of the terms of any Organizational Document, other than any such amendment, modification or other change which does not adversely affect the Lenders in any material respect.

6.11 Limitation on Transactions with Affiliates. Enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than any Loan Party, any Restricted Subsidiary or any Person that becomes a Restricted Subsidiary as a result of such transaction) unless such transaction is otherwise permitted under this Agreement and upon fair and reasonable terms no less favorable to the Borrower and its Subsidiaries than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate. Notwithstanding the foregoing, the Borrower and its Subsidiaries may (a) [reserved], (b) enter into and consummate the transactions existing on the Closing Date and, to the extent exceeding \$1,000,000 in amount, listed on Schedule 6.11, (c) make Restricted Payments permitted pursuant to Section 6.6 and repayments and prepayments of Indebtedness permitted pursuant to Section 6.9, (d) make Investments permitted by Section 6.8, (e) [reserved], (f) enter into employment and severance arrangements with officers, directors, managers and employees of the Parent, the Borrower and the Subsidiaries and, to the extent relating to services performed for Parent, the Borrower and the Subsidiaries, pay director, officer and employee compensation (including, without limitation, bonuses) and other benefits (including, without limitation, retirement, health, stock option and other benefit plans) and indemnification and expense reimbursement arrangements; provided that any purchase of Capital Stock of Parent (or any direct or indirect holding company of Parent) in connection with the foregoing shall be subject to Section 6.6, and (g) license on a non-exclusive basis Intellectual Property in the ordinary course of business (and, to the extent in existence on the Closing Date or granted in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States and Canada) (1) on an arm's length basis to permit the commercial exploitation of such Intellectual Property between or among Affiliates of the Borrower and (2) to parent companies of the Parent in connection with their ownership of the Parent.

6.12 Limitation on Sales and Leasebacks. Enter into any arrangement with any Person providing for the leasing by any Loan Party of real or personal property which has been or is to be sold or transferred by such Loan Party to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of such Loan Party (a "Sale and Leaseback Transaction") unless (i) the sale of such

property is made for cash consideration in an amount not less than the fair market value of such property, (ii) the Sale and Leaseback Transaction is permitted by Section 6.5 and is consummated within 180 days after the date on which such property is sold or transferred, (iii) any Liens arising in connection with its use of the property are permitted by Section 6.3(q), (iv) the Sale and Leaseback Transaction would be permitted under Section 6.2, assuming the Attributable Indebtedness with respect to the Sale and Leaseback Transaction constituted Indebtedness under Section 6.2.

6.13 [Reserved].

6.14 Limitation on Negative Pledge Clauses. Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of the Borrower or any of the Guarantors to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations or, in the case of any guarantor, its obligations under the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement, other than (a) this Agreement and the other Loan Documents, the Prepetition Loan Documents in effect on the Petition Date, the Term Loan DIP Credit Agreement, the LC Cash Collateral Agreement and the Existing Letters of Credit and the Carve Out (b) customary provisions in joint venture agreements and similar agreements that restrict transfer of or liens on assets of, or equity interests in, joint ventures, (c) non-exclusive licenses or sub-licenses by any Loan Party of Intellectual Property in the ordinary course of business (and, to the extent in existence on the Closing Date or granted by any Loan Party in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States, Canada and Puerto Rico) (in which case any prohibition or limitation shall only be effective against the Intellectual Property subject thereto), (d) (x) prohibitions and limitations in effect on the Closing Date and (y) to the extent such prohibitions and limitations described in clause (x) are set forth in an agreement evidencing Indebtedness, prohibitions and limitations set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such prohibitions and limitations, (e) customary provisions in leases, subleases, licenses and sublicenses that restrict the transfer thereof or the transfer of the assets subject thereto by the lessee, sublessee, licensee or sublicensee, (f) prohibitions and limitations arising by operation of law, (g) customary restrictions that arise in connection with any Disposition permitted by Section 6.5 applicable pending such Disposition solely to the assets subject to such Disposition, (h) negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 6.2 but solely to the extent any negative pledge relates to the property financed by or the subject of such Indebtedness and the proceeds and products thereof (other than Indebtedness constituting any unsecured Debt) as long as such pledges and restrictions do not restrict or impair the ability of the Parent, the Borrower and the Restricted Subsidiaries to comply with their obligations under the Loan Documents, (i) customary provisions contained in an agreement restricting assignment of such agreement entered into in the ordinary course of business, and (j) customary restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business.

6.15 Limitation on Restrictions on Restricted Subsidiary Distributions. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the

ability of any Restricted Subsidiary to (a) make Restricted Payments in respect of any Capital Stock of such Restricted Subsidiary held by, or pay or subordinate any Indebtedness owed to, Parent, the Borrower or any other Restricted Subsidiary, (b) make Investments in the Borrower or any other Restricted Subsidiary or (c) transfer any of its assets to the Borrower or any other Restricted Subsidiary, except in each case for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions existing under the Term Loan DIP Credit Agreement, Prepetition Loan Documents in effect on the Petition Date, the LC Cash Collateral Agreement and the Existing Letters of Credit, and the Carve Out, (iii) any restrictions with respect to a Restricted Subsidiary imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Restricted Subsidiary, (iv) customary net worth provisions contained in real property leases entered into by the Borrower or any of its Subsidiaries so long as such net worth provisions would not reasonably be expected to impair materially the ability of the Loan Parties to meet their ongoing obligations under this Agreement or any of the other Loan Documents, (v) any restriction with respect to Excluded Subsidiaries in connection with Indebtedness not prohibited hereunder, (vi) to the extent not otherwise permitted under this Section 6.15, agreements, restrictions and limitations described in clauses (a)-(j) of Section 6.14, (vii) restrictions with respect to the transfer of any asset (or the interest in any Person) contained in an agreement that has been entered into in connection with the disposition of such asset (or interest in such Person) permitted hereunder and (viii) prohibitions and limitations arising by operation of law.

6.16 Limitation on Lines of Business. Enter into any business, either directly or through any Subsidiary, except for those businesses in which the Borrower and its Subsidiaries are engaged on the date of this Agreement or that are reasonably related or ancillary thereto or reasonable extensions thereof.

6.17 [Reserved].

6.18 Canadian Pension Plans. Canadian Guarantor shall not, without the consent of the Administrative Agent, maintain, administer, contribute or have any liability in respect of any Canadian Defined Benefit Plan (governed by the province of Ontario) or acquire an interest in any Person if such Person sponsors, maintains, administers or contributes to, or has any liability in respect of any Canadian Defined Benefit Plan (governed by the province of Ontario).

6.19 Use of Proceeds. No portion of the proceeds of the Loans, the Collateral, or the Carve Out may be used:

(a) for any purpose that is prohibited under the Bankruptcy Code or the Bankruptcy Court DIP Order;

(b) subject to the terms of the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, to finance in any way: any contested matter, adversary proceeding, suit, arbitration, application, motion or other litigation of any type adverse to the interests of any or all of the Administrative Agent, the Lenders, the Prepetition Agents or the Prepetition Lenders or their respective rights and remedies under the Loan Documents, the

Bankruptcy Court DIP Order, the Canadian Court DIP Recognition Order or the Prepetition Loan Documents;

(c) subject to the terms of the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, for the payment of fees, expenses, interest or principal under the Prepetition Loan Documents (other than permitted adequate protection payments);

(d) unless the Exit Conversion occurs, to make any distribution under a plan of reorganization confirmed in the Chapter 11 Cases that does not provide for the indefeasible payment of the Loans in full and in cash on the effective date of such plan; and

(e) to make any payment in excess of \$1,000,000 in the aggregate in settlement of any claim, action or proceeding before any court, arbitrator or other governmental body without the prior written consent of the Administrative Agent acting at the direction of the Required Lenders;

provided that notwithstanding the foregoing, advisors to the official unsecured creditors' committee, if one is appointed, may investigate the liens granted pursuant to, or any claims under or causes of action with respect to, the Prepetition Loan Documents at an aggregate expense for such investigation not to exceed \$75,000, provided that no portion of such amount may be used to prosecute any claims.

Subject to the Restructuring Support Agreement, nothing herein shall in any way prejudice or prevent the Administrative Agent or the Lenders from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest.

6.20 Chapter 11 Modifications. Except as permitted pursuant to the terms of this Agreement and the Bankruptcy Court DIP Order or otherwise consented to by the Required Lenders, make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Bankruptcy Court DIP Orders.

6.21 Operating Account. Create, incur, assume or suffer to exist any Lien upon the Operating Account other than (i) the first priority Lien created in favor of the Secured Parties under the Loan Documents and (ii) rights of setoff and Liens arising as a matter of law, including bankers' Liens and other similar Liens.

6.22 Right of Subrogation. Assert any right of subrogation or contribution against any other Loan Party until all amounts under this Facility are paid in full in cash and the Commitments are terminated or upon an Exit Conversion.

Notwithstanding anything to the contrary in this Agreement, or in any other Loan Document, any disbursements, Indebtedness, Liens, Investments or other transactions restricted by this Section 6 shall nevertheless be permitted hereunder to the extent set forth in the Budget.



## SECTION 7. EVENTS OF DEFAULT

7.1 Events of Default. If any of the following events shall occur and be continuing:

(a) (i) The Borrower shall fail to pay any principal of any Loan when due in accordance with the terms hereof; or (ii) the Borrower shall fail to pay any interest on any Loan, or any Loan Party shall fail to pay any other amount payable hereunder or under any other Loan Document, within three Business Days after any such interest or other amount becomes due in accordance with the terms hereof or thereof; or

(b) Any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement required to be furnished by it at any time under this Agreement (other than a Borrowing Base Certificate) or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made or furnished (provided that, in each case such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified by materiality); or

(c) Any Loan Party shall default in the observance or performance of any covenant contained in clause (i) of Section 5.4(a) (with respect to Parent and the Borrower only), Section 5.7(a) or Section 6; or

(d) Any Loan Party shall default in the observance or performance of any covenant or other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) and (k) of this Section), and such default shall continue unremedied for a period of thirty (30) days following delivery of written notice thereof to the Borrower by the Administrative Agent; or

(e) (i) Any Person shall engage in any “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan (other than any “prohibited transaction” for which a statutory or administrative exemption is available) that results in liability of the Borrower or any Commonly Controlled Entity, (ii) any ERISA Event shall occur or (iii) any other similar event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (iii) above, such event or condition, together with all other such events or conditions, if any, would reasonably be expected to have a Material Adverse Effect; or

(f) One or more final judgments or decrees for the payment of money shall be entered against Parent, the Borrower or any of its Restricted Subsidiaries involving for Parent, the Borrower and its Restricted Subsidiaries taken as a whole a liability (not paid or fully covered by insurance as to which the relevant insurance company has not denied coverage in writing) of \$5,000,000 or more, and all such judgments or decrees shall not have been satisfied, vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or

(g) The Interim DIP Order, Interim DIP Recognition Order, and the Final DIP Order or Final DIP Recognition Order, as applicable, together with the Loan Documents shall cease to create a valid and perfected Lien with such priority required by this Agreement; or

(h) The guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason (other than by reason of the express release thereof pursuant to the provisions of the Loan Documents), to be in full force and effect or any Loan Party shall so assert in writing (other than by reason of the express release thereof pursuant to the provisions of the Loan Documents); or

(i) Any Change of Control shall occur; or

(j) The occurrence of a Canadian Pension Plan Termination Event, or any Lien arises (save for contribution amounts not yet due) in connection with any Canadian Pension Plan, that would reasonably be expected to have a Material Adverse Effect; or

(k) The Borrower shall (i) make a material misrepresentation in any Borrowing Base Certificate delivered to the Administrative Agent or (ii) shall fail to deliver any Borrowing Base Certificate within five Business Days of such Borrowing Base Certificate becoming due; or

(l) Any Loan Party shall file a motion in the Chapter 11 Cases without the express written consent of Required Lenders, to obtain additional financing from a party other than Lenders under Section 364(d) of the Bankruptcy Code that does not provide for the payment of the Obligations in full in cash upon the incurrence of such additional financing; or

(m) Any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter, an order (i) approving payment of any prepetition claim in excess of \$1,000,000 in the aggregate other than (x) as provided for in the “first day” or “second day” orders, (y) as contemplated by the Budget (including Permitted Variances), or (z) otherwise as consented to by the Required Lenders in writing, (ii) granting relief from the automatic stay under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of \$1,000,000 in the aggregate, or (iii) except with respect to the Prepetition Obligations as provided in the Bankruptcy Court DIP Orders, approving any settlement or other stipulation in excess of \$1,000,000 in the aggregate not approved by the Required Lenders and not included in the Budget with any secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor; or

(n) An order is entered in any of the Chapter 11 Cases appointing, or any Loan Party, or any Restricted Subsidiary of a Loan Party shall file an application for an order seeking the appointment of, (i) a trustee under Section 1104, or (ii) an examiner with enlarged powers relating to the operation of the Loan Parties’ business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; provided that, for the avoidance of doubt, the appointment of a fee examiner shall not constitute an Event of Default; or

(o) An order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, in each case, which does not contain a provision for termination of the Commitment, and payment in full in cash of all Obligations (other than contingent Obligations

not due and owing) of the Loan Parties hereunder and under the other Loan Documents upon entry thereof; or

(p) Other than as set forth in the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, an order is entered by the Bankruptcy Court in any of the Chapter 11 Cases without the express prior written consent of the Required Lenders (i) to revoke, reverse, stay, modify, supplement or amend the Bankruptcy Court DIP Order in a manner that is inconsistent with this Agreement that adversely affects, and is not otherwise consented to by, the Required Lenders, (ii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to the Loan Parties equal or superior to the priority of the DIP Superpriority Claim, (iii) to grant or permit the grant of a Lien on the Collateral (other than Liens permitted under Section 6.3); or

(q) At any time after the Final DIP Order Entry Date, an application for any of the orders described in clauses 7.1(m), (n), (o), (p) and (r) shall be made by a Person other than the Loan Parties and such application is not contested by the Loan Parties in good faith or any Person obtains a final order under § 506(c) of the Bankruptcy Code adverse in any material respect to the Administrative Agent or obtains a final order adverse in any material respect to the Administrative Agent or the Lenders or any of their respective rights and remedies under the Loan Documents or in the Collateral; or

(r) The entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any Loan Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the Required Lenders; or

(s) At any time after the Final DIP Order Entry Date (i) any Loan Party shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of the Secured Parties, or to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) the Lien or security interest created by Security Documents or the Bankruptcy Court DIP Orders with respect to the Collateral shall, for any reason, cease to be valid or (iii) any action is commenced by the Loan Parties which contests the validity, perfection or enforceability of any of the Liens and security interests of the Collateral Agent created by any of the Bankruptcy Court DIP Order, Canadian Court DIP Recognition Order, this Agreement, or any Security Document; or

(t) Any Loan Party shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or Canadian Court), any other Person's motion to, disallow in whole or in part the Lenders' claim in respect of the Obligations or contest any material provision of any Loan Document or any material provision of any Loan Document shall cease to be effective (other than in accordance with its terms); or

(u) (i) The Approved Plan of Reorganization or the Confirmation Order is withdrawn, amended, supplemented or otherwise modified in a manner that materially adversely affects the rights and duties of the Lenders and/or the Administrative Agent without the prior written consent of the Required Lenders or (ii) any plan of reorganization other than an Approved Plan of Reorganization is consummated without the Required Lenders' consent; or

(v) Any Restricted Subsidiary of a Loan Party that is not subject to the Chapter 11 Cases becomes subject to an insolvency proceeding without the consent of the Required Lenders, other than GNC Holdings, Inc. in connection with the Recognition Proceeding; or

(w) The Bankruptcy Court denies entry of the Confirmation Order and such order remains in effect for seven (7) Business Days after entry of such order, provided, that if the Loan Parties subsequently obtain an order of the Bankruptcy Court approving a plan of reorganization and a subsequent recognition order of the Canadian Court recognizing such order, that are in form and substance substantially similar to the Approved Plan of Reorganization or otherwise approved by the Required Lenders, such Event of Default shall be deemed cured or not to have occurred; or

(x) [Reserved]; or

(y) The failure to meet any of the Milestones by the applicable date for such Milestone set forth in the Bankruptcy Court DIP Order.

then, and in any such event, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent (and for the avoidance of doubt no other Person) shall, by notice to the Borrower, declare the FILO Term Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable, subject to the Bankruptcy Court DIP Order, and the Canadian Court DIP Recognition Order.

## SECTION 8. THE AGENTS

8.1 Appointment. Each Lender hereby irrevocably designates, appoints and authorizes the Administrative Agent and the Collateral Agent as the agents of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Administrative Agent and the Collateral Agent, in such capacities, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent and the Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, each Lender hereby authorizes the Administrative Agent and the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent and the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto and to enter into each Security Document, the Intercreditor Agreements and any other intercreditor or subordination agreements contemplated hereby on behalf of and for the benefit of the Lenders and the other Secured Parties and agrees to be bound by the terms thereof. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent and the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or

otherwise exist against the Administrative Agent or the Collateral Agent. Notwithstanding anything to the contrary herein or in any other Loan Document, (i) each Agent is authorized to take direction from the Required Lender Representative to the extent set forth in Section 1.5(b), (ii) each Agent is authorized to take direction from the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.2) and (iii) the Collateral Agent is authorized to take direction from the Administrative Agent.

Without limiting the powers of the Administrative Agent, for the purposes of holding any hypothec granted to the Attorney (as defined below) pursuant to the laws of the Province of Québec to secure the prompt payment and performance of any and all Obligations by any Loan Party, each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent and, to the extent necessary, ratifies the appointment and authorization of the Administrative Agent, to act as the hypothecary representative of the creditors as contemplated under Article 2692 of the Civil Code of Québec (in such capacity, the “Attorney”), and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Attorney under any related deed of hypothec. The Attorney shall: (a) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Attorney pursuant to any such deed of hypothec and applicable law, and (b) benefit from and be subject to all provisions hereof with respect to the Administrative Agent mutatis mutandis, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Lenders and the Loan Parties. Any person who becomes a Lender shall, by its execution of an Assignment and Assumption Agreement, be deemed to have consented to and confirmed the Attorney as the person acting as hypothecary representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Lender, all actions taken by the Attorney in such capacity. The substitution of the Administrative Agent pursuant to the provisions of this Section 8 also constitute the substitution of the Attorney.

8.2 Delegation of Duties. Each of the Administrative Agent and the Collateral Agent may execute any of its duties under this Agreement and the other Loan Documents by or through sub-agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. No such Agent shall be responsible for the negligence or misconduct of any such sub-agents or attorneys-in-fact selected by it with reasonable care. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of each such Agent and any such sub-agent, and shall apply to their respective activities as Arranger and as such Agent. No such Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

8.3 Exculpatory Provisions. Neither any Agent, Arranger, nor any of their respective officers, directors, employees, agents, advisors, attorneys-in-fact or affiliates shall be:

(a) liable to any other Credit Party for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan

Document (i) with the consent or at the request of the Required Lender Representative in accordance with Section 1.5, the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.2) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given in writing to such Agent by the Borrower or a Lender;

(b) responsible in any manner to any other Credit Party for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents or the Arranger under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Loan Party party thereto to perform its obligations hereunder or thereunder. The Agents and the Arranger shall not be under any obligation to any other Credit Party to ascertain or to inquire as to the observance or performance of any of the covenants or agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party. Neither the Administrative Agent nor the Collateral Agent nor the Arranger shall be under any obligation to any other Credit Party to ascertain or to inquire as to the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), or the creation, perfection or priority of any Lien purported to be created by the Security Documents, the value or the sufficiency of any Collateral, or the satisfaction of any condition set forth in Section 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent or the Arranger, as applicable;

(c) subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(d) subject to any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent or the Collateral Agent is required to exercise as directed in writing by the Required Lender Representative or the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that such Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(e) subject to a duty or responsibility to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent, the Collateral Agent, an Arranger or any of their respective Affiliates in any capacity, except as expressly set forth herein and in the other Loan Documents;

(f) obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it;

(g) responsible for any unsuitability, inadequacy, expiration or unfitness of any security interest created hereunder or pursuant to any other Loan Document nor shall it be obligated to make any investigation into, and shall be entitled to assume, the adequacy and fitness of any security interest created hereunder or pursuant to any other Loan Document; or

(h) responsible or liable for any failure or delay in the performance of its obligations hereunder or under any other Loan Document arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

8.4 Reliance by Administrative Agent. Each of the Administrative Agent and the Collateral Agent shall be entitled to rely, and shall be fully protected in relying and shall not incur any liability for relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, facsimile or email message, statement, order, telephonic or electronic notices or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Loan Parties), independent accountants and other experts selected by such Agent. Each of the Administrative Agent and the Collateral Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with such Agent. Each of the Administrative Agent and the Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lender Representative in accordance with Section 1.5 or the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents or, if so specified by this Agreement, all affected Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each of the Administrative Agent and the Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lender Representative in accordance with Section 1.5, the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents or, if so specified by this Agreement, all affected Lenders), and such request

and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans. In determining compliance with any condition hereunder to the occurrence of the Closing Date that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the occurrence of the Closing Date. The Administrative Agent and the Collateral Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

8.5 Notice of Default. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless such Agent has received notice from a Lender, Parent or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Administrative Agent or the Collateral Agent receives such a notice, such Agent shall give notice thereof to the Lenders and the other such Agent. Each of the Administrative Agent and the Collateral Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents or, if so specified by this Agreement, all affected Lenders); provided that unless and until such Agent shall have received such directions, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

8.6 Non-Reliance on Agents, Arranger and Other Lenders. Each Lender expressly acknowledges that none of the Agents, the Arranger nor any of their respective officers, directors, employees, agents, advisors, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Agent or Arranger hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent or Arranger to any Lender. Each Lender represents to the Agents and the Arrangers that it has, independently and without reliance upon any Agent, Arranger or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent, Arranger or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, no Agent or Arranger shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of such



Agent or Arranger or any of their respective officers, directors, employees, agents, advisors, attorneys-in-fact or affiliates.

8.7 Indemnification. The Lenders agree to indemnify each Agent and its officers, directors, employees, affiliates, agents, advisors and controlling persons (each, an “Agent Indemnitee”) (to the extent not reimbursed by the Loan Parties and without limiting any obligation of the Loan Parties to do so), ratably according to their respective outstanding FILO Term Loans in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such outstanding FILO Term Loans immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs and expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent Indemnitee in any way relating to or arising out of, the Commitments, the FILO Term Loans, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent Indemnitee under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent Indemnitee’s gross negligence, bad faith or willful misconduct. The agreements in this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

8.8 Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from, own securities of, act as the financial advisor of or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any Subsidiary or other Affiliate thereof as though such Agent were not an Agent and without any duty to account therefor to the Lenders or provide notice to or consent of the Lenders with respect thereto. With respect to its Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms “Lender” and “Lenders” shall include each Agent in its individual capacity.

8.9 Successor Administrative Agent. Either of the Agents may resign as Agent upon 10 days’ notice to the Lenders and the Borrower. The Borrower and the Required Lenders, after consultation with the Agent (it being understood that the consent of the Agent shall not be required), may upon 10 days’ prior notice remove either or both Agents. If either Agent shall resign or be removed, then the Borrower and the Required Lenders (or, if an Event of Default has occurred and is continuing under Section 7.1(a), the Required Lenders) shall appoint a successor agent for the Lenders, which shall be a financial institution with an office in the United States, or an Affiliate of any such financial institution with an office in the United States, whereupon such successor agent shall succeed to the rights, powers and duties of such Agent, and the term “Administrative Agent” or “Collateral Agent”, as applicable, shall mean such successor agent effective upon such appointment and approval, and the former Agent’s rights, powers and duties as Administrative Agent or Collateral Agent, as applicable, shall be

terminated, without any other or further act or deed on the part of such former Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has been appointed as Administrative Agent or Collateral Agent, as applicable, by the date that is 10 days following a retiring Agent's notice of resignation or the delivery of such removal notice (or such earlier date as shall be agreed by the Borrower and the Required Lenders) (the "Resignation Effective Date"), the retiring Agent's resignation or removal, as the case may be, shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of such Agent hereunder until such time, if any, as the Borrower and the Required Lenders (or, if an Event of Default has occurred and is continuing under Section 7.1(a), the Required Lenders as set forth above) shall appoint a successor agent as provided for above; provided that in no event shall any successor Agent be a Defaulting Lender or a Disqualified Institution. After any retiring Agent's resignation or removal as Administrative Agent, the provisions of this Section 8 and of Section 9.3 shall continue to inure to its benefit.

8.10 Effect of Resignation or Removal. With effect from the Resignation Effective Date (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent (or its agent or bailee for such purpose) on behalf of the Lenders under any of the Loan Documents, the retiring or removed Collateral Agent (or its agent or bailee for such purpose) shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Borrower (or, if an Event of Default has occurred and is continuing under Section 7.1(a), the Required Lenders as set forth above) shall appoint a successor agent as provided for above. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Agent as of the Resignation Effective Date), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Section 8 and Section 9.3 shall continue in effect for the benefit of such retiring or removed Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Agent was acting as Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity (other than in its capacity as a Lender) hereunder or under the other Loan Documents, including, without limitation, (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Secured Parties and (B) in respect of any actions taken in connection with transferring the agency to any successor Agent.

8.11 Collateral and Guarantee Matters. Each of the Lenders hereby irrevocably authorizes the Administrative Agent and the Collateral Agent to, and the Administrative Agent and the Collateral hereby agree:

(a) to take such action and execute such documents as may be reasonably requested by any of the Loan Parties pursuant to Section 9.14 to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (i) upon the payment in full of the Obligations (other than Obligations in respect of Cash Management Obligations and contingent reimbursement and indemnification obligations) and termination of all Commitments, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, (iii) that is or becomes an Excluded Asset or (iv) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 9.2;

(b) to subordinate any Lien on any property granted to or held by the Collateral Agent on behalf of the Secured Parties under any Loan Document as set forth in the applicable Intercreditor Agreement; and

(c) to take such action and execute such documents as may be reasonably requested by any of the Loan Parties pursuant to Section 9.14 to release any Guarantor from its Guarantee Obligations and other obligations under the Loan Documents, and to release any Liens granted by it under the Loan Documents, if such Person ceases to be a Subsidiary or is or becomes an Excluded Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's and the Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantee Obligations or Liens pursuant to this Section 8.11. In each case as specified in this Section 8.11, the Administrative Agent and the Collateral Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement and to release the Liens granted by such Guarantor under the Loan Documents, in each case in accordance with the terms of this Section 8.11.

Neither the Administrative Agent nor the Collateral Agent shall be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent or the Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral, any security interests of the Administrative Agent or the Collateral Agent therein or any filings, registrations, or recordings made with respect thereto. Neither the Collateral Agent nor the Administrative Agent shall have any obligation whatsoever to any Lender or any other person to investigate, confirm or assure that the Collateral exists or is owned by any Loan Party or is insured or has been encumbered, or that the liens and security interests granted to the Collateral Agent pursuant hereto or any of the Loan Documents or otherwise have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority.

8.12 Appointment of Borrower. Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrower may execute such documents and provide such authorizations on behalf of such Loan Parties as the Borrower deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent or a Lender to the Borrower shall be deemed delivered to each Loan Party and (c) the Administrative Agent, or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrower on behalf of each of the Loan Parties.

8.13 Administrative Agent or Collateral Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, including during the pendency of the Chapter 11 Cases, each of the Administrative Agent and Collateral Agent (irrespective of whether the principal of any Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent or Collateral Agent shall have made any demand on the Loan Parties) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, Administrative Agent and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, Administrative Agent, Collateral Agent and their respective agents and counsel and all other amounts due Lenders, Administrative Agent and Collateral Agent hereunder) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to pay to Administrative Agent or Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent, Collateral Agent and their respective agents and counsel, and any other amounts due Administrative Agent or Collateral Agent hereunder. To the extent that the payment of any such compensation, expenses, disbursements and advances of Administrative Agent, Collateral Agent and their respective agents and counsel, and any other amounts due Administrative Agent or Collateral Agent under this Agreement out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

8.14 Agent Duties. If any of the rights, responsibilities or duties of the Agents conflict with such Agents' rights, responsibilities or duties under the Prepetition ABL Agreement, this Agreement shall supersede the Prepetition ABL Agreement.

8.15 Arranger. Anything herein to the contrary notwithstanding, the Arranger shall have no duties or responsibilities hereunder in its capacity as such.

8.16 The Collateral Agent. The Collateral Agent shall be entitled to all rights, protections, immunities and indemnities granted to it in the Security Documents as if set forth herein.

## SECTION 9. MISCELLANEOUS

9.1 Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent electronically or by facsimile, as follows:

- (i) if to Parent or the Borrower, to it at:

General Nutrition Centers, Inc.  
300 Sixth Avenue  
Pittsburgh, PA 15222  
Attention: Tricia Tolivar  
Telephone: (412) 288 4641  
Email: [Tricia-Tolivar@gnc-hq.com](mailto:Tricia-Tolivar@gnc-hq.com)

with copies (which shall not constitute notice) to:

Michèle O. Penzer  
Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022  
Facsimile: (212) 751-4864  
Telephone: (212) 906-1245  
Email: [michele.penzer@lw.com](mailto:michele.penzer@lw.com)

and

Latham & Watkins LLP  
330 North Wabash, Suite 2800  
Chicago, IL 60611  
Attention: Rick Levy and Caroline Reckler  
Telephone: (312) 876-7692 (Rick Levy); (312) 876-7663 (Caroline Reckler)  
Email: [Richard.Levy@lw.com](mailto:Richard.Levy@lw.com); [Caroline.Reckler@lw.com](mailto:Caroline.Reckler@lw.com)

- (ii) if to the Administrative Agent :

JPMorgan Chase Bank, N.A.  
 Loan and Agency Services Group  
 500 Stanton Christiana Rd.  
 NCC5 / 1<sup>st</sup> Floor  
 Newark, DE 19713  
 Attention: Mark Postupack  
 Telephone: 302-634-1005  
 Email: [mark.postupack@chase.com](mailto:mark.postupack@chase.com)

with a copy to:

JPMorgan Chase Bank, N.A.  
 270 Park Avenue, 43<sup>rd</sup> Floor  
 New York, New York 10017  
 Attention: James A. Knight  
 Facsimile: 917-464-7000  
 Telephone: 212-622-8486  
 Email: [james.a.knight@jpmorgan.com](mailto:james.a.knight@jpmorgan.com)

- (iii) if to any Lender, to it at its address (or facsimile number or email address) set forth in its Administrative Questionnaire
- (iv) notices and other communications delivered under any Loan Document to all Lenders shall also be delivered to (but which delivery shall not constitute delivery to any Lender):

Milbank LLP  
 2029 Century Park East, 33rd Floor  
 Los Angeles, California 90067-3019  
 Attention: Mark Shinderman  
 Telephone: (424) 386-4411  
 Email: [MShinderman@Milbank.com](mailto:MShinderman@Milbank.com)

and

Paul, Weiss, Rifkind, Wharton & Garrison, LLP  
 1285 Avenue of the Americas  
 New York, New York 10019-6064  
 Attention: Andrew Rosenberg; Jacob Adlerstein  
 Telephone: (212) 373-3158 (Andrew Rosenberg); (212) 373-3142 (Jacob Adlerstein)  
 Email: [arosenberg@paulweiss.com](mailto:arosenberg@paulweiss.com); [jadlerstein@paulweiss.com](mailto:jadlerstein@paulweiss.com)

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the

Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent, the Collateral Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(d) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, other than for direct or actual damages to the extent resulting from the gross negligence, bad faith or willful misconduct of such party or its Related Parties as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) The Administrative Agent, the Collateral Agent and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the Collateral Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party in accordance with Section 9.3. All telephonic notices to and other telephonic communications with the Administrative Agent or the Collateral Agent may be recorded by the Administrative Agent or the Collateral Agent, as applicable, and each of the parties hereto hereby consents to such recording.

9.2 Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the Collateral Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or

any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by Parent or the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, the Collateral Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly and adversely affected thereby (except in connection with the waiver of applicability of any post-default increase in interest rates (which waiver shall be effective with the consent of the Required Lenders)), (ii) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment without the written consent of each Lender directly and adversely affected thereby (it being understood that a waiver of any condition precedent set forth in Section 4.1, Section 4.2 or the waiver of any Default, mandatory prepayment or mandatory reduction of Commitments shall not constitute a postponement of the scheduled date of expiration of any Commitment of any Lender), (iii) change Section 2.21(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby or the “waterfall” contained therein without the written consent of each Lender directly and adversely affected thereby, (iv) change any of the provisions of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or grant any consent hereunder, or release all or substantially all of the Collateral or release Guarantors from their guarantee obligations under the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement representing all or substantially all of the value of such guarantees, taken as a whole, in each case, without the written consent of each Lender directly and adversely affected thereby, (v) increase the advance rates set forth in the definition of “Borrowing Base” without the consent of the Lenders holding at least 66  $\frac{2}{3}$ % of the aggregate amount of FILO Term Loans, (vi) change the definition of the “Borrowing Base” without the consent of the Lenders holding at least 66  $\frac{2}{3}$ % of the aggregate amount of FILO Term Loans, (vii) amend the Exit ABL Term Sheet or the conditions precedent to Exit Conversion set forth in Section 2.24, in each case without the consent of the Lenders holding at least 66  $\frac{2}{3}$ % of the aggregate amount of FILO Term Loans (provided that consent of each Lender directly and adversely affected thereby shall be required with respect to modifications of the terms of Exit FILO Loans that would require the consent of each directly and adversely affected Lender if such Exit FILO Loans were FILO Term Loans), (viii) permit the incurrence by any Loan Party of Indebtedness for borrowed money that is secured by (A) Liens on ABL Priority



Collateral that rank senior in priority to or *pari passu* with the Liens thereon in favor of the Lenders or (B) Liens on Term Priority Collateral that rank senior in priority to the Liens thereon in favor of the Lenders, in each case without the consent of the Lenders holding at least 66 ⅔% of the aggregate amount of FILO Term Loans, (ix) permit the Bankruptcy Court DIP Order to be amended or modified to change the priority, as between the Lenders and the Term Loan Lenders, of their respective claims or of the Liens on the ABL Priority Collateral or the Term Priority Collateral in a manner materially adverse to the Lenders without the consent of the Lenders holding at least 66 ⅔% of the aggregate amount of FILO Term Loans, or (x) permit the Bankruptcy Court DIP Order to be amended or modified in a manner materially adverse to the FILO Ad Hoc Group or the Lenders taken as a whole without the consent of the Lenders holding at least 66 ⅔% of the aggregate amount of FILO Term Loans; provided that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent in a manner adverse to the Administrative Agent or the Collateral Agent, respectively, without the prior written consent of the Administrative Agent or the Collateral Agent, as the case may be.

(c) Notwithstanding anything to the contrary contained in this Section 9.2, the Administrative Agent and the Borrower, in their discretion, may amend, modify or supplement any provision of this Agreement or any other Loan Document to (i) cure any ambiguity, omission, mistake, error, defect or inconsistency, so long as such amendment, modification or supplement does not directly and adversely affect the rights or obligations of any Lender, (ii) to permit additional affiliates of the Borrower to guarantee the Obligations and/or provide Collateral therefor and (iii) to add covenants and other terms for the benefit of the Lenders as provided herein. Subject to Section 1.5, such amendments shall become effective without any further action or consent of any other party to any Loan Document.

(d) Notwithstanding anything to the contrary contained in this Section 9.2 or any other Loan Document, guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Requirements of Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement or any other Loan Documents.

9.3 Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by each Agent and its Affiliates, including the reasonable and documented out-of-pocket fees, charges and disbursements of the Ad Hoc Committee Advisors and of legal counsel for the Administrative Agent and the other Agents in connection with the preparation and administration of this Agreement or any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the Collateral Agent, or all Lenders collectively, including the reasonable and documented out-of-pocket fees, charges and disbursements of the Ad Hoc Committee Advisors and of legal counsel for the Administrative Agent and the Collateral Agent, or all Lenders collectively, in connection with the enforcement

or protection of its rights in connection with this Agreement, including its rights under this Section, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; provided that the Borrower's obligations under this Section 9.3(a) for fees and expenses of legal counsel shall be limited to fees and expenses of (x) (I) one outside legal counsel for each Agent and its Affiliates, taken as a whole, and (II) one outside legal counsel for all Indemnitees described in clauses (i) and (ii) above, taken as a whole, (y) in the case of any conflict of interest, one outside legal counsel for such affected Indemnitee or group of Indemnitees and (z) if necessary, (I) one local or foreign legal counsel in each relevant jurisdiction for each Agent and its Affiliates, taken as a whole, and (II) one local or foreign legal counsel in each relevant jurisdiction for all other Indemnitees described in clauses (i) and (ii) above, taken as a whole.

(b) The Borrower shall indemnify the Administrative Agent, each other Agent, the Arranger, each Lender and the Required Lender Representative, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee"), against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable and documented out-of-pocket expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of (i) one outside legal counsel to the Administrative Agent and one outside legal counsel to the other Indemnitees taken as a whole, (ii) in the case of any conflict of interest, one outside legal counsel for the affected Lender or group of Lenders and (iii) if necessary, one local or foreign legal counsel in each relevant jurisdiction), which may at any time be imposed on, incurred by or asserted or awarded against any such Indemnitee arising out of, in connection with, or as a result of (w) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or any other transactions contemplated hereby, (x) any Loan or the use of the proceeds therefrom, (y) any actual or alleged presence or release of Hazardous Materials at, on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability of the Borrower or any of its Subsidiaries, or (z) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (1) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or material breach of its obligations under the Loan Documents or willful misconduct of such Indemnitee or its Primary Related Parties, (2) arise out of any claim, litigation, investigation or proceeding that does not involve an act or omission by the Borrower or any of its Affiliates and that is brought by an Indemnitee against any other Indemnitee (provided that in the event of such a claim, litigation, investigation or proceeding involving a claim or proceeding brought against the Arranger (in its capacity as such), the Administrative Agent (in its capacity as such) or the Collateral Agent (in its capacity as such) by other Indemnitees, the Arranger (in its capacity as such), the Administrative Agent (in its capacity as such) or the Collateral Agent (in its capacity as such) shall be entitled (subject to the other limitations and exceptions set forth above) to the benefit of the indemnities set forth above) or (3) are in respect of indemnification payments made pursuant to Section 8.7, to the extent the Borrower would not have been or was not required to make such indemnification payments directly pursuant to the provisions of this Section 9.3(b). This Section 9.3 shall not apply to Taxes, except any Taxes that represent losses,

claims, damages or liabilities arising from a non-Tax claim. As used herein, the “Primary Related Parties” of an Indemnitee are its Affiliates with direct involvement in the negotiation of the Facilities under this Agreement and such Indemnitee’s and Affiliates’ respective directors, officers and employees.

(c) To the extent permitted by applicable law, none of Parent, the Borrower nor any Indemnitee shall assert, and Parent, the Borrower and each Indemnitee hereby waives, any claim against Parent, the Borrower or any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any agreement or instrument contemplated hereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and, to the extent permitted by applicable law, Parent, the Borrower and each Indemnitee hereby waive, release and agree not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that nothing contained in this paragraph shall limit the obligations of the Borrower under Section 9.3(b) in respect of any such damages claimed against the Indemnitees by Persons other than Indemnitees.

(d) All amounts due under this Section shall be payable not later than thirty days after written demand therefor.

9.4 Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) subject to Section 6.4, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) 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.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender or if an Event of Default has occurred and is continuing under Section 7.1(a), to any other Eligible Assignee; and provided, further, that the Borrower shall be deemed to have consented to any such assignment unless the Borrower shall have objected thereto by written notice to the Administrative Agent not later than the tenth

Business Day following the date the Borrower acknowledges its receipt of notice of the proposed assignment; and

(B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a FILO Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

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

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Loans, the amount of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default under Section 7.1(a) has occurred and is continuing;

(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;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with (unless waived by the Administrative Agent in its sole discretion) a processing and recordation fee of \$3,500;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws;

(E) no such assignment shall be made to a natural person; and

(F) such assignment does not violate Section 9.4(g).

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its

obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.18, 2.19, 2.20 and 9.3). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.4 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.4(b)(vi).

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and principal amount and stated interest of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and, if an Event of Default has occurred and is continuing, any Lender (but only with respect to the entries related to such Lender), at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section (unless waived by the Administrative Agent in its sole discretion) and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.21(d) or 8.7, the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) Subject to compliance with Section 9.4(g), any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement 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, modification or waiver described in the first proviso to Section 9.2(b) that (1) requires the consent of each Lender or each directly and adversely affected Lender and (2) directly and adversely affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.18, 2.19 and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.8 as though it were a Lender, provided such Participant agrees to be subject to Section 2.21(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Loans, or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Loan or other obligation is in registered form under Section 5f.103-1(c) and Proposed Section 1.163-5(b) (and any amended or successor version) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. The portion of the Participant Register relating to any Participant requesting payment from the Borrower under the Loan Documents shall be made available to the Borrower upon request.

(vii) A Participant shall not be entitled to receive any greater payment under Section 2.18, 2.19 or 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless (A) the Borrower is notified of the participation sold to such Participant and the sale of the participation to such Participant is made with the Borrower's prior written consent or (B) such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.20 unless such Participant agrees, for the benefit of the Borrower, to comply (and actually complies) with Section 2.20(e) as though it were a Lender.

(c) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(d) [Reserved].

(e) [Reserved].

(f) [Reserved].

(g) No assignment or participation shall be made to any Person that is a Disqualified Institution to the extent the list thereof has been provided to any Lender requesting the same as of the date (the “Trade Date”) on which such Lender entered into a binding agreement to sell and assign or participate all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any Assignee that becomes a Disqualified Institution after the applicable Trade Date, (x) such Assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Acceptance with respect to such Assignee will not by itself result in such Assignee no longer being considered a Disqualified Institution. Any assignment in violation of this paragraph (g) shall not be void, but the other provisions of this paragraph (g) shall apply.

(h) If any assignment or participation is made to any Disqualified Institution without the Borrower’s prior written consent in violation of clause (g)(i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.4), all of its interest, rights and obligations under this Agreement to one or more Assignees at the lower of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations.

(i) Notwithstanding anything to the contrary contained in this Agreement, (A) Disqualified Institutions will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, any other Loan Party, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any plan of reorganization, each Disqualified Institution party hereto hereby agrees (1) not to vote on such plan of reorganization, (2) if such Disqualified Institution does vote on such plan of reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has

accepted or rejected such plan of reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(j) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to provide the list of Disqualified Institutions to each Lender requesting the same and to post such list to the Platform. Each Lender shall have the right, and the Borrower hereby authorizes each Lender, to provide the list of Disqualified Institutions to any of such Lender's actual or prospective transferees (including any actual or prospective assignee or participant).

(k) The Administrative Agent, in its capacity as such, shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions; provided that without limiting the generality of the foregoing, the Administrative Agent, in its capacity as such, shall not (a) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Institution or (b) have any liability with respect to or arising out of any assignment or participation of loans, or disclosure of confidential information in connection therewith, to any Disqualified Institution; it being agreed that the foregoing shall not relieve the Administrative Agent, to the extent constituting a Lender, from its obligations in respect of Disqualified Institutions in connection with assignments and participations, and disclosure of confidential information in connection therewith, by it.

9.5 Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement (excluding Obligations in respect of Cash Management Obligations and contingent reimbursement and indemnification obligations that are not then due and payable at the time all other Obligations hereunder are discharged) is outstanding and unpaid. The provisions of Sections 2.18, 2.19, 2.20 and 9.3 and Section 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans or the termination of this Agreement or any provision hereof.

#### 9.6 Counterparts; Integration; Electronic Signatures.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and



supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.1), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an “Ancillary Document”) that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower and each Loan Party hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Borrower and the Loan Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (ii) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (iii) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (iv) waives any claim against any Indemnitee for any losses, claims (including intraparty claims), demands, damages or liabilities of any kind arising solely from the Administrative Agent’s and/or any Lender’s reliance on or use of Electronic Signatures and/or

transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any losses, claims (including intraparty claims), demands, damages or liabilities of any kind arising as a result of the failure of the Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

9.7 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

9.8 Right of Setoff. Subject to the terms of the Bankruptcy Court DIP Order, the Canadian Court DIP Recognition Order and the Carve Out, if an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time with the prior written consent of the Administrative Agent, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) (excluding payroll, tax withholding and trust accounts maintained in the ordinary course of business) at any time held and other obligations at any time owing by such Lender to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have but subject to the terms of the Bankruptcy Court DIP Order, the Canadian Court DIP Recognition Order and the Carve Out. Each Lender shall notify the Administrative Agent and the Borrower promptly after any such setoff.

9.9 Governing Law; Jurisdiction; Consent to Service of Process. (a) EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY CODE, THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE BANKRUPTCY COURT. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE BANKRUPTCY COURT AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH HEREIN. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE ADMINISTRATIVE AGENT AND THE LENDERS

TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN SUCH COURT AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(c) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.1. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(d) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

9.12 Confidentiality. (a) Each of the Administrative Agent, the Arranger and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (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), (ii) to the extent requested by any regulatory authority claiming jurisdiction over it, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (provided that the applicable Agent or such Lender, as applicable, shall notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority claiming jurisdiction over it) unless such notification is prohibited by applicable law, rule or regulation), (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) to any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to the Borrower and its obligations (provided, such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this Section 9.12 or other provisions at least as restrictive as this Section 9.12), (vii) with the prior written consent of the Borrower or (viii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section 9.12 or (B) becomes available other than as a result of a breach of this Section 9.12 to the Administrative Agent, the Arranger or any Lender on a nonconfidential basis from a source other than the Borrower or any of its Affiliates. For the purposes of this Section, "Information" means all information received from Parent, the Borrower or any of their Affiliates relating to Parent or the Borrower or any of its Subsidiaries or businesses, other than any such information that is available other than as a result of a breach of this Section 9.12 to the Administrative Agent, the Arranger or any Lender on a nonconfidential basis prior to disclosure by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section 9.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information which shall in no event be less than commercially reasonable care. To the extent the list of Disqualified Institutions has been provided to any Lender requesting the same, Information shall not be disclosed to a Disqualified Institution that constitutes a Disqualified Institution at the time of such disclosure without the Borrower's prior written consent.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

**(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS AND WARRANTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.**

9.13 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”) and the Administrative Agent and the Collateral Agent (in each case for themselves and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Act, it may be required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or such Agent, as applicable, to identify the Borrower in accordance with the Act.

9.14 Release of Liens and Guarantees. (a) In the event that any Loan Party conveys, sells, leases, assigns, transfers or otherwise Disposes of all or any portion of any of the Capital Stock or assets of any Loan Party to a Person that is not (and is not required hereunder to become) a Loan Party in a transaction permitted under this Agreement, the Liens created by the Loan Documents in respect of such Capital Stock or assets shall automatically terminate and be released without the requirement for any further action by any Person, and the Administrative Agent and the Collateral Agent shall promptly (and the Lenders hereby authorize the Administrative Agent and the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower’s expense to further document and evidence such termination and release of Liens created by any Loan Document in respect of such Capital Stock or assets, and, in the case of a transaction permitted under this Agreement the result of which is that a Loan Party would cease to be a Subsidiary or would become an Excluded Subsidiary, the Guarantee Obligations created by the Loan Documents in respect of such Loan Party (and all security interests granted by such Guarantor under the Loan Documents) shall automatically terminate and be released without the requirement for any further action by any Person, and the Administrative Agent and the Collateral Agent shall promptly (and the Lenders hereby authorize the Administrative Agent and the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower’s expense to further document and evidence such termination and release of such security interests and such Loan Party’s Guarantee Obligations in respect of the Obligations (including, without limitation, its Guarantee Obligations under the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement). Any representation, warranty or covenant contained in any Loan Document relating to any such Capital Stock, asset or subsidiary of any Loan Party shall no longer be deemed to be made with respect thereto once such Capital Stock or asset or Subsidiary is so conveyed, sold, leased, assigned, transferred or disposed of.

(b) Upon the payment in full of the Obligations (excluding Obligations in respect of Cash Management Obligations and contingent reimbursement and indemnification obligations that are not then due and payable), all Liens created by the Loan Documents shall automatically terminate and be released without the requirement for any further action by any Person, and the Collateral Agent shall promptly (and the Lenders hereby authorize the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower's expense to further document and evidence such termination and release of Liens created by the Loan Documents, and the Guarantee Obligations created by the Loan Documents in respect of the Guarantors shall automatically terminate and be released without the requirement for any further action by any Person, and the Collateral Agent shall promptly (and the Lenders hereby authorize the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower's expense to further document and evidence such termination and release of the Guarantors' Guarantee Obligations in respect of the Obligations (including, without limitation, the Guarantee Obligations under the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement).

9.15 Enforcement Matters. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against Parent, the Borrower, any of its Restricted Subsidiaries or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 7.1 for the benefit of the Required Lenders; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 9.8 (subject to the terms of Section 2.21(c)), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then the Required Lenders (and no other Person) shall have the rights otherwise ascribed to the Administrative Agent at the instruction of the Required Lenders pursuant to Section 7.1.

9.16 No Fiduciary Duty. Each Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the "Lender Parties") may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender Parties, on the one hand, and such Loan Party, its stockholders or its affiliates, on the other. The Loan Parties acknowledge and agree that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lender Parties, on the one hand, and the Loan Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender Parties have assumed any advisory, agent (other than to the extent set forth in Section 9.4(b)(iv)) or fiduciary responsibility in favor of any Loan Party, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with

respect thereto) or the process leading thereto (irrespective of whether any Lender Parties have advised, are currently advising or will advise any Loan Party, its stockholders or its Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents, (y) the Administrative Agent, the Collateral Agent, their respective Affiliates and the Lenders may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Collateral Agent, any of their respective Affiliates nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates and (z) the Lender Parties are acting solely as principals and not as the agents or fiduciaries of any Loan Party, its management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate, that it is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party agrees that it will not claim that the Lender Parties have rendered advisory services of any nature or respect, or owe a fiduciary or similar duty to such Loan Party, in connection with such transaction or the process leading thereto. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Collateral Agent, any of their respective Affiliates or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

9.17 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or any Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

9.18 Security Documents and Intercreditor Agreements. The parties hereto acknowledge and agree that any provision of any Loan Document to the contrary notwithstanding, prior to the discharge in full of all “Obligations” (as defined in the Term Loan DIP Credit Agreement and in the Prepetition Term Loan Agreement), the Loan Parties shall not be required to act or refrain from acting under any Security Document with respect to the Term Loan Priority Collateral in any manner that would result in a “Default” or “Event of Default” (as defined in the Term Loan DIP Credit Agreement and the Prepetition Term Loan Agreement) under the terms and provisions of the “Loan Documents” (as defined in the Term Loan DIP Credit Agreement and the Prepetition Term Loan Agreement). Additionally, each Lender hereunder:

(a) consents to the subordination of Liens provided for in the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order; and

(b) agrees that it will be bound by and will take no actions contrary to the provisions of the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order.

The foregoing provisions are intended as an inducement to the lenders under the Term Loan DIP Credit Agreement to enter into the Term Loan DIP Credit Agreement and such lenders are intended third party beneficiaries of such provisions.

9.19 Canadian Anti-Money Laundering Legislation. (a) Each Loan Party acknowledges that, pursuant to Canadian Anti-Money Laundering Legislation and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws (collectively, including any guidelines or orders thereunder, “AML Legislation”), the Lenders may be required to obtain, verify and record information regarding the Loan Parties and their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Loan Parties, and the transactions contemplated hereby. Each Loan Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any prospective assignee or participant of a Lender or any Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(b) If the Administrative Agent has ascertained the identity of any Loan Party or any authorized signatories of the Loan Parties for the purposes of applicable AML Legislation, then the Administrative Agent:

(i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a “written agreement” in such regard between each Lender and the Administrative Agent within the meaning of the applicable AML Legislation; and

(ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that neither the Administrative Agent nor any other Agent has any obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any Loan Party or any such authorized signatory in doing so.

9.20 Judgment Currency. If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the “Original Currency”) into another currency (the “Second Currency”), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. The Borrower agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged



only to the extent that, on the Business Day following the date the Administrative Agent receives payment of any sum so adjudged to be due hereunder in the Second Currency, the Administrative Agent may, in accordance with normal banking procedures, purchase, in the New York foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency, the Borrower agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify the Administrative Agent against such loss; and if the amount of the Original Currency so purchased or could have been so purchased is greater than the amount originally due in the Original Currency, the Administrative Agent agrees to remit such excess amount to the Borrower. The term “rate of exchange” in this Section 9.19 means the spot rate at which the Administrative Agent, in accordance with normal practices, is able on the relevant date to purchase the Original Currency with the Second Currency, and includes any premium and costs of exchange payable in connection with such purchase.

9.21 Electronic Execution. The words “delivery,” “execute,” “execution,” “signed,” “signature,” and words of like import in any Loan Document or any other document executed in connection herewith shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, 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, physical delivery thereof 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; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided further, without limiting the foregoing, upon the request of the Administrative Agent, any electronic signature shall be promptly followed by such manually executed counterpart.

9.22 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(b) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(c) the effects of any Bail-in Action on any such liability, including (without limitation), if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

9.23 Conflicts. If any provision in this Agreement or any other Loan Document expressly conflicts with any provision in the Interim DIP Order or Final DIP Order, the provisions in the Bankruptcy Court DIP Order shall govern and control.

9.24 Revolver Termination. The parties hereto acknowledge and agree that the Revolver Termination has been consummated notwithstanding that the Borrower provided fewer than the three Business Days' notice specified for termination of commitments and prepayment of loans in Sections 2.11 and 2.13 of the Prepetition ABL Agreement.

9.25 Amendment and Restatement. This Agreement constitutes an amendment to and restatement of the Prepetition ABL Agreement. The parties hereto hereby agree to the terms of this Agreement and in furtherance thereof, further agree that, on the Closing Date, this Agreement shall be amended and restated as set forth herein. The FILO Term Loan Lenders (as defined in the Prepetition ABL Agreement) holding at least 66 ⅔% of the FILO Term Loans (as defined in the Prepetition ABL Agreement) hereby authorize and instruct the Administrative Agent and the Collateral Agent to execute and deliver the other Loan Documents contemplated to be executed and delivered on the date hereof, and shall be deemed to have consented to, approved or accepted or to be satisfied with each such Loan Document or other matter required thereunder to be consented to, approved or accepted or satisfactory to the FILO Term Loan Lenders (as defined in the Prepetition ABL Agreement) holding at least 66 ⅔% of the FILO Term Loans (as defined in the Prepetition ABL Agreement).

9.26 Termination of Certain Provisions of that certain Second Amendment, dated as of May 15, 2020, and that certain Third Amendment, dated as of June 12, 2020. Section 2 and Section 3 of that certain Second Amendment, dated as of May 15, 2020, and Section 2 of that certain Third Amendment, dated as of June 12, 2020, in each case to the Prepetition ABL Agreement are hereby deleted and of no further force or effect.

9.27 Operating Account. The parties hereto acknowledge and agree that the Operating Account does not constitute (a) ABL Priority Collateral or (b) Collateral for the Obligations.

## SECTION 10. SECURITY AND PRIORITY

### 10.1 Collateral; Grant of Lien and Security Interest.

(a) Pursuant to, and otherwise subject to the terms of, the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order and in accordance with the terms thereof and subject to the Carve Out, as security for the full and timely payment and performance

of all of the Obligations, the Loan Parties hereby pledge and grant to the Collateral Agent (for the benefit of the Secured Parties), a security interest in and to, and a Lien on, all of the Collateral.

(b) Notwithstanding anything herein to the contrary (i) all proceeds received by the Collateral Agent and the Lenders from the Collateral subject to the Liens granted in this Section 10.1 and in each other Loan Document and by the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order shall be subject in all respects to the Carve Out and (ii) no Person entitled to amounts in respect of the Carve Out shall be entitled to sell or otherwise dispose, or seek or object to the sale or other disposition, of any Collateral.

#### 10.2 Priority and Liens Applicable to Loan Parties.

(a) Upon entry of the Interim DIP Order or Final DIP Order and subject to the terms thereof, as the case may be, the Obligations, Liens and security interests in favor of the Secured Parties shall, subject in all respects to the Carve Out, at all times, pursuant to the Bankruptcy Code, be secured by a perfected Lien on and security interest in all of the Collateral of the Loan Parties.

(b) The relative priorities of the Liens with respect to the Collateral shall be as set forth in the Interim DIP Order (and, when entered, the Final DIP Order).

(c) Each Loan Party hereby confirms and acknowledges that, pursuant to the Interim DIP Order (and, when entered, the Final DIP Order), the Liens in favor of the Collateral Agent on behalf of and for the benefit of the Secured Parties in all of the Collateral shall be created and perfected, to the maximum extent permitted by law, without the execution or the recordation or filing in any land records or filing offices of, any mortgage, assignment, security agreements, mortgages, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Collateral Agent of, or over, any Collateral, as set forth in the Interim DIP Order (and, when entered, the Final DIP Order).

10.3 Grants, Rights and Remedies. The Liens and security interests granted pursuant to Section 10.1 hereof and the administrative claim priority and lien priority granted pursuant to Section 10.2 hereof may be independently granted in the Loan Documents. This Agreement, the Bankruptcy Court DIP Order and such other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Agents and the Lenders hereunder and thereunder are cumulative; provided that to the extent of conflict the Bankruptcy Court DIP Order controls.

10.4 No Filings Required. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim DIP Order or the Final DIP Order, as the case may be, and entry of the Interim DIP Order shall have occurred on or before the date of the initial Borrowing hereunder. The Collateral Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, take possession or control of any Collateral, or take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, the Interim DIP Order or the Final DIP Order, as the case may be, or any other Loan Document.

10.5 Survival. Except as set forth in the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, the Liens, lien priority, administrative priorities and other rights and remedies granted to the Collateral Agent and the Lenders pursuant to this Agreement, the Bankruptcy Court DIP Orders and the other Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the Borrower (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever.

*(signature pages follow)*

**Exhibit J<sup>1</sup>**

**NEW REVOLVER BASKET AND EXIT FILO FACILITY TERM SHEET**

Set forth below is a summary of the principal terms and conditions for the New Revolver Facility and the Exit FILO Facility (each as defined below). Unless otherwise noted below, capitalized terms used but not defined in this Exhibit J shall have the meanings set forth in the Restructuring Support Agreement or the Debtor-in-Possession ABL Credit Agreement (the “DIP ABL FILO Credit Agreement”), to which this Exhibit J is attached.

**Summary of Principal Terms and Conditions**

**Borrower:** Either (i) a new entity as contemplated by the Restructuring Support Agreement or (ii) reorganized General Nutrition Centers, Inc., a Delaware corporation, formerly a debtor and debtor-in-possession in the Chapter 11 Cases (the “Company” or the “Borrower”); *provided* that the Borrower shall be the same as the borrower under Exit Term Loan Facility (as defined in the Restructuring Support Agreement).

**Guarantors:** Either (i) new entities as contemplated by the Restructuring Support Agreement or (ii) each of the entities listed on Exhibit A-1 hereof (collectively, the “Guarantors” and, together with the Borrower, the “Loan Parties”); *provided* that the Guarantors shall be the same as the guarantors under the Exit Term Loan Facility. All obligations of the Borrower under the Exit FILO Facility will be unconditionally guaranteed on a joint and several basis by the Guarantors. [In addition, [TaxFilerCo] shall provide a limited guarantee and security agreement pledging Tax Refunds (as defined below) to the Agent for the benefit of the Secured Parties, or alternatively, shall enter into an exit tax sharing agreement.]

For the avoidance of doubt, each of the affiliates of the Borrower listed on Exhibit A-2 hereof will not be a Guarantor.

**New Revolver Facility Basket:** A secured revolving credit facility on a “first-out” basis (the “New Revolver Facility”) of new money revolving loans and letter of credit obligations (collectively, the “New Revolver Loans”, and the lenders thereof, the “New Revolver Lenders”). Such facility will be on market terms, will have the same lien priority on the Collateral (as defined below) as the Exit FILO Facility (as defined below) and will be paid prior to the Exit FILO Facility in the payment waterfall.

For the avoidance of doubt, the consummation of the New Revolver Facility shall not be a condition precedent to the effectiveness and consummation of the Plan (as defined below), the Exit FILO Facility or the Exit Term Loan Facility. The New Revolver Facility shall operate as a basket for future debt of the Company, it being understood that the Borrower shall be permitted, whether at the Exit Date or thereafter, to add the New Revolver Facility if, after giving effect thereto, (a) the New Revolver Facility availability (not

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<sup>1</sup> This Term Sheet will also be Exhibit B to the Exit Term Loan Facility Term Sheet.

the commitments therefor) does not exceed the remainder of (x) the Borrowing Base (without giving effect to the Availability Cushion (as defined below)) less (y) the aggregate principal amount of Exit FILO Loans then outstanding and (b) as a condition to drawing on such New Revolver Facility, the Borrower shall be in compliance with the Borrowing Base (without giving effect to the Availability Cushion) after giving effect to such borrowing.

**Exit FILO Facility:** A \$275 million secured term loan credit facility (the “Exit FILO Facility”) comprised of FILO Term Loans (as defined in the DIP ABL FILO Credit Agreement) (the “DIP FILO Loans”) converted on a dollar-for-dollar basis on the Exit Date (as defined below) (the “Exit FILO Loans”, and the lenders thereof, the “Exit FILO Lenders”). The Exit FILO Loans will be incurred on a “last out” basis with payment priority behind the New Revolver Facility (at any time that a New Revolver Facility is in effect). For the avoidance of doubt, the Exit FILO Loans shall include all unpaid amounts due and payable (including interest and fees) in respect of the DIP FILO Loans (the “DIP FILO Unpaid Amounts”).

The “Plan” means the Chapter 11 Plan of Reorganization and the related disclosure statement of the Debtors to be filed with the Bankruptcy Court, in form and substance reasonably satisfactory to the Required FILO Lenders (as defined below). The reorganization contemplated by the Plan is referred to herein as the “Reorganization.”

**Conversion of Claims and Use of Proceeds:** On the Exit Date, the DIP FILO Loans and the DIP FILO Unpaid Amounts will be converted dollar-for-dollar into Exit FILO Loans.

**Exit Date:** The date (the “Exit Date”) on which the Exit FILO Loans are issued under the Exit FILO Facility and all Closing Conditions (as defined below) have been satisfied or waived by lenders holding more than 66 2/3% of the loans under the Exit FILO Facility (the “Required FILO Lenders”).

**Maturity:** With respect to the Exit FILO Loans, the date that is four (4) years after the Exit Date.

**Collateral:** The New Revolver Facility and the Exit FILO Facility will both be secured by a perfected lien on, with the priority described below under the caption “Priority,” substantially all of the Loan Parties’ tangible and intangible assets (collectively, the “Collateral”), including owned and ground leased real property, tax refunds, the equity interests of the Guarantors and other majority owned subsidiaries (subject to customary exclusions) and all deposit and security accounts (which shall be subject to control agreements to the extent set forth in the Pre-Existing FILO Facility Documentation (as defined below)), with materiality thresholds and exceptions to be agreed.

**Priority:** The New Revolver Facility and the Exit FILO Facility will both have (i) a first priority lien on ABL Priority Collateral, subject to certain customary baskets and exceptions to be agreed (“Permitted Liens”), and (ii) a second priority lien on Term Priority Collateral, subject to Permitted Liens, which ABL Priority Collateral and Term Priority Collateral shall be as defined in and subject to ranking and intercreditor arrangements substantially

consistent with the Prepetition Intercreditor Agreement or otherwise reasonably satisfactory to the Required FILO Lenders, subject to any agreed post-closing perfection requirements and subject to thresholds, exceptions and exclusions substantially identical to the Pre-Existing FILO Facility Documentation.

The Exit Term Loan Facility will have (i) a first priority lien on Term Priority Collateral, subject to Permitted Liens, and (ii) a second priority lien on ABL Priority Collateral, subject to Permitted Liens.

**Exit FILO Facility Documentation:**

The loan documents governing the Exit FILO Facility shall contain terms substantially similar to the terms of that certain ABL Credit Agreement dated as of February 28, 2018, (as amended by that certain First Amendment dated as of March 20, 2018 and as in effect on such date) among GNC Corporation, a Delaware corporation, as parent, General Nutrition Centers, Inc., a Delaware corporation, as borrower, each other borrower from time to time party thereto, the several banks and other financial institutions or entities from time to time parties thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (the “Pre-Existing FILO Facility Documentation”), with modifications to reflect this term sheet and other adjustments reasonably satisfactory to the Borrower and the Required FILO Lenders (such loan documents, the “Exit FILO Facility Documentation”).

**Conditions to Closing:**

Limited to the following (collectively, the “Closing Conditions”):

- A. The negotiation, execution and delivery of the Exit FILO Facility Documentation by the Loan Parties.
- B. The following documents shall be reasonably satisfactory to the Borrower and the Required FILO Lenders:
  - the Plan;
  - the terms of the Exit Term Loan Facility, which terms shall be deemed reasonably satisfactory to the Required FILO Lenders if substantially consistent with the Exit Term Loan Facility Term Sheet in the form attached hereto as Exhibit B; and
  - the confirmation order with respect to the Plan, and corresponding recognition order of the Canadian Court.
- C. To the extent that the Borrower or any Guarantor is a new entity formed as contemplated by the Restructuring Support Agreement, all assets that are to be owned by such new entity under the Plan shall have been transferred to such new entity pursuant to documentation in form and substance reasonably acceptable to the Agent.
- D. Substantial consummation (as defined in Section 1101 of the Bankruptcy Code) of the Plan (all conditions precedent set forth therein having been satisfied or waived in accordance with the terms thereof).
- E. Immediately after the Exit Date, the Loan Parties shall have outstanding no indebtedness for borrowed money other than indebtedness outstanding under the New Revolver Facility (if any), the

Exit FILO Facility, the Exit Term Loan Facility and indebtedness contemplated by the Plan.

- F. Accuracy in all material respects (or, in the case of representations and warranties that are qualified by materiality, in all respects) on the Exit Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date) of representations and warranties contained in the Exit FILO Facility Documentation which shall be no more burdensome to the Company than those set forth in the Pre-Existing FILO Facility Documentation and absence of an Event of Default under the Exit FILO Facility Documentation.
- G. Compliance with customary documentation conditions for a facility of this size, type, and purpose, including the delivery of customary legal opinions and closing certificates (including a customary solvency certificate in substantially the form provided under the Pre-Existing FILO Facility Documentation), good standing certificates and certified organizational documents, in each case, in form and substance reasonably satisfactory to the Required FILO Lenders.
- H. The Agent shall have a perfected lien on the Collateral of the Loan Parties, subject to Permitted Liens and any post-closing perfection requirements, with the priority set forth under the heading “Priority” hereunder; *provided* that security interests will not be required to be perfected on the Exit Date other than by (A) filings of UCC and PPSA financing statements in the office of the secretary of state or provincial ministry (or similar central filing office) of the Loan Parties, and (B) delivery to the Agent, for the benefit of the secured parties, of promissory notes representing material intercompany indebtedness for borrowed money and equity certificates (other than equity issued by GNC Holdings, Inc.) representing equity issued by Loan Parties, in each case, together with customary transfer powers executed in blank.
- I. Receipt by the Agent of reasonably satisfactory results of customary lien searches.
- J. The Loan Parties shall have used commercially reasonable efforts to obtain a public corporate credit rating (but not a specific rating) from either Standard & Poor’s, a division of S&P Global, Inc., or Moody’s Investors Service, Inc. in respect of the Exit FILO Facility.
- K. All requisite governmental and material third party approvals shall have been obtained, and there shall be no litigation, governmental, administrative or judicial action against the Loan Parties, in each case, the failure to obtain or existence of which would reasonably be expected to restrain, prevent or impose materially burdensome restrictions on the substantial consummation of the Plan or the Exit FILO Facility.
- L. Delivery of all documentation and other information required by bank regulatory authorities under applicable “know-your-customer”, anti-money laundering rules and regulations, and the Patriot Act that has



been reasonably requested by the Exit FILO Lenders at least ten (10) business days prior to the closing date of the Exit FILO Facility.

- M. Payment by the Borrower on the Exit Date of all reasonable and documented out-of-pocket costs, fees and expenses owed or otherwise required to be paid pursuant to the Exit FILO Facility to the Agent and Lenders (including reasonable and documented fees and expenses of counsel and one financial advisor (which shall be Alix Partners for the FILO Ad Hoc Group); *provided*, that legal fees shall be limited to the reasonable and documented fees and disbursements of one counsel for the Agent and one U.S. counsel for the FILO Ad Hoc Group (which shall be Paul, Weiss, Rifkind, Wharton & Garrison LLP) and, in addition, local counsel for each in each appropriate jurisdiction), including reasonable and documented out-of-pocket costs and expenses of (a) the Agent administering the Exit FILO Facility and (b) preparing all documents relating to the Exit FILO Facility.
- N. The Company shall file with the SEC a Form 15 to deregister the outstanding securities of the Company under the Exchange Act and will not be a reporting company under the Exchange Act immediately following the effective date of the Plan.

**Interest Rate:**

With respect to the Exit FILO Loans, (i) initially, LIBOR + 9.00% *per annum* paid in cash and (ii) upon elimination of the Availability Cushion, LIBOR + 7.00% *per annum* paid in cash.

LIBOR will be subject to a 1.00% “floor”.

During the continuance of a payment or bankruptcy Event of Default, past due amounts under the Exit FILO Facility will bear interest at an additional 2.00% *per annum* above the interest rate otherwise applicable.

The Borrower shall also have the right to elect that the Exit FILO Loans bear interest at a rate determined by reference to an “alternate base rate”, and the interest rate margin with respect to Exit FILO Loans bearing interest at the alternate base rate shall be reduced by 1.00% *per annum*.

**Borrowing Base:**

On the Exit Date, to be substantially identical (including with respect to advance rates, reserves and cash dominion) to the DIP ABL FILO Credit Agreement, including the component of the Borrowing Base thereunder consisting of an amount equal to \$17.5 million (the “Availability Cushion”), which Availability Cushion shall be eliminated beginning July 1, 2021. The Borrower may, at its option elect to reduce the Availability Cushion, in whole or in part and on one or more occasions, earlier than set forth in the preceding sentence (the date that the Availability Cushion is reduced to zero is referred to herein as the “Availability Cushion Termination Date”). The Exit FILO Facility shall not include “cash dominion” provisions. Any “reserves” shall (i) prior to the occurrence of the Availability Cushion Termination Date, be calculated as set forth in the DIP ABL FILO Credit Agreement, and (ii) on and after the occurrence of the Availability Cushion Termination Date, be calculated as set forth in the Pre-Existing FILO Facility Documentation.

**Financial Covenant:** None.

**Agency Fees:** As agreed with the Agent.

**Scheduled Amortization:** None.

**Call Protection:** None.

**Lender Voting:** To be substantially identical to the Pre-Existing FILO Facility Documentation, with such modifications as may be reasonably agreed by the Required FILO Lenders and the Company. For the avoidance of doubt, modifications with respect to customary sacred rights provisions shall require consent of each affected lender and modifications with respect to the Borrowing Base (including advance rates and components thereof) shall require supermajority lenders consent.

**Covenants:** To be substantially identical to the Pre-Existing FILO Facility Documentation (including, without limitation, a covenant to use commercially reasonable efforts to obtain a public rating for the Exit FILO Facility (but no requirement to obtain or maintain a specific rating)), except that baskets based on “payment conditions” or “distribution conditions” will be replaced by the baskets that were included in the Prepetition Term Loan Documents (but were not included in the Pre-Existing FILO Facility Documentation), with such modifications as may be reasonably agreed by the Required FILO Lenders and the Company.

**Events of Default:** To be substantially identical to the Pre-Existing FILO Facility Documentation (collectively, the “Events of Default”).

**Mandatory Prepayments:** Mandatory prepayments of the borrowings under the Exit FILO Facility shall be made at par, without premium or penalty, subject to certain provisions, including rights with respect to Term Priority Collateral, substantially similar to those under the Pre-Existing FILO Facility Documentation and others to be agreed, modified as appropriate to reflect the proposed exit facility, including, subject to the following paragraph, with respect to receipt of tax refunds by the Loan Parties (the “Tax Refunds”) at the end of the fiscal quarter in which such proceeds are received; *provided* that (1) the amount of such Tax Refunds prepayment at such quarter end shall be limited to the lesser of (x) the amount of net cash proceeds so received and (y) the amount that would not cause Liquidity (as defined below) (after giving effect to such prepayment and any prepayment of the Exit Term Loan Facility) to be less than \$75 million (the difference between clauses (x) and (y), the “Holdback Amount”; and the difference between clause (x) and the Holdback Amount, the “Refund Prepayment”) and (2) if there is a Holdback Amount, then at the end of each subsequent fiscal quarter a mandatory prepayment shall be made in an amount equal to the lesser of (i) the Holdback Amount less any portion of the Holdback Amount so applied pursuant to this clause (2) in prior fiscal quarters and (ii) the amount that would not cause Liquidity (after giving effect to such prepayment and any prepayment of the Exit Term Loan Facility) to be less than \$75 million (any such prepayment pursuant to this clause (2), a

“Holdback Prepayment”; and Holdback Prepayments and Refund Prepayments are collectively referred to herein as “Tax Prepayments”).

Any mandatory prepayment relating to Tax Prepayments shall be applied as follows: a percentage to be agreed to prepay loans under the Exit Term Loan Facility; and a percentage to be agreed to prepay the Exit FILO Loans (but not the New Revolver Loans) (with such percentages to be agreed among the Borrower, the Required FILO Lenders and the “Required Exit Lenders” (as defined the Exit Term Loan Facility Term Sheet)).

Mandatory prepayments and the application of such proceeds at all times will be subject to the intercreditor arrangements consistent with the Prepetition Intercreditor Agreement, the Pre-Existing FILO Facility Documentation, and the Prepetition Term Loan Documents, or otherwise reasonably satisfactory to the Borrower, the Required FILO Lenders and the “required lenders” under the Exit Term Loan Facility.

For purposes hereof, “Liquidity” shall mean unrestricted cash of the Loan Parties and their restricted subsidiaries (other than cash held by foreign subsidiaries that are not Guarantors, cash included in the Borrowing Base and cash supporting letters of credit) and amounts available to be drawn under any revolving credit facility.

**Application of Payments:**

To be substantially similar to the Pre-Existing FILO Facility Documentation as reasonably agreed by the Required FILO Lenders and the Company, with the New Revolver Loans taking the position of the Revolving Credit Exposure (as defined in the Prepetition ABL Agreement) and the Exit FILO Loans taking the position of the FILO Term Loan (as defined in the Prepetition ABL Agreement) and subject to the terms and conditions of the intercreditor arrangements between the New Revolver Lenders and the Exit FILO Lenders.

**Voluntary Prepayments:**

Voluntary prepayments of the borrowings under the Exit FILO Facility will be permitted at any time at par, without premium or penalty, subject to the reimbursement of the Exit FILO Lenders’ redeployment costs in the case of a prepayment of LIBOR borrowings other than on the last day of the relevant interest period.

**Governing Law:**

State of New York.

**Agent:**

To be agreed between the Borrower and the Required FILO Lenders.

**Expenses and Indemnification:**

To be substantially consistent with the Pre-Existing FILO Facility Documentation.

EXHIBIT A-1  
TO  
NEW REVOLVER BASKET AND EXIT FILO FACILITY TERM SHEET

Guarantor Entities\*

\* To be supplemented by adding the names of affiliates that provide collateral under the DIP FILO.

GNC Holdings, Inc.

GNC Parent LLC

GNC Corporation

General Nutrition Corporation

General Nutrition Investment Company

Lucky Oldco Corporation

GNC Funding, Inc.

GNC International Holdings, Inc.

GNC Canada Holdings, Inc.

General Nutrition Centres Company

GNC Government Services, LLC

GNC Headquarters LLC

Gustine Sixth Avenue Associates, Ltd.

GNC China Holdco LLC

GNC Puerto Rico Holdings, Inc.

GNC Puerto Rico, LLC

EXHIBIT A-2  
TO  
NEW REVOLVER BASKET AND EXIT FILO FACILITY TERM SHEET

Non-Guarantor Entities

Nutra Insurance Company

GNC Korea Limited

GNC Hong Kong Limited

GNC (Shanghai) Trading Co., Ltd.

GNC China JV Holdco Limited

GNC (Shanghai) Food Technology Limited

GNC South Africa (Pty) Ltd.

GNC Jersey One Limited

GNC Jersey Two Unlimited

THSD

GNC Live Well Ireland

GNC Colombia SAS

GNC Newco Parent, LLC

Nutra Manufacturing, LLC

GNC Supply Purchaser, LLC

GNC Intermediate IP Holdings, LLC

GNC Intellectual Property Holdings, LLC

EXHIBIT B  
TO  
NEW REVOLVER BASKET AND EXIT FILO FACILITY TERM SHEET

Exit Term Loan Facility Term Sheet

[See attached].

**Exhibit D**

**Form of Joinder Agreement**

The undersigned hereby acknowledges that it has reviewed and understands the Restructuring Support Agreement (as amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the “**Agreement**”) dated as of [\_\_\_\_], 2020 by and among (i) GNC Holdings, Inc. (“**GNC**”), GNC Parent LLC, GNC Corporation, General Nutrition Centers, Inc., General Nutrition Corporation, General Nutrition Investment Company, Lucky Oldco Corporation, GNC Funding Inc., GNC International Holdings Inc., GNC Headquarters LLC, Gustine Sixth Avenue Associates, Ltd., General Nutrition Centres Company, GNC Government Services, LLC, GNC Canada Holdings, Inc., GNC Puerto Rico Holdings, Inc., GNC Puerto Rico, LLC, and GNC China Holdco, LLC (each, together with GNC, a “**Company Entity**,” and collectively, and together with GNC, the “**Company**”), and (ii) the Consenting Creditors, and agrees to be bound as a Consenting Creditor by the terms and conditions thereof binding on the Consenting Creditors with respect to all Claims and Interests held by the undersigned.<sup>1</sup>

The undersigned hereby makes the representations and warranties of the Consenting Creditors set forth in the Agreement to each other Party, effective as of the date hereof.

This joinder agreement shall be governed by the governing law set forth in the Agreement.

Date: \_\_\_\_\_

**[CONSENTING CREDITOR]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Claims under the [\_\_\_\_\_]: \$ \_\_\_\_\_

Other Claims: \$ \_\_\_\_\_

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<sup>1</sup> Defined terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

**EXHIBIT C**

**Sale Transaction Term Sheet**



**THIS TERM SHEET AND THE INFORMATION CONTAINED HEREIN ARE STRICTLY PRIVATE AND CONFIDENTIAL AND ARE NOT TO BE DISCLOSED OR RELIED UPON IN ANY MANNER WHATSOEVER WITHOUT THE PRIOR WRITTEN CONSENT<sup>1</sup> OF HARBIN PHARMACEUTICAL GROUP HOLDING CO., LTD. (“HAYAO”). THIS TERM SHEET IS FOR DISCUSSION AND SETTLEMENT PURPOSES AND IS SUBJECT TO THE PROVISIONS AND PROTECTIONS OF RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND OTHER SIMILAR APPLICABLE STATUTES OR DOCTRINES PROTECTING AGAINST THE DISCLOSURE OF CONFIDENTIAL INFORMATION AND INFORMATION EXCHANGED IN THE CONTEXT OF SETTLEMENT DISCUSSIONS (IN EACH CASE, WHETHER LEGAL, EQUITABLE, OR OTHERWISE AND WHETHER FEDERAL, STATE, OR OTHERWISE). NOTHING IN THIS TERM SHEET IS (NOR SHALL IT BE CONSTRUED AS) AN ADMISSION OF FACT OR LIABILITY, A STIPULATION OR A WAIVER, OR BINDING ON HAYAO. EACH STATEMENT CONTAINED HEREIN IS MADE WITHOUT PREJUDICE, WITH A FULL RESERVATION OF ALL RIGHTS, REMEDIES, CLAIMS AND DEFENSES. THIS TERM SHEET IS NOT (NOR SHALL IT BE CONSTRUED AS) (I) AN OFFER OR A SOLICITATION OF AN OFFER WITH RESPECT TO ANY SECURITY, OPTION, COMMODITY, FUTURE, LOAN OR CURRENCY, (II) A COMMITMENT TO UNDERWRITE ANY SECURITY, TO LOAN ANY FUNDS OR TO MAKE ANY INVESTMENT, OR (III) A SOLICITATION OF ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN OF REORGANIZATION PURSUANT TO THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL BE MADE ONLY IN COMPLIANCE WITH ALL APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, SECURITIES LAWS AND PROVISIONS OF THE BANKRUPTCY CODE). THIS TERM SHEET AND THE TRANSACTIONS DESCRIBED HEREIN ARE SUBJECT IN ALL RESPECTS TO, AMONG OTHER THINGS, NEGOTIATION, EXECUTION AND DELIVERY OF DEFINITIVE DOCUMENTATION AND SATISFACTION OR WAIVER OF THE CONDITIONS PRECEDENT SET FORTH HEREIN AND THEREIN.<sup>2</sup>**

### **Term Sheet**

This term sheet (the “*Term Sheet*”) sets forth the principal terms of a transaction in which Hayao, or its designee (the “*Purchaser*”), shall purchase all or substantially all of the assets (the “*Sale*”) of GNC Holdings Inc. (“*Holdings*”) and its subsidiaries (collectively, the “*Company*”) in connection with the restructuring (the “*Restructuring*”) of the Company’s existing debt obligations. To facilitate the Restructuring, Hayao is also prepared (subject to all of the terms, conditions, and caveats described herein) to fund the chapter 11 cases necessary for the Company to implement the Sale. To the extent possible, this Term Sheet is intended to be appended to and incorporated as an exhibit to a restructuring support agreement (the “*RSA*”), to be executed by and among the Company, Hayao, and certain supporting lenders (the “*Consenting Lenders*”). Each element of this Term Sheet is being contemplated as (i) an integral part of a comprehensive transaction and (ii) in consideration for the other elements thereof.

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<sup>1</sup> Any consent required or authorized to be given hereunder in writing may be given by an electronic writing.

<sup>2</sup> Without limiting the generality of the foregoing, this Term Sheet is not, and shall not be construed as: (i) an offer that is capable of acceptance, (ii) a binding agreement of any kind, (iii) a commitment of, or offer by to enter into any agreement, or (iv) an agreement or commitment (a) to commence any restructuring, reorganization, liquidation, or other proceeding, (b) file any restructuring, reorganization, liquidation or other plan, (c) enter into any transaction, or (d) vote for or otherwise support any restructuring, reorganization, liquidation, or other plan. This Term Sheet is not intended to provide the sole basis for any decision on any transaction and is not a recommendation with respect to any transaction. The recipient should make its own independent business decision based on all other information, advice and the recipient’s own judgment.

## ARTICLE I – SALE AND IMPLEMENTATION

<p><b><i>Sale:</i></b></p>	<p>The Purchaser will purchase all or substantially all of the assets of the Company for \$760 million, which amount shall be inclusive of the full amount of:</p> <ul style="list-style-type: none"><li>a) the BOC Facility (as defined below in Article II);</li><li>b) the Second Lien Take-Back Instrument (as described below in Article III);</li><li>c) the DIP Financing (as defined below in Article IV); and</li><li>d) draw of a revolver up to \$75 million,</li></ul> <p>which amounts shall be subject to adjustment to take proper account of the agreed upon DIP budget (including an allowance for permitted variances).</p> <p>In addition, \$475 million to the FILO lenders and Term Loan B lenders in amounts to be agreed, and which amounts shall not be subject to reduction under any circumstances.</p>
<p><b><i>Conditions to Closing:</i></b></p>	<p>The occurrence of the closing of the Sale shall be subject to the satisfaction of the conditions precedent as set forth in the Definitive Documents. Such conditions precedent shall be usual and customary for transactions of this type, including (without limitation), that the Bankruptcy Court shall have entered an order approving the Sale or confirming a chapter 11 plan (whichever is more efficient and expeditious) and such order shall not have been stayed or modified or subject to an appeal.</p>
<p><b><i>Implementation:</i></b></p>	<p>The Sale shall be implemented pursuant to:</p> <ul style="list-style-type: none"><li>(a) a bid and auction process and approved under Section 363 of the Bankruptcy Code; or</li><li>(b) in connection with confirmation of a chapter 11 plan; <u>provided, however</u>, that for the avoidance of doubt the terms of the Sale shall be acceptable to Hayao in its sole discretion.</li></ul>
<p><b><i>Bid and Auction Process:</i></b></p>	<p>In the case of a bid and auction process, motion seeking approval of bidding procedures, authority to enter into the stalking horse asset purchase agreement, and approval of the stalking horse bid protections shall be filed on the petition date.</p> <p>The bidding procedures and stalking horse bid protections shall be in form and substance acceptable to Hayao, including the deadlines for qualified bids, the auction, and the hearing for approval of the Sale or confirmation of a chapter 11 plan.</p>

	The Purchaser shall be the stalking horse bidder and provided with customary bid protections including a break-up fee of 3% plus costs and advisors' fees.
<b>Requisite Approvals:</b>	To the extent NDRC, MOC or other PRC approvals are required, such approvals shall be obtained by closing of the Sale.

## ARTICLE II – BANK OF CHINA FACILITY

<b>BOC Facility:</b>	Hayao will provide the Company with a new committed financing amounting to an aggregate principal amount of \$400 million with Bank of China (“ <b>BOC</b> ”) that is guaranteed by Hayao (the “ <b>BOC Facility</b> ”). <sup>3</sup>  The terms of the BOC Facility shall be as set out in the term sheet and on such other terms as are acceptable to the Ad Hoc Group of Crossover Lenders.
<b>Requisite Approvals:</b>	Hayao and IVC will obtain all requisite approvals prior to closing. SAFE approvals for the BOC Facility should not be an issue since funding occurs upon the filing for SAFE. Hayao anticipates the filing for SAFE will occur prior to closing.

## ARTICLE III – SECOND LIEN TAKE-BACK INSTRUMENT<sup>4</sup>

<b>Second Lien Take-Back Instrument:</b>	In addition to the above, Hayao is prepared to offer a take-back instrument to be issued by the Company or a new company formed pursuant to a bid auction process, if applicable (the “ <b>Second Lien Take-Back Instrument</b> ”) to Term Loan B lenders in an aggregate principal amount not to exceed \$210 million. The Second Lien Take-Back Instrument will be on the terms set forth in this term sheet and such other terms acceptable to the Ad Hoc Group of Crossover Lenders.
<b>Issuer:</b>	The Company or a new company formed pursuant to a bid auction process (the “ <b>Issuer</b> ”).
<b>Amount:</b>	\$210 million.
<b>Interest Rate:</b>	The Second Lien Take-Back Instrument shall PIK at a rate of L+6% (the “ <b>PIK Interest Rate</b> ”).

<sup>3</sup> A portion of the proceeds of the BOC Facility shall be used for exit costs, including cure costs.

<sup>4</sup> All terms shall be subject to definitive documentation.

<p><b>Periodic Fee:</b></p>	<p>A cash fee (a “<b>Periodic Fee</b>”) equal to 3% per annum of the aggregate outstanding amount of Second Lien Take-Back Instrument paid in semi-annual installments (each, a “<u>Payment Date</u>”). The Company will have 180 days past any Payment Date to cure any default in the payment of a Periodic Fee (as described below under Events of Default). To the extent any Periodic Fee is not paid on the applicable Payment Date, such Periodic Fee shall accrue interest at L+6% per annum until such Periodic Fee (and such accrued interest) is paid in full in cash.</p>
<p><b>Maturity Date:</b></p>	<p>The Second Lien Take-Back Instrument shall have a term of 6 years.</p>
<p><b>Rating:</b></p>	<p>The Company shall obtain a private corporate credit rating (but not a specific rating) from either Standard &amp; Poor’s, a division of S&amp;P Global, Inc., or Moody’s Investors Service, Inc. in respect of the Second Lien Take-Back Instrument.</p>
<p><b>Priority:</b></p>	<p>The obligations under the Second Lien Take-Back Instrument shall be secured by a second lien on all of the Company’s assets and subordinated and rank junior to the BOC Facility and any revolver for operating costs and other expenses, which revolver shall be in an amount not to exceed \$175 million.</p> <p>Separately and to the fullest extent permitted by law, the Second Lien Take-Back Instrument shall be secured by a first lien on (a) the right to receive the tax refund for NOL carryback pursuant to the Cares Act and, to the extent received by the Company, the tax refund (and the accounts into which such tax refund is deposited) and (b) the Company’s intellectual property; <i>provided</i> that when \$75 million of proceeds from the Company’s intellectual property is paid in respect of the Second Lien Take-Back Instrument, the Second Lien Take-Back Instrument shall then be secured by a second lien on the remaining intellectual property collateral.</p>
<p><b>Contingent Rights on IVC Proceeds Refund:</b></p>	<p>To the extent proceeds are received by the Company from IVC under the product supply agreement or limited liability company agreement between the Company and IVC, such proceeds shall be paid on a pro rata basis to the BOC Facility and the Second Lien Take-Back Instrument (in proportion to outstanding balances on each of the BOC Facility and the Second Lien Take-Back Instrument), with total proceeds to the Second Lien Take-Back Instrument up to \$27 million, which proceeds paid to the holders of the Second Lien Take-Back Instrument shall reduce the Second Lien Take-Back Instrument dollar for dollar.</p>

<b><i>Contingent Rights on Tax Refund:</i></b>	In the event the Company receives a tax refund for NOL carrybacks pursuant to the CARES Act, the gross amount of such refund (without any holdback or other reduction) shall, to the fullest extent permitted by law, be promptly paid in cash to the holders of the Second Lien Take-Back Instrument and, upon such payment, the principal balance of the Second Lien Take-Back Instrument shall be reduced dollar for dollar.
<b><i>Optional Prepayments:</i></b>	No restrictions on optional prepayment.
<b><i>Mandatory Prepayment Requirements:</i></b>	The Company shall sweep 15% of its pro forma cash that is in excess of \$50 million to pay off and reduce the Second Lien Take-Back Instrument on a dollar for dollar basis; provided that such sweep shall only occur if after giving effect to such sweep (a) there is no event of default under BOC Facility; (b) the Company has a minimum cash balance of \$50 million; and (c) the Company has a net senior leverage of less than or equal to 2x.
<b><i>Prepayment/Make Whole Premium:</i></b>	None.
<b><i>Conditions Precedent:</i></b>	The Second Lien Take-Back Instrument would be issued upon satisfaction of conditions precedent acceptable to Hayao and the Company including: (i) the closing of the Sale or (ii) the occurrence of the effective date of a chapter 11 plan that consummates the Restructuring.
<b><i>Affirmative Covenants:</i></b>	Ordinary and customary, including but not limited to, quarterly and annual financial reporting and earnings calls for the holders of the Second Lien Take-Back Instrument. The Second Lien Take-Back Instrument would have no affirmative covenants more restrictive than BOC Facility, and (a) if the Company has a net senior leverage of less than or equal to 1.5x, the Company shall undertake to commence the refinancing process to refinance the entire capital structure of the Company with processes and milestones to be agreed in the definitive documents and (b) as may be agreed by Hayao and the Company, including information rights.
<b><i>Negative Covenants:</i></b>	Ordinary and customary negative covenants. The Second Lien Take-Back Instrument would have no negative covenants more restrictive than those set forth in the BOC Facility (subject to review of covenants in the BOC Facility), including without limitation a prohibition on debt that is senior or pari with the Second Lien Take-Back Instrument (other than the BOC Facility and the revolver set forth in this term sheet). The Company will not amend the BOC Facility or enter into any agreement that restricts the Company from performing its covenants under the Second Lien Take-Back Instrument.
<b><i>Restricted Payments:</i></b>	No dividends or other payments to shareholders on account

	of their equity in the Company until the Second-Lien Takeback Instrument is paid in full.
<b>Financial Covenants:</b>	None, including no leverage or other financial maintenance covenants.
<b>Guarantee or Share Pledge:</b>	Guarantees and liens from all Issuer subsidiaries.
<b>Subordination of Subrogation Rights:</b>	Any subrogation or similar rights that Hayao might otherwise acquire upon a repayment of the BOC Facility shall be subordinate to the Second Lien Take-Back Instrument and Hayao shall be stayed from seeking enforcement of any such rights, in each case unless and until the Second Lien Take-Back Instrument is repaid in full. Such arrangement shall be memorialized by a separate contractual agreement between the holders of the Second Lien Take-Back Instrument, the Purchaser and Hayao.
<b>Events of Default:</b>	Ordinary and customary, including but not limited to, non-payment at the maturity date, non-payment of Periodic Fee and other fees and interest, non-payment of required prepayments, and for commencing an insolvency proceeding, <i>provided</i> , that any failure to pay any Periodic Fee on the applicable Payment Date shall not constitute an Event of Default if paid in full (including all accrued interest on such Periodic Payment) within 180 days of such Payment Date.
<b>Governing Law and Submission to Exclusive Jurisdiction:</b>	State of New York
<b>Professional Fees:</b>	The Company shall pay the fees and expenses of Hayao’s advisors.
<b>Definitive Documentation:</b>	The documentation governing the Second Lien Take-Back Instrument and the BOC Facility, including credit agreement and security documents, shall be in form and substance acceptable to Hayao.

**ARTICLE IV– DIP FINANCING<sup>5</sup>**

<b>DIP Terms:</b>	Hayao, together with IVC, will provide will provide a senior secured superpriority debtor-in-possession delayed-draw term loan facility (the “ <i>DIP Facility</i> ”) in an aggregate principal amount not to exceed \$75 million with a six-month maturity that will be secured by (a) perfected priming security interests and liens on all unencumbered assets, (b) perfected junior security interest and liens as to the ABL and perfected priming security interests and liens as to the TLB
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<sup>5</sup> All terms shall be subject to definitive documentation.

	<p>with respect to the ABL Collateral, and (c) perfected junior security interest and liens on the TLB Collateral (the “<b>DIP Financing</b>”).<sup>6</sup></p> <p>Proceeds of the DIP Financing shall be used to fund the chapter 11 cases necessary to implement the Sale subject to a budget to be approved by the DIP Lender in its sole discretion.</p> <p>The documentation governing the DIP Financing, including credit agreement, security documents and order shall contain customary terms (including as to representations, covenants and events of default) and protections for the DIP Lender and shall be subject to approval in the DIP Lender’s sole discretion.</p> <p>The DIP Financing shall require and be conditioned on certain milestones (the “<b>DIP Milestones</b>”) for completing the Sale (as described herein) and other conditions, including (without limitations) stalking horse protections as required by the DIP Lender in its sole discretion. DIP Milestones shall include a sale timeline and other customary milestones.</p> <p>The Company shall pay the fees and expenses of the DIP Lender’s advisors.</p>
<b>Adequate Protection</b>	Existing Term Loans will be entitled to adequate protection payments; <i>provided</i> that such payments shall reduce the cash consideration paid to the Term Loan B Lenders under this term sheet on a dollar for dollar basis.
<b>DIP Claims:</b>	DIP claims shall be credit bid in connection with the Sale or become a part of the revolver, in each case, at IVC’s sole option.
<b>Requisite Approvals:</b>	Hayao and IVC will obtain all requisite approvals prior to funding of the DIP Financing.

**ARTICLE V– ADDITIONAL TERMS**

<b>Consummation of Restructuring:</b>	<p>Unless otherwise agreed by the Parties, post-petition financing shall be provided by the Term Loan B Lenders and the DIP Claims shall be paid in full in cash pursuant to a chapter 11 plan.</p> <p>To the extent possible, the Company, Hayao, the ABL Lenders, and the Term Loan B Lenders will execute a RSA with sufficient holdings to support the Sale (whether under Section 363 of the Bankruptcy Code or through a chapter 11 plan). The RSA shall include deadlines for court approval</p>
---------------------------------------	---

<sup>6</sup> Such DIP financing may be provided by or arranged by Hayao, its affiliates, or its designees (the “**DIP Lenders**”).

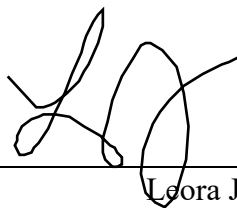
	<p>of the Sale, the closing of the Sale, and the confirmation and effective date of a chapter 11 plan.</p> <p>The Company, Hayao, and the Consenting Lenders agree that the Company shall commence the chapter 11 cases in the Bankruptcy Court for the District of Delaware.</p>
<b><i>Tax Related Issues:</i></b>	The Company and Hayao will work together in good faith and will use reasonable best efforts to structure and implement the Sale and Restructuring and the transactions related thereto in a tax efficient and cost efficient manner.
<b><i>Securities Laws Issues:</i></b>	The Company and Hayao will work together in good faith and will use reasonable best efforts to structure and implement the Sale and Restructuring and the transactions related thereto in a manner that complies with applicable securities laws and does not require registration thereunder.
<b><i>Sale Documentation:</i></b>	This Term Sheet does not include a description of all of the terms, conditions, and other provisions that will be contained in the definitive documentation governing the Sale and the Restructuring. The material documents implementing the Sale and the Restructuring shall be materially consistent with this Term Sheet and shall be in form and substance acceptable to Hayao (collectively, the “ <b><i>Definitive Documents</i></b> ”).
<b><i>Choice of Forum:</i></b>	The Company, Hayao, and the Consenting Lenders agree that the Bankruptcy Court shall have exclusive jurisdiction over all matters arising out of or in connection with the Sale, the issuance of the Second Lien Take-Back Instrument, and Restructuring.





TABT

THIS IS **EXHIBIT “T”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'L. Jackson', is positioned above a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits

Search ID #: Z12756130

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES  
LTD. (P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967  
Phone #: 780 483 8211  
Reference #: 02955142-105264

Search ID #: Z12756130

Date of Search: 2020-Jun-16

Time of Search: 07:35:06

**Business Debtor Search For:**

General Nutrition Centres Company

Exact Result(s) Only Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.  
Be sure to read the reports carefully.



Search ID #: Z12756130

**Business Debtor Search For:**

General Nutrition Centres Company

Search ID #: Z12756130

Date of Search: 2020-Jun-16

Time of Search: 07:35:06

---

Registration Number: 18022712456

Registration Type: SECURITY AGREEMENT

Registration Date: 2018-Feb-27

Registration Status: Current

Expiry Date: 2026-Feb-27 23:59:59

---

Exact Match on:

Debtor

No: 1

---

**Debtor(s)**

**Block**

**Status**

1 GENERAL NUTRITION CENTRES COMPANY  
300 SIXTH AVENUE  
PITTSBURGH, PA 15222

Current

**Secured Party / Parties**

**Block**

**Status**

1 JPMORGAN CHASE BANK, N.A., AS COLLATERAL AGENT  
10 S. DEARBORN ST, FLOOR L2, IL1-1145  
CHICAGO, IL 60603

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR

Current

Search ID #: Z12756130

**Business Debtor Search For:**

General Nutrition Centres Company

Search ID #: Z12756130

Date of Search: 2020-Jun-16

Time of Search: 07:35:06

---

Registration Number: 18022717395

Registration Type: SECURITY AGREEMENT

Registration Date: 2018-Feb-27

Registration Status: Current

Expiry Date: 2026-Feb-27 23:59:59

---

Exact Match on:

Debtor

No: 1

---

**Debtor(s)**

**Block**

**Status**

Current

1 GENERAL NUTRITION CENTRES COMPANY  
300 SIXTH AVENUE  
PITTSBURGH, PA 15222

**Secured Party / Parties**

**Block**

**Status**

Current

1 GLAS TRUST COMPANY LLC, AS COLLATERAL AGENT  
230 PARK AVENUE, 10TH FLOOR  
NEW YORK, NY 10169

**Collateral: General**

**Block**

**Description**

**Status**

1 ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR

Current

Result Complete

BC OnLine: PPRS SEARCH RESULT 2020/06/16  
Lterm: XPSP0050 For: PH43818 DYE AND DURHAM CORPORATION 06:35:17

Index: BUSINESS DEBTOR

List of matches:

Exact: GENERAL NUTRITION CENTRES COMPANY  
Exact: GENERAL NUTRITION CENTRES COMPANY  
Exact: GENERAL NUTRITION CENTRES COMPANY  
Exact: GENERAL NUTRITION CENTRES COMPANY

Page: 1

BC OnLine: PPRS SEARCH RESULT 2020/06/16  
Lterm: XPSP0050 For: PH43818 DYE AND DURHAM CORPORATION 06:35:17

Index: BUSINESS DEBTOR

Search Criteria: GENERAL NUTRITION CENTRES COMPANY

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: OCT 13, 2015 Reg. Length: 20 YEARS  
Reg. Time: 15:50:29 Expiry Date: OCT 13, 2035  
Base Reg. #: 895236I Control #: D3378506

Block#

S0001 Secured Party: HOOPP REALTY INC  
2020 - 505 BURRARD STREET  
VANCOUVER BC V7X 1M6

=D0001 Base Debtor: GENERAL NUTRITION CENTRES COMPANY  
(Business) 300 SIXTH AVENUE  
PITTSBURGH PA 15222

General Collateral:

ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.

.  
THE COMPLETE ADDRESS OF THE DEBTOR IS GENERAL NUTRITION CENTRES  
COMPANY C/O GENERAL NUTRITION CORPORATION, 300 SIXTH AVENUE,  
PITTSBURGH, PA 15222 USA.

Registering

Party: LAWSON LUNDELL LLP  
1600 925 WEST GEORGIA STREET  
VANCOUVER BC V6C 3L2

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: FEB 26, 2016 Reg. Length: 12 YEARS  
Reg. Time: 09:25:04 Expiry Date: FEB 26, 2028  
Base Reg. #: 134833J Control #: D3622991

Block#

S0001 Secured Party: SHAPE PROPERTIES (LOUGHEED) CORP  
2020 BURRARD STREET, STE 505  
VANCOUVER BC V7X 1M6

S0002 Secured Party: LTC EQUITIES INC

2020 Burrard Street, Ste 505  
Vancouver BC V7X 1M6

=D0001 Base Debtor: GENERAL NUTRITION CENTRES COMPANY  
(Business) 300 Sixth Avenue  
Pittsburgh, PA 15222

General Collateral:

ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.

THE COMPLETE ADDRESS OF THE DEBTOR IS: 300 SIXTH AVENUE, PITTSBURGH,  
PA, USA 15222, ATTENTION: REAL ESTATE COUNSEL (KK #4032)

Continued on Page 2

Search Criteria: GENERAL NUTRITION CENTRES COMPANY

Page: 2

Registering

Party: LAWSON LUNDELL LLP  
1600 925 West Georgia Street  
Vancouver BC V6C 3L2

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: FEB 27, 2018                      Reg. Length: 8 YEARS  
Reg. Time: 14:09:53                      Expiry Date: FEB 27, 2026  
Base Reg. #: 594128K                      Control #: D5110565

Block#

S0001 Secured Party: JPMORGAN CHASE BANK, N.A., AS  
COLLATERAL AGENT  
10 S Dearborn, FL L2, IL1-1145  
Chicago IL 60603

=D0001 Base Debtor: GENERAL NUTRITION CENTRES COMPANY  
(Business) 300 Sixth Avenue  
Pittsburgh PA 15222

General Collateral:

ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR  
AND ALL PROCEEDS THEREOF. PROCEEDS: ALL GOODS, INVESTMENT  
PROPERTY, INSTRUMENTS, DOCUMENTS OF TITLE, CHATTEL PAPER,  
INTANGIBLES OR MONEY NOW OR HEREAFTER FORMING PROCEEDS OF THE  
FOREGOING COLLATERAL. TERMS USED IN THIS GENERAL COLLATERAL  
DESCRIPTION WHICH ARE DEFINED IN THE PERSONAL PROPERTY SECURITY  
ACT (BRITISH COLUMBIA) SHALL HAVE THE MEANINGS SPECIFIED IN THE  
ACT, UNLESS THE CONTEXT OTHERWISE INDICATES.

Registering

Party: MLT AIKINS LLP  
1800-355 Burrard Street  
Vancouver BC V6C 2G8

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*





Sue Shaunessy  
(odi1ssha)



- Services
- Account Services
  - Account Statements
- Registration Services
  - Financing Statement
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  - Global Change
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## Business Debtor

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### Search by Business Debtor

Date: 2020-06-16  
Time: 8:36:22 AM  
Transaction Number: 10255431469

Business Name: General Nutrition Centres Company

**1 exact match was found.**  
**8 similar matches were found.**

#### EXACT MATCHES

Business Debtor Name	No. of Registrations
1. <a href="#">General Nutrition Centres Company</a>	2

### 1. General Nutrition Centres Company

1.1 General Nutrition Centres Company: Registration 201803364503 (2018-02-27 3:15:55 PM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2026-02-27
Debtor Address	300 Sixth Avenue Pittsburgh, PA USA 15222
Secured Parties (party code, name, address)	GLAS Trust Company LLC, as Collateral Agent 230 Park Avenue, 10th Floor New York, NY USA 10169
General Collateral Description	*The security interest is taken in all of the debtor's present and after-acquired personal property.

1.2 General Nutrition Centres Company: Registration 201803363604 (2018-02-27 3:11:55 PM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2026-02-27
Debtor Address	300 Sixth Avenue Pittsburgh, PA USA 15222
Secured Parties (party code, name, address)	JPMorgan Chase Bank, N.A., as Collateral Agent 10 S. Dearborn, Floor L2, IL1-1145 Chicago, IL USA 60603
General Collateral Description	*The security interest is taken in all of the debtor's present and after-acquired personal property.

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#### END OF EXACT MATCHES

#### Additional Options:

To view similar matches, please select the "Similar Matches" tab.  
To request Printed Search Results or Printed Registered Documents, please select the "Print Requests" tab.  
To start a new search, please select the "New Search" button:

New Search

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- Similar Matches
- Print Requests
- Mailing Information
- Payment

[Printer Friendly Version](#)

Privacy

Sue Shaunessy  
(odi1ssha)



## Business Debtor

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  - Business Debtor
    - Registration Number
    - Serial Number
    - Document Copies
- Other Services
  - Fees
  - Party Code
  - Registration History
  - Contact Us

**Search by Business Debtor: 8 similar matches were found.**

Business Debtor Name	No. of Registrations
<a href="#">1. GENERAL MACHINERY &amp; WELDING LTD</a>	4
<a href="#">2. GENERAL METAL FABRICATION LTD</a>	2
<a href="#">3. GENERAL METAL FABRICATION LTD.</a>	3
<a href="#">4. GENERAL MORTGAGE CO LTD</a>	1
<a href="#">5. GENERAL NUTRITION CENTRE LTD /CENTRE DE NUTRITION GENERALE LTEE</a>	1
<a href="#">6. GENERAL NUTRITION CENTRE LTD/CENTRE DE NUTRITION GENERALE LTEE</a>	1
<a href="#">7. General Metal Fabrication Ltd</a>	1
<a href="#">8. General Metal Fabrication Ltd.</a>	2

**1. GENERAL MACHINERY & WELDING LTD**  Include in Printed Search Results

**1.1 GENERAL MACHINERY & WELDING LTD: Registration 710506032102 (1971-05-06)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	Infinity
<b>Special Notices</b>	Corporate Security
<b>Debtor Address</b>	N/A N/A,
<b>Secured Parties (party code, name, address)</b>	MANITOBA DEVELOPMENT CORP N/A N/A,
<b>Additional Information</b>	<p>NOTES FROM PRIOR LAW: See microfilm record for Additional General Schedule of Collateral.</p> <p>CORPORATE SECURITY PARTICULARS: Amount: \$90000.00 Document Type: DEB Doc. Date: 700911</p> <p>See microfilm record for Corporate Security document.</p>

**1.2 GENERAL MACHINERY & WELDING LTD: Registration 690415027431 (1969-04-15)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	Infinity
<b>Special Notices</b>	Corporate Security
<b>Debtor Address</b>	N/A N/A,
<b>Secured Parties (party code, name, address)</b>	SEE ORIGINAL DOCUMENT N/A N/A,
<b>Additional Information</b>	<p>NOTES FROM PRIOR LAW: See microfilm record for Additional General Schedule of Collateral.</p> <p>CORPORATE SECURITY PARTICULARS: Amount: \$214400.00 Document Type: DEB Doc. Date: 690327</p> <p>See microfilm record for Corporate Security document.</p>

**1.3 GENERAL MACHINERY & WELDING LTD: Registration 640204015065 (1964-02-04)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	Infinity
<b>Special Notices</b>	Corporate Security
<b>Debtor Address</b>	N/A N/A,
<b>Secured Parties (party code, name, address)</b>	MANITOBA DEVELOPMENT FUND N/A N/A,
<b>Additional Information</b>	<p>NOTES FROM PRIOR LAW: See microfilm record for Additional General Schedule of Collateral.</p> <p>CORPORATE SECURITY PARTICULARS: Amount: \$35000.00 Document Type: DEB Doc. Date: 640109</p> <p>See microfilm record for Corporate Security document.</p>

**1.4 GENERAL MACHINERY & WELDING LTD: Registration 600601009703 (1960-06-01)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	Infinity
<b>Special Notices</b>	Corporate Security
<b>Debtor Address</b>	N/A N/A,
<b>Secured Parties (party code, name, address)</b>	MANITOBA DEVELOPMENT FUND N/A N/A,
<b>Additional Information</b>	<p>NOTES FROM PRIOR LAW: See microfilm record for Additional General Schedule of Collateral.</p> <p>CORPORATE SECURITY PARTICULARS: Amount: \$20000.00 Document Type: INDEN Doc. Date: 600601</p>

See microfilm record for Corporate Security document.

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**2. GENERAL METAL FABRICATION LTD**

Include in Printed Search Results

**2.1 GENERAL METAL FABRICATION LTD: Registration 201801193205 (2018-01-22 12:09:00 PM)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2021-01-22
<b>Debtor Address</b>	269-MANITOBA RD WINKLER, MB Canada R6W 4A9
<b>Secured Parties (party code, name, address)</b>	DELL FINANCIAL SERVICES CANADA LIMITED 155 GORDON BAKER RD, STE 501 NORTH YORK, ON Canada M2H 3N5
<b>General Collateral Description</b>	ALL DELL AND NON DELL COMPUTER EQUIPMENT AND PERIPHERALS WHEREVER LOCATED HERETOFORE OR HEREAFTER LEASED TO DEBTOR BY SECURED PARTY PURSUANT TO AN EQUIPMENT LEASE TOGETHER WITH ALL SUBSTITUTIONS, ADDITIONS, ACCESSIONS AND REPLACEMENTS THERETO AND THEREOF NOW AND HEREAFTER INSTALLED IN, AFFIXED TO, OR USED IN CONJUNCTION WITH SUCH EQUIPMENT AND PROCEEDS THEREOF TOGETHER WITH ALL RENTAL OR INSTALLMENT PAYMENTS, INSURANCE PROCEEDS, OTHER PROCEEDS AND PAYMENTS DUE OR TO BECOME DUE AND ARISING FROM OR RELATING TO SUCH EQUIPMENT. PROCEEDS:ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.

**2.2 GENERAL METAL FABRICATION LTD: Registration 981005100756 (1998-10-05 12:00:00 AM)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2021-10-05
<b>Debtor Address</b>	BOX 878 WINKLER, MANITOBA CANADA R6W4A9
<b>Secured Parties (party code, name, address)</b>	AC438 ACCESS CREDIT UNION LIMITED BOX 1060 WINKLER, MB Canada R6W 4B1
<b>General Collateral Description</b>	GENERAL ASSIGNMENT OF BOOK DEBTS AND ACCOUNTS
<b>Additional Information</b>	NOTES FROM PRIOR LAW: Collateral classification: Book Debts Proceeds claimed
<b>Change History</b>	Registration Number: 201614144314 (2016-07-28 11:04:24 AM) Sections Changed: Expiry Date Registration Number: 201116330712 (2011-09-27 2:20:54 PM) Sections Changed: Secured Parties, Expiry Date Registration Number: 200617469412 (2006-09-25 1:38:15 PM) Sections Changed: Secured Parties, Expiry Date Registration Number: 200129150415 (2001-09-20 12:48:44 PM) Sections Changed: General Collateral Description, Expiry Date

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**3. GENERAL METAL FABRICATION LTD.**

Include in Printed Search Results

**3.1 GENERAL METAL FABRICATION LTD.: Registration 201822449501 (2018-12-14 6:25:16 PM)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2023-12-14
<b>Debtor Address</b>	269 MANITOBA RD WINKLER, MB Canada R6W 4A9
<b>Secured Parties (party code, name, address)</b>	ROYAL BANK OF CANADA 36 YORK MILLS ROAD, 4TH FLOOR TORONTO, ON Canada M2P 0A4
<b>General Collateral Description</b>	*The security interest is taken in all of the debtor's present and after-acquired personal property.

**3.2 GENERAL METAL FABRICATION LTD.: Registration 201821411608 (2018-11-28 12:45:30 PM)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2031-11-28
<b>Debtor Address</b>	269 Manitoba Road P.O. Box 878 Winkler, Manitoba Canada R6W 4A9
<b>Secured Parties (party code, name, address)</b>	AB410 Business Development Bank of Canada 940 Princess Avenue Brandon, Manitoba Canada R7A 0P6
<b>General Collateral Description</b>	*The security interest is taken in all of the debtor's present and after-acquired personal property.

**3.3 GENERAL METAL FABRICATION LTD.: Registration 200123820605 (2001-07-10 2:14:17 PM)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2021-07-10

<b>Special Notices</b>	Purchase Money Security Interest
<b>Debtor Address</b>	BOX 878 WINKLER, MB Canada R6W 4A9
<b>Secured Parties (party code, name, address)</b>	AC914 ACCESS CREDIT UNION LIMITED BOX 1418 WINKLER, MB Canada R6W 4B4
<b>General Collateral Description</b>	<p>*The security interest is taken in all of the debtor's present and after-acquired personal property.</p> <p>2002 HAAS SL-30 CNC LATHE S/N 65224, 2003 ACCURPRESS MODEL 7606 BRAKE PRESS C/W STANDARD EQUIPMENT 575/3/60 ELECTRICS, PREMIUM 24' BACKGUAGE, R AXIS, T-SLOTS IN TABLE, PER PAIR (FRONT-BACK); MACHINE GROOVE IN BED 3/4' X 1', DH-3-3X6' LOWER DIE HOLDER, H.H.ROBERTS MILLING MACHINE MODEL 5-VF, 7.5 HP BACK GEARED, C/W STANDARD FEATURES IN CLUDING ANALAM WIZARD 1000 2 AXIS DRO (X-Y), HI-TORQUE POWER DRAW BAR, UPGRADED HANDLES, 3RD AXIS FOR WIZARD DRO, AUTOMATIC TIMED LUBRICANT SYSTEM IN LIEU OF ONE SHOT</p> <p>HAAS ST-10 CNC LATHE WITH ACCESSORIES SERIAL # 3089583 TIGERCUT 110 CNC BORING MILL WITH HEIDENHAIN ITNC 530 CONTROL MODEL HBM-4 SERIAL # 114001151</p> <p>HAAS ST-10 CNC LATHE S/N: 3089583 WITH ACCESSORIES TIGERCUT 110 CNC BORING MILL WITH HEIDENHAIN ITNC 530 CONTRO INCLUDING 60 ATC, COOLANT THROUGH SPINDAL 20 BAR, TABLE GUARD .001 DEG. TABLE POSITIONING, SPINDLE MOTOR 22/33 KW SPINDLE SUPPORT</p> <p>H. H. ROBERTS MILLING MACHINE S/N: 5-VF 7.5 HP BACK GEARED, C/W STANDARD FEATURES INCLUDING ANALAM WIZARD 1000 2 AXIS DRO (X-Y), HI-TORQUE POWER DRAW BAR, 3RD AXIS FOR WIZARD DRO AND AUTOMATIC TIMED LUBRICATION SYSTEM SOCO CNC TUBE BENDING MACHINE MODEL SB-51X4A-3SV S/N: 0705SB514CNC114 C/W STANDARD FEATURES, 2DIES</p> <p>ACCURPRESS ACCELL HYDRAULIC PRESS BRAKE MODEL 538514 SN 11677 HYD-MECH BANDSAW MODEL S-20P SN 7C0913603 HYD-MECH BANDSAW MODEL DM-10 SN WXA11131011</p>
<b>Serial Numbered Goods (serial number, category, year, description)</b>	<p>114001151 Motor Vehicle 2011 CNC BORING MILL TIGERCUT 110 MODEL HBM.4</p> <p>3089583 Motor Vehicle 2011 HAAS ST-10 CNC LATHE WITH ACCESSORIES</p> <p>11664 Motor Vehicle 2007 TOYOTA 5000 LB FORKLIFT</p> <p>0705SB514CNC114 Motor Vehicle 2005 SOCO CNC TUBE BENDING MACHINE MODEL SB-51X4A-3SV</p> <p>1FTPW14V29FA71266 Motor Vehicle 2009 FORD F150</p>
<b>Change History</b>	<p>Registration Number: 201610375117 (2016-06-03 12:51:35 PM) Sections Changed: Expiry Date</p> <p>Registration Number: 201520360617 (2015-10-23 8:19:05 AM) Sections Changed: General Collateral Description</p> <p>Registration Number: 201401762014 (2014-01-30 4:28:55 PM) Sections Changed: Secured Parties, General Collateral Description</p> <p>Registration Number: 201204032217 (2012-03-13 2:28:28 PM) Sections Changed: Secured Parties, Business Debtors, General Collateral Description</p> <p>Registration Number: 201119055712 (2011-11-10 12:41:19 PM) Sections Changed: General Collateral Description, Serial Numbered Goods</p> <p>Registration Number: 201110199614 (2011-06-20 3:10:28 PM) Sections Changed: Secured Parties, Expiry Date</p> <p>Registration Number: 200904802114 (2009-03-31 8:54:17 AM) Sections Changed: Serial Numbered Goods</p> <p>Registration Number: 200813699515 (2008-07-15 1:54:12 PM) Sections Changed: Secured Parties, General Collateral Description</p> <p>Registration Number: 200611095316 (2006-06-21 10:54:49 AM) Sections Changed: Expiry Date</p> <p>Registration Number: 200316627918 (2003-08-05 4:38:30 PM) Sections Changed: General Collateral Description</p> <p>Registration Number: 200216696211 (2002-08-02 2:39:16 PM) Sections Changed: Secured Parties, General Collateral Description</p>

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**4. GENERAL MORTGAGE CO LTD**

Include in Printed Search Results

**4.1 GENERAL MORTGAGE CO LTD: Registration 760316052350 (1976-03-16)**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	Infinity

<b>Special Notices</b>	Corporate Security
<b>Debtor Address</b>	N/A N/A,
<b>Secured Parties (party code, name, address)</b>	UNITY BANK OF CANADA N/A N/A,
<b>Additional Information</b>	NOTES FROM PRIOR LAW: See microfilm record for Additional General Schedule of Collateral.  CORPORATE SECURITY PARTICULARS: Amount: \$125000.00 Document Type: DEB Doc. Date: 760309  See microfilm record for Corporate Security document.

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**5. GENERAL NUTRITION CENTRE LTD /CENTRE DE NUTRITION GENERALE LTEE**  Include in Printed Search Results

<b>5.1 GENERAL NUTRITION CENTRE LTD /CENTRE DE NUTRITION GENERALE LTEE: Registration 861119104543 (1986-11-19)</b>	
<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	Infinity
<b>Special Notices</b>	Corporate Security
<b>Debtor Address</b>	4001 COTE VERTU ST. LAURENT, QUEBEC CANADA H4R1R5
<b>Secured Parties (party code, name, address)</b>	COMPAGNIE TRUST ROYAL 630 DORCHESTER WEST MONTREAL, QUEBEC CANADA H3B1S6
<b>Additional Information</b>	NOTES FROM PRIOR LAW:  CORPORATE SECURITY PARTICULARS: Amount: \$3600000.00 Document Type: DEED OF TRUST AND MORTGAGE Doc. Date: 861218  See microfilm record for Corporate Security document.
<b>Change History</b>	Registration Number: 861219106896 (1986-12-19) Sections Changed: Corporate Security amount, Corporate Security document type, Corporate Security document date  Registration Number: 861209110330 (1986-12-09) Sections Changed: Amendment transaction indicator, Corporate Security amount, Corporate Security document type, Corporate Security document date

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**6. GENERAL NUTRITION CENTRE LTD/CENTRE DE NUTRITION GENERALE LTEE**  Include in Printed Search Results

<b>6.1 GENERAL NUTRITION CENTRE LTD/CENTRE DE NUTRITION GENERALE LTEE: Registration 880321107591 (1988-03-21)</b>	
<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	Infinity
<b>Special Notices</b>	Corporate Security
<b>Debtor Address</b>	4001 COTEVERTU SAINT LAURENT MONTREAL, QUEBEC CANADA H4R1R5
<b>Secured Parties (party code, name, address)</b>	COMPAGNIE TRUST ROYAL 630 DORCHESTER BOULEVARD WEST MONTREAL, QUEBEC CANADA H3B1S6
<b>Additional Information</b>	NOTES FROM PRIOR LAW:  CORPORATE SECURITY PARTICULARS: Amount: \$9600000.00 Document Type: DEED OF TRUST AND MORTGAGE Doc. Date: 880225  See microfilm record for Corporate Security document.
<b>Change History</b>	Registration Number: 880624109597 (1988-06-24) Sections Changed: Amendment transaction indicator, Corporate Security amount, Corporate Security document type, Corporate Security document date

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**7. General Metal Fabrication Ltd**  Include in Printed Search Results

<b>7.1 General Metal Fabrication Ltd: Registration 201721932309 (2017-12-01 5:19:17 PM)</b>	
<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2024-12-01
<b>Debtor Address</b>	269 Manitoba RD WINKLER, MB Canada R6W4A9
<b>Secured Parties (party code, name, address)</b>	The Bank of Nova Scotia 4715 Tahoe Boulevard Mississauga, ON

	Canada L4W0B4
<b>General Collateral Description</b>	OUR SECURITY INTEREST IS LIMITED TO THE MOTOR VEHICLES LISTED ABOVE AND THE PROCEEDS OF THOSE VEHICLES
<b>Serial Numbered Goods (serial number, category, year, description)</b>	3GCUKREC3HG474289 Motor Vehicle 2017 Chevrolet Silverado 1500

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**8. General Metal Fabrication Ltd.**

Include in Printed Search Results

<b>8.1 General Metal Fabrication Ltd.: Registration 201721774606 (2017-11-30 10:14:53 AM)</b>	
<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2024-11-30
<b>Debtor Address</b>	269 MANITOBA RD WINKLER, MB Canada R6W4A9
<b>Secured Parties (party code, name, address)</b>	The Bank of Nova Scotia 4715 Tahoe Boulevard Mississauga, ON Canada L4W0B4
<b>General Collateral Description</b>	OUR SECURITY INTEREST IS LIMITED TO THE MOTOR VEHICLES LISTED ABOVE AND THE PROCEEDS OF THOSE VEHICLES
<b>Serial Numbered Goods (serial number, category, year, description)</b>	3GTU2MEC4HG519470 Motor Vehicle 2017 GMC Sierra 1500

<b>8.2 General Metal Fabrication Ltd.: Registration 201721774401 (2017-11-30 10:14:42 AM)</b>	
<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2024-11-30
<b>Debtor Address</b>	269 MANITOBA RDPO BOX 878 WINKLER, MB Canada R6W4A9
<b>Secured Parties (party code, name, address)</b>	The Bank of Nova Scotia 4715 Tahoe Boulevard Mississauga, ON Canada L4W0B4
<b>General Collateral Description</b>	OUR SECURITY INTEREST IS LIMITED TO THE MOTOR VEHICLES LISTED ABOVE AND THE PROCEEDS OF THOSE VEHICLES
<b>Serial Numbered Goods (serial number, category, year, description)</b>	3GCUKSEJ1HG481389 Motor Vehicle 2017 Chevrolet Silverado 1500

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<a href="#">Search Results</a>	<a href="#">Similar Matches</a>	<a href="#">Print Requests</a>	<a href="#">Mailing Information</a>	<a href="#">Payment</a>
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This report lists registrations in the Personal Property Registry that match the following search criteria:

**Province or Territory Searched:** New Brunswick  
**Type of Search:** Debtors (Enterprise)  
**Search Criteria:** General Nutrition Centres Company  
**Date and Time of Search (YYYY-MM-DD hh:mm):** 2020-06-16 10:37 (Atlantic)  
**Transaction Number:** 20025056  
**Searched By:** S185207

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
*	*	30227318	GENERAL NUTRITION CENTRES COMPANY	PITTSBURGH
*	*	30228027	GENERAL NUTRITION CENTRES COMPANY	PITTSBURGH

An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

#### Included Column Legend

- An asterisk (\*) in the 'Included' column indicates that the registration's details are included within the Search Result Report.

#### Registration Counts

- 2 registration(s) contained information that **exactly** matched the search criteria you specified.

- 0 registration(s) contained information that **closely** matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

### Registration Details for Registration Number: 30227318

**Province or Territory:** New Brunswick  
**Registration Type:** PPSA Financing Statement

#### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic) (YYYY-MM-DD hh:mm)	Expiry Date (YYYY-MM-DD)	File Number
Original	30227318	2018-02-27 12:30	2026-02-27	SM004579.527

This registration has **not** been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

#### Debtors

Type: Enterprise  
GENERAL NUTRITION CENTRES COMPANY

300 SIXTH AVENUE  
PITTSBURGH PA 15222  
USA

### **Secured Parties**

Type: Enterprise  
JPMORGAN CHASE BANK, N.A., AS COLLATERAL AGENT  
10 S. DEARBORN STREET  
FLOOR L2, IL1-1145  
CHICAGO IL 60603  
USA

### **General Collateral**

A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.

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### **Registration Details for Registration Number: 30228027**

Province or Territory: New Brunswick  
Registration Type: PPSA Financing Statement

### **Registration History**

Registration Activity	Registration Number	Date/Time (Atlantic) (YYYY-MM-DD hh:mm)	Expiry Date (YYYY-MM-DD)	File Number
Original	30228027	2018-02-27 13:04	2026-02-27	SM004579.527

This registration has **not** been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

### **Debtors**

Type: Enterprise  
GENERAL NUTRITION CENTRES COMPANY  
300 SIXTH AVENUE  
PITTSBURGH PA 15222  
USA

### **Secured Parties**

Type: Enterprise  
GLAS TRUST COMPANY LLC, AS COLLATERAL AGENT  
230 Park Avenue, 10th Floor  
New York NY 10169  
USA



**General Collateral**

A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.

***END OF REPORT***

This report lists registrations in the Personal Property Registry that match the following search criteria:

<b>Province or Territory Searched:</b>	Newfoundland and Labrador
<b>Type of Search:</b>	Debtors (Enterprise)
<b>Search Criteria:</b>	General Nutrition Centres Company
<b>Date and Time of Search (YYYY-MM-DD hh:mm):</b>	2020-06-16 10:38 (Atlantic)
<b>Transaction Number:</b>	20025058
<b>Searched By:</b>	S185207

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
*	*	15716285	GENERAL NUTRITION CENTRES COMPANY	PITTSBURGH
*	*	15716673	GENERAL NUTRITION CENTRES COMPANY	PITTSBURGH

An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

#### Included Column Legend

- An asterisk (\*) in the 'Included' column indicates that the registration's details are included within the Search Result Report.

#### Registration Counts

- 2 registration(s) contained information that **exactly** matched the search criteria you specified.

- 0 registration(s) contained information that **closely** matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

### Registration Details for Registration Number: 15716285

**Province or Territory:** Newfoundland and Labrador  
**Registration Type:** PPSA Financing Statement

#### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic) (YYYY-MM-DD hh:mm)	Expiry Date (YYYY-MM-DD)	File Number
Original	15716285	2018-02-27 12:30	2026-02-27	SM004579.527

This registration has **not** been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

#### Debtors

Type: Enterprise  
GENERAL NUTRITION CENTRES COMPANY

300 SIXTH AVENUE  
PITTSBURGH PA 15222  
USA

### **Secured Parties**

Type: Enterprise  
JPMORGAN CHASE BANK, N.A., AS COLLATERAL AGENT  
10 S. DEARBORN STREET  
FLOOR L2, IL1-1145  
CHICAGO IL 60603  
USA

### **General Collateral**

A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.

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### **Registration Details for Registration Number: 15716673**

Province or Territory: Newfoundland and Labrador  
Registration Type: PPSA Financing Statement

### **Registration History**

Registration Activity	Registration Number	Date/Time (Atlantic) (YYYY-MM-DD hh:mm)	Expiry Date (YYYY-MM-DD)	File Number
Original	15716673	2018-02-27 13:04	2026-02-27	SM004579.527

This registration has **not** been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

### **Debtors**

Type: Enterprise  
GENERAL NUTRITION CENTRES COMPANY  
300 SIXTH AVENUE  
PITTSBURGH PA 15222  
USA

### **Secured Parties**

Type: Enterprise  
GLAS TRUST COMPANY LLC, AS COLLATERAL AGENT  
230 Park Avenue, 10th Floor  
New York NY 10169  
USA

**General Collateral**

A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.

***END OF REPORT***

This report lists registrations in the Personal Property Registry that match the following search criteria:

<b>Province or Territory Searched:</b>	Nova Scotia
<b>Type of Search:</b>	Debtors (Enterprise)
<b>Search Criteria:</b>	General Nutrition Centres Company
<b>Date and Time of Search (YYYY-MM-DD hh:mm):</b>	2020-06-16 10:38 (Atlantic)
<b>Transaction Number:</b>	20025070
<b>Searched By:</b>	S185207

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
*	*	28966042	GENERAL NUTRITION CENTRES COMPANY	PITTSBURGH
*	*	28966927	GENERAL NUTRITION CENTRES COMPANY	PITTSBURGH

An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

#### Included Column Legend

- An asterisk (\*) in the 'Included' column indicates that the registration's details are included within the Search Result Report.

#### Registration Counts

- 2 registration(s) contained information that **exactly** matched the search criteria you specified.

- 0 registration(s) contained information that **closely** matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

### Registration Details for Registration Number: 28966042

**Province or Territory:** Nova Scotia  
**Registration Type:** PPSA Financing Statement

#### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic) (YYYY-MM-DD hh:mm)	Expiry Date (YYYY-MM-DD)	File Number
Original	28966042	2018-02-27 12:30	2026-02-27	SM004579.527

This registration has **not** been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

#### Debtors

Type: Enterprise  
GENERAL NUTRITION CENTRES COMPANY

300 SIXTH AVENUE  
PITTSBURGH PA 15222  
USA

### **Secured Parties**

Type: Enterprise  
JPMORGAN CHASE BANK, N.A., AS COLLATERAL AGENT  
10 S. DEARBORN STREET  
FLOOR L2, IL1-1145  
CHICAGO IL 60603  
USA

### **General Collateral**

A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.

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### **Registration Details for Registration Number: 28966927**

Province or Territory: Nova Scotia  
Registration Type: PPSA Financing Statement

### **Registration History**

Registration Activity	Registration Number	Date/Time (Atlantic) (YYYY-MM-DD hh:mm)	Expiry Date (YYYY-MM-DD)	File Number
Original	28966927	2018-02-27 13:05	2026-02-27	SM004579.527

This registration has **not** been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

### **Debtors**

Type: Enterprise  
GENERAL NUTRITION CENTRES COMPANY  
300 SIXTH AVENUE  
PITTSBURGH PA 15222  
USA

### **Secured Parties**

Type: Enterprise  
GLAS TRUST COMPANY LLC, AS COLLATERAL AGENT  
230 Park Avenue, 10th Floor  
New York NY 10169  
USA

**General Collateral**

A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.

***END OF REPORT***

**ServiceOntario**

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Enquiry Result

File Currency: 15JUN 2020



Show All Pages

**Note: All pages have been returned.**

Type of Search Business Debtor  
 Search Conducted On GENERAL NUTRITION CENTRES COMPANY  
 File Currency 15JUN 2020

File Number	Family	of Families	Page	of Pages	Expiry Date	Status
728779257	1	5	1	25	15JUN 2022	

**FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN**

File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period
728779257		001	4		20170615 1236 1532 5221	P PPSA	5

Individual Debtor	Date of Birth	First Given Name	Initial	Surname

Business Debtor	Business Debtor Name	Ontario Corporation Number
	GENERAL NUTRITION CENTERS, INC.	
	Address	City
	300 SIXTH AVENUE	PITTSBURGH
	Province	Postal Code
	PA	15222

Individual Debtor	Date of Birth	First Given Name	Initial	Surname

Business Debtor	Business Debtor Name	Ontario Corporation Number
	Address	City
	Province	Postal Code

Secured Party	Secured Party / Lien Claimant
	ARI FINANCIAL SERVICES INC.
	Address
	600-1270 CENTRAL PARKWAY WEST
	City
	MISSISSAUGA
	Province
	ON
	Postal Code
	L5C 4P4

Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
			X		X	X			

Motor Vehicle Description	Year	Make	Model	V.I.N.

General Collateral Description	General Collateral Description
	ALL PRESENT AND FUTURE MOTOR VEHICLES (INCLUDING WITHOUT LIMITATION, PASSENGER AUTOMOBILES, VANS, TRUCKS, TRUCK-TRACTORS, TRUCK-TRAILERS, TRUCK-CHASSIS AND TRUCK-BODIES), AUTOMOTIVE EQUIPMENT (INCLUDING,



<b>Registering Agent</b>	<b>Registering Agent</b>			
	CSRS			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	4126 NORLAND AVE	BURNABY	BC	V5G 3S8

CONTINUED

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY								
<b>File Currency</b>	15JUN 2020								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	728779257	1	5	2	25	15JUN 2022			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
728779257		002	4		20170615 1236 1532 5221				
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	WITHOUT LIMITATION, TRAILERS, BOXES AND REFRIGERATION UNITS),								
	MATERIALS-HANDLING EQUIPMENT AND OTHER GOODS (WHETHER SIMILAR OR								
	DISSIMILAR TO THE FOREGOING) LEASED FROM TIME TO TIME BY THE SECURED								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		

CONTINUED

<b>Type of Search</b>	Business Debtor							
	GENERAL NUTRITION CENTRES COMPANY							

<b>Search Conducted On</b>									
<b>File Currency</b>	15JUN 2020								
<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>			
728779257	1	5	3	25	15JUN 2022				
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
728779257		003	4		20170615 1236 1532 5221				
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>				
<b>Business Debtor</b>	<b>Business Debtor Name</b>				<b>Ontario Corporation Number</b>				
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>				
<b>Business Debtor</b>	<b>Business Debtor Name</b>				<b>Ontario Corporation Number</b>				
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>		<b>Model</b>		<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	PARTY TO THE DEBTOR, TOGETHER WITH, IN EACH CASE, ALL PRESENT AND FUTURE PARTS, ATTACHMENTS, ACCESSORIES AND ACCESSIONS ATTACHED THERETO OR INSTALLED THEREIN, AND ALL PROCEEDS OF OR RELATING TO ANY								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			

CONTINUED

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY								
<b>File Currency</b>	15JUN 2020								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	728779257	1	5	4	25	15JUN 2022			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		

728779257		004	4		20170615 1236 1532 5221		
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**Individual Debtor**      **Date of Birth**      **First Given Name**      **Initial**      **Surname**

**Business Debtor**      **Business Debtor Name**      **Ontario Corporation Number**  
**Address**      **City**      **Province**      **Postal Code**

**Individual Debtor**      **Date of Birth**      **First Given Name**      **Initial**      **Surname**

**Business Debtor**      **Business Debtor Name**      **Ontario Corporation Number**  
**Address**      **City**      **Province**      **Postal Code**

**Secured Party**      **Secured Party / Lien Claimant**  
**Address**      **City**      **Province**      **Postal Code**

**Collateral Classification**      **Consumer Goods**      **Inventory**      **Equipment**      **Accounts**      **Other**      **Motor Vehicle Included**      **Amount**      **Date of Maturity or**      **No Fixed Maturity Date**

**Motor Vehicle Description**      **Year**      **Make**      **Model**      **V.I.N.**

**General Collateral Description**      **General Collateral Description**  
 OF THE FOREGOING

<b>Registering Agent</b>				
<b>Registering Agent</b>				
<b>Address</b>				
<b>City</b>		<b>Province</b>		<b>Postal Code</b>

CONTINUED

<b>Type of Search</b>	Business Debtor						
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY						
<b>File Currency</b>	15JUN 2020						
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>		
	728779257	1	5	5	25		
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>							
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>	<b>Registered Under</b>	
		01	001		20181029 1445 1530 5379		
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>	<b>Correct Period</b>	
	728779257		X	A AMNDMNT			
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
	<b>Business Debtor Name</b>						

GENERAL NUTRITION CENTERS, INC.

Other Change

Other Change

Reason / Description

ADD DEBTOR  
GENERAL NUTRITION CENTRES COMPANY

Reason / Description

Debtor/ Transferee	Date of Birth	First Given Name	Initial	Surname
		Business Debtor Name		Ontario Corporation Number
		GENERAL NUTRITION CENTRES COMPANY		
		Address	City	Province Postal Code
		1959 UPPER WATER STREET, SUITE 800	HALIFAX	NS B3J 2X2

Assignor Name

Assignor Name

Secured Party

Secured party, lien claimant, assignee

Address	City	Province	Postal Code
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Collateral Classification

Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
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Motor Vehicle Description

Year	Make	Model	V.I.N.
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General Collateral Description

General Collateral Description

Registering Agent

Registering Agent or Secured Party/ Lien Claimant

CANADIAN SECURITIES REGISTRATION SYSTEMS

Address		City	Province	Postal Code
4126 NORLAND AVENUE		BURNABY	BC	V5G 3S8

END OF FAMILY

Type of Search	Business Debtor						
Search Conducted On	GENERAL NUTRITION CENTRES COMPANY						
File Currency	15JUN 2020						
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status
	736752357	2	5	6	25	27FEB 2026	
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>							
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period
736752357		001	001		20180227 1100 1862 7173	P PPSA	8
Individual Debtor	Date of Birth	First Given Name		Initial	Surname		
Business Debtor	Business Debtor Name				Ontario Corporation Number		

GENERAL NUTRITION CENTRES COMPANY									
<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
300 SIXTH AVENUE					PITTSBURGH	PA	15222		
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
300 SIXTH AVENUE					PITTSBURGH	PA	15222		
<b>Secured Party</b>					<b>Secured Party / Lien Claimant</b>				
JPMORGAN CHASE BANK, N.A., AS COLLATERAL AGENT									
<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
10 SOUTH DEARBORN, FLOOR L2, IL1-1145					CHICAGO	IL	60603		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X	X			
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>					<b>General Collateral Description</b>				

<b>Registering Agent</b>	<b>Registering Agent</b>			
	TORYS LLP - K. MILNE			
<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>
79 WELLINGTON STREET WEST, SUITE 3000		TORONTO	ON	M5K 1N2

END OF FAMILY

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY								
<b>File Currency</b>	15JUN 2020								
<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>			
736764714	3	5	7	25	27FEB 2026				
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
736764714		001	001		20180227 1149 1862 7186	P PPSA	8		
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
GENERAL NUTRITION CENTRES COMPANY									
<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
300 SIXTH AVENUE					PITTSBURGH	PA	15222		
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			

	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>				
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	GLAS TRUST COMPANY LLC, AS COLLATERAL AGENT								
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>				
	230 PARK AVENUE, 10TH FLOOR		NEW YORK	NY	10169				
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X	X			
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>		<b>Model</b>		<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								

<b>Registering Agent</b>	<b>Registering Agent</b>				
	TORYS LLP - K. MILNE				
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	79 WELLINGTON STREET WEST, SUITE 3000		TORONTO	ON	M5K 1N2

END OF FAMILY

<b>Type of Search</b>	Business Debtor						
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY						
<b>File Currency</b>	15JUN 2020						
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>
	881776035	4	5	8	25	10MAY 2027	
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>							
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>
881776035		01	003		20020510 1914 1530 5564	P PPSA	5
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>	
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>	
	GENERAL NUTRITION CENTRES COMPANY						
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
	6299 AIRPORT RD, SUITE 201			MISSISSAUGA	ON	L4V 1N3	
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>	
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>	
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>						
	PHH VEHICLE MANAGEMENT SERVICES INC.						
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
	350 BURNHAMTHORPE ROAD WEST, SUITE 700			MISSISSAUGA	ON	L5B 3P9	

Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
			X		X	X			

Motor Vehicle Description	Year	Make	Model	V.I.N.

General Collateral Description	General Collateral Description
	ALL PRESENT AND FUTURE MOTOR VEHICLES (INCLUDING, WITHOUT LIMITATION, PASSENGER AUTOMOBILES, TRUCKS, TRUCK TRACTORS, TRUCK TRAILERS, TRUCK CHASSIS, OR TRUCK BODIES), AUTOMOTIVE EQUIPMENT

Registering Agent	Registering Agent			
	CANADIAN SECURITIES REGISTRATION SYSTEMS			
	Address	City	Province	Postal Code
	SUITE 180-13571 COMMERCE PARKWAY	RICHMOND	BC	V6V2L1

CONTINUED

Type of Search	Business Debtor						
Search Conducted On	GENERAL NUTRITION CENTRES COMPANY						
File Currency	15JUN 2020						
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status
	881776035	4	5	9	25	10MAY 2027	

**FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN**

File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period
881776035		02	003		20020510 1914 1530 5564		

Individual Debtor	Date of Birth	First Given Name	Initial	Surname
Business Debtor	Business Debtor Name			Ontario Corporation Number
	Address	City	Province	Postal Code

Individual Debtor	Date of Birth	First Given Name	Initial	Surname
Business Debtor	Business Debtor Name			Ontario Corporation Number
	Address	City	Province	Postal Code

Secured Party	Secured Party / Lien Claimant			
	Address	City	Province	Postal Code

Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date

Motor Vehicle Description	Year	Make	Model	V.I.N.

<b>General Collateral Description</b>	<b>General Collateral Description</b>			
	(INCLUDING, WITHOUT LIMITATION, TRAILERS, BOXES AND REFRIGERATION UNITS), AND MATERIALS-HANDLING EQUIPMENT LEASED FROM TIME TO TIME BY THE SECURED PARTY TO THE DEBTOR, TOGETHER WITH ALL PRESENT AND			
<b>Registering Agent</b>	<b>Registering Agent</b>			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>

CONTINUED

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY								
<b>File Currency</b>	15JUN 2020								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	881776035	4	5	10	25	10MAY 2027			
	<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>								
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
881776035		03	003		20020510 1914 1530 5564				
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>				<b>Ontario Corporation Number</b>				
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>				<b>Ontario Corporation Number</b>				
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>		<b>Model</b>		<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	FUTURE ATTACHMENTS, ACCESSIONS, APPURTENANCES, ACCESSORIES AND REPLACEMENT PARTS, AND ALL PROCEEDS OF OR RELATING TO ANY OF THE FOREGOING.								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			



CONTINUED

<b>Type of Search</b>	Business Debtor									
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY									
<b>File Currency</b>	15JUN 2020									
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>			<b>of Pages</b>			
	881776035	4	5	11			25			
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>										
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>		<b>Registration Number</b>			<b>Registered Under</b>	
		01	002			20030721 1055 1529 5257				
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>			<b>Renewal Years</b>	<b>Correct Period</b>		
	881776035		X	A AMNDMNT						
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>			<b>Initial</b>		<b>Surname</b>				
	<b>Business Debtor Name</b>									
	GENERAL NUTRITION CENTRES COMPANY									
<b>Other Change</b>	<b>Other Change</b>									
<b>Reason / Description</b>	<b>Reason / Description</b>									
	AMEND SECURED PARTY TO READ									
	2233 ARGENTIA RD., SUITE 400									
	MISSISSAUGA, ON									
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>		<b>Surname</b>			
	<b>Business Debtor Name</b>								<b>Ontario Corporation Number</b>	
	<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>		
<b>Assignor Name</b>	<b>Assignor Name</b>									
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>									
	PHH VEHICLE MANAGEMENT SERVICES INC.									
	<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>		
	2233 ARGENTIA RD, SUITE 400				MISSISSAUGA		ON	L5N 2X7		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>	
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>			<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>									

Registering Agent	Registering Agent or Secured Party/ Lien Claimant			
	CANADIAN SECURITIES REGISTRATION SYSTEMS			
	Address	City	Province	Postal Code
	4126 NORLAND AVENUE	BURNABY	BC	V5G 3S8

CONTINUED

Type of Search	Business Debtor									
Search Conducted On	GENERAL NUTRITION CENTRES COMPANY									
File Currency	15JUN 2020									
	File Number	Family	of Families	Page	of Pages					
	881776035	4	5	12	25					
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>										
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number	Registered Under				
		02	002		20030721 1055 1529 5257					
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period				
	881776035									
Reference Debtor/ Transferor	First Given Name			Initial	Surname					
	Business Debtor Name									
Other Change	Other Change									
Reason / Description	Reason / Description									
	L5N 2X7									
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname				
	Business Debtor Name						Ontario Corporation Number			
	Address				City	Province	Postal Code			
Assignor Name	Assignor Name									
Secured Party	Secured party, lien claimant, assignee									
	Address				City	Province	Postal Code			
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	
Motor Vehicle Description	Year	Make			Model			V.I.N.		
General Collateral Description	General Collateral Description									

Registering Agent		Registering Agent or Secured Party/ Lien Claimant			
Address		City	Province	Postal Code	

CONTINUED

**Type of Search** Business Debtor  
**Search Conducted On** GENERAL NUTRITION CENTRES COMPANY  
**File Currency** 15JUN 2020

File Number	Family	of Families	Page	of Pages
881776035	4	5	13	25

**FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT**

Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number	Registered Under
	01	001		20060817 1941 1531 1447	

Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period
	881776035		X	A AMNDMNT		

Reference Debtor/ Transferor	First Given Name	Initial	Surname
	Business Debtor Name GENERAL NUTRITION CENTRES COMPANY		

**Other Change** Other Change

Reason / Description	Reason / Description
	TO UPDATE SERIAL NUMBER COLLATERAL DESCRIPTION. ADDED 2

Debtor/ Transferee	Date of Birth	First Given Name	Initial	Surname
	Business Debtor Name			
		Address	City	Province Postal Code

**Assignor Name** Assignor Name

Secured Party	Address	City	Province	Postal Code
	Secured party, lien claimant, assignee			

Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date

Motor Vehicle Description	Year	Make	Model	V.I.N.
	2004	JEEP	LIBERTY	1J4GL48K04W312741
	2006	JEEP	LIBERTY	1J4GL48K06W186237

<b>General Collateral Description</b>		<b>General Collateral Description</b>		
<b>Registering Agent</b>		<b>Registering Agent or Secured Party/ Lien Claimant</b>		
CANADIAN SECURITIES REGISTRATION SYSTEMS				
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	4126 NORLAND AVENUE	BURNABY	BC	V5G 3S8

CONTINUED

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY								
<b>File Currency</b>	15JUN 2020								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>				
	881776035	4	5	14	25				
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>		<b>Registered Under</b>		
		01	001		20070416 1048 1529 2939				
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>		<b>Renewal Years</b>	<b>Correct Period</b>		
	881776035		X	A AMNDMNT					
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>				
	<b>Business Debtor Name</b>								
	GENERAL NUTRITION CENTRES COMPANY								
<b>Other Change</b>	<b>Other Change</b>								
<b>Reason / Description</b>	<b>Reason / Description</b>								
	TO UPDATE SERIAL NUMBER COLLATERAL DESCRIPTION.								
	ADDED 1								
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Assignor Name</b>	<b>Assignor Name</b>								
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>

<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>V.I.N.</b>
	2007	JEEP	LIBERTY	1J4GL48K07W590303

**General Collateral Description**

**General Collateral Description**

**Registering Agent**

**Registering Agent or Secured Party/ Lien Claimant**

CANADIAN SECURITIES REGISTRATION SYSTEMS

<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
4126 NORLAND AVENUE	BURNABY	BC	V5G 3S8

CONTINUED

<b>Type of Search</b>	Business Debtor					
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY					
<b>File Currency</b>	15JUN 2020					
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	
	881776035	4	5	15	25	
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>						
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>	<b>Registered Under</b>
		01	001		20070417 1457 1530 6028	
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>	<b>Correct Period</b>
	881776035		X	B RENEWAL	5	
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>		
	<b>Business Debtor Name</b>					
	GENERAL NUTRITION CENTRES COMPANY					
<b>Other Change</b>	<b>Other Change</b>					
<b>Reason / Description</b>	<b>Reason / Description</b>					
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>	
	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>
<b>Assignor Name</b>	<b>Assignor Name</b>					
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>					
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>
		<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Amount</b>

<b>Collateral Classification</b>	<b>Consumer Goods</b>				<b>Motor Vehicle Included</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
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**Motor Vehicle Description**      **Year**      **Make**      **Model**      **V.I.N.**

**General Collateral Description**      **General Collateral Description**

**Registering Agent**      **Registering Agent or Secured Party/ Lien Claimant**

CANADIAN SECURITIES REGISTRATION SYSTEMS				
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	4126 NORLAND AVENUE	BURNABY	BC	V5G 3S8

CONTINUED

**Type of Search** Business Debtor  
**Search Conducted On** GENERAL NUTRITION CENTRES COMPANY  
**File Currency** 15JUN 2020

File Number	Family	of Families	Page	of Pages
881776035	4	5	16	25

**FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT**

Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number	Registered Under
	01	001		20071102 1047 1529 1206	

Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period
	881776035		X	A AMNDMNT		

**Reference Debtor/ Transferor**      **First Given Name**      **Initial**      **Surname**

**Business Debtor Name**  
 GENERAL NUTRITION CENTRES COMPANY

**Other Change**      **Other Change**

**Reason / Description**      **Reason / Description**  
 ADDING 2 NEW SERIAL COLLATERAL

**Debtor/ Transferee**      **Date of Birth**      **First Given Name**      **Initial**      **Surname**

**Business Debtor Name**      **Ontario Corporation Number**

**Address**      **City**      **Province**      **Postal Code**

**Assignor Name**      **Assignor Name**

**Secured Party**      **Secured party, lien claimant, assignee**

		Address			City	Province	Postal Code		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
	2006	JEEP			LIBERTY		1J4GL48K06W186237		
	2007	JEEP			LIBERTY		1J4GL48K07W590303		

General Collateral Description	General Collateral Description

Registering Agent	Registering Agent or Secured Party/ Lien Claimant				
	CANADIAN SECURITIES REGISTRATION SYSTEMS				
	Address		City	Province	Postal Code
	4126 NORLAND AVENUE		BURNABY	BC	V5G 3S8

CONTINUED

<b>Type of Search</b>	Business Debtor					
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY					
<b>File Currency</b>	15JUN 2020					
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	
	881776035	4	5	17	25	
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>						
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>	<b>Registered Under</b>
		01	003		20100604 1052 1529 0395	
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>	<b>Correct Period</b>
	881776035		X	F PRT DSC		
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>		
	<b>Business Debtor Name</b>					
	GENERAL NUTRITION CENTRES COMPANY					
<b>Other Change</b>	<b>Other Change</b>					
<b>Reason / Description</b>	<b>Reason / Description</b>					
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>	
	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>
<b>Assignor Name</b>	<b>Assignor Name</b>					

<b>Secured Party</b>		<b>Secured party, lien claimant, assignee</b>							
		<b>Address</b>			<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>		<b>Model</b>		<b>V.I.N.</b>			
	2004	JEEP		LIBERTY		1J4GL48K04W312741			
	2006	JEEP		LIBERTY		1J4GL48K06W186237			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>		<b>Registering Agent or Secured Party/ Lien Claimant</b>							
		CANADIAN SECURITIES REGISTRATION SYSTEMS							
		<b>Address</b>			<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
		4126 NORLAND AVENUE			BURNABY		BC	V5G 3S8	

CONTINUED

**Type of Search** Business Debtor  
**Search Conducted On** GENERAL NUTRITION CENTRES COMPANY  
**File Currency** 15JUN 2020

File Number	Family	of Families	Page	of Pages
881776035	4	5	18	25

**FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT**

Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number	Registered Under
	02	003		20100604 1052 1529 0395	

Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period
	881776035					

<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>		<b>Initial</b>		<b>Surname</b>		
	<b>Business Debtor Name</b>						
<b>Other Change</b>	<b>Other Change</b>						
<b>Reason / Description</b>	<b>Reason / Description</b>						
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>		<b>Surname</b>	
		<b>Business Debtor Name</b>				<b>Ontario Corporation Number</b>	
		<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>



<b>Assignor Name</b>		<b>Assignor Name</b>							
<b>Secured Party</b>		<b>Secured party, lien claimant, assignee</b>							
		<b>Address</b>			<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
	2007	JEEP			LIBERTY		1J4GL48K07W590303		
	2006	JEEP			LIBERTY		1J4GL48K06W186237		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>		<b>Registering Agent or Secured Party/ Lien Claimant</b>							
		<b>Address</b>			<b>City</b>		<b>Province</b>	<b>Postal Code</b>	

CONTINUED

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY								
<b>File Currency</b>	15JUN 2020								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>		<b>of Pages</b>			
	881776035	4	5	19	25				
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>		<b>Registered Under</b>		
		03	003		20100604 1052 1529 0395				
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>		<b>Renewal Years</b>	<b>Correct Period</b>		
	881776035								
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>				
	<b>Business Debtor Name</b>								
<b>Other Change</b>	<b>Other Change</b>								
<b>Reason / Description</b>	<b>Reason / Description</b>								
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			

Business Debtor Name							Ontario Corporation Number		
Address				City		Province	Postal Code		
Assignor Name				Assignor Name					
Secured Party				Secured party, lien claimant, assignee					
Address				City		Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make		Model		V.I.N.			
	2007	JEEP		LIBERTY		1J4GL48K07W590303			
General Collateral Description				General Collateral Description					
Registering Agent				Registering Agent or Secured Party/ Lien Claimant					
Address				City		Province	Postal Code		

CONTINUED

**Type of Search** Business Debtor  
**Search Conducted On** GENERAL NUTRITION CENTRES COMPANY  
**File Currency** 15JUN 2020

File Number	Family	of Families	Page	of Pages
881776035	4	5	20	25

**FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT**

Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number	Registered Under
	01	001		20120418 1949 1531 2448	

Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period
	881776035		X	B RENEWAL	5	

**Reference Debtor/ Transferor**

First Given Name	Initial	Surname
Business Debtor Name GENERAL NUTRITION CENTRES COMPANY		

**Other Change**

**Reason / Description**

Reason / Description

Debtor/ Transferee	Date of Birth	First Given Name	Initial	Surname					
Business Debtor Name				Ontario Corporation Number					
Address			City	Province Postal Code					
Assignor Name	Assignor Name								
Secured Party	Secured party, lien claimant, assignee								
Address			City	Province Postal Code					
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make	Model	V.I.N.					
General Collateral Description	General Collateral Description								

Registering Agent	Registering Agent or Secured Party/ Lien Claimant			
CANADIAN SECURITIES REGISTRATION SYSTEMS				
Address		City	Province	Postal Code
4126 NORLAND AVENUE		BURNABY	BC	V5G 3S8

CONTINUED

Type of Search	Business Debtor								
Search Conducted On	GENERAL NUTRITION CENTRES COMPANY								
File Currency	15JUN 2020								
	File Number	Family	of Families	Page	of Pages				
	881776035	4	5	21	25				
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number			Registered Under	
		01	003		20130521 1951 1531 2691				
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period			
	881776035		X	A AMNDMNT					
Reference Debtor/ Transferor	First Given Name			Initial	Surname				
	Business Debtor Name								
	GENERAL NUTRITION CENTRES COMPANY								
Other Change	Other Change								
	Reason / Description								

<b>Reason / Description</b>	TO UPDATE SERIAL NUMBER COLLATERAL DESCRIPTION.
-----------------------------	---

<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>
		<b>Business Debtor Name</b>		<b>Ontario Corporation Number</b>
		<b>Address</b>	<b>City</b>	<b>Province Postal Code</b>

<b>Assignor Name</b>	<b>Assignor Name</b>
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>
	<b>Address City Province Postal Code</b>

<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>		<b>Make</b>				<b>Model</b>		<b>V.I.N.</b>
	2012	JEEP				LIBERTY			1C4PJMAK4CW208466
	2012	JEEP				LIBERTY			1C4PJMAK6CW208467

<b>General Collateral Description</b>	<b>General Collateral Description</b>
---------------------------------------	---------------------------------------

<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>			
	CANADIAN SECURITIES REGISTRATION SYSTEMS			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	4126 NORLAND AVENUE	BURNABY	BC	V5G 3S8

CONTINUED

<b>Type of Search</b>	Business Debtor					
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY					
<b>File Currency</b>	15JUN 2020					
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	
	881776035	4	5	22	25	
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>						
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>	<b>Registered Under</b>
		02	003		20130521 1951 1531 2691	
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>	<b>Correct Period</b>
	881776035					
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>		
	<b>Business Debtor Name</b>					
<b>Other Change</b>	<b>Other Change</b>					

<b>Reason / Description</b>	<b>Reason / Description</b>								
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
		<b>Business Debtor Name</b>				<b>Ontario Corporation Number</b>			
		<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Assignor Name</b>	<b>Assignor Name</b>								
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>								
		<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
	2011	JEEP			LIBERTY		1J4PN2GK6BW545987		
	2011	JEEP			LIBERTY		1J4PN2GK8BW545988		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>								
	<b>Address</b>			<b>City</b>	<b>Province</b>	<b>Postal Code</b>			

CONTINUED

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY								
<b>File Currency</b>	15JUN 2020								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>		<b>of Pages</b>			
	881776035	4	5	23		25			
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>		<b>Registered Under</b>		
		03	003		20130521 1951 1531 2691				
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>		<b>Renewal Years</b>	<b>Correct Period</b>		
	881776035								
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>				
	<b>Business Debtor Name</b>								

<b>Other Change</b>		<b>Other Change</b>							
<b>Reason / Description</b>		<b>Reason / Description</b>							
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>		<b>Surname</b>		
		<b>Business Debtor Name</b>				<b>Ontario Corporation Number</b>			
		<b>Address</b>			<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
<b>Assignor Name</b>		<b>Assignor Name</b>							
<b>Secured Party</b>		<b>Secured party, lien claimant, assignee</b>							
		<b>Address</b>			<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
	2011	JEEP			LIBERTY		1J4PN2GK8BW548938		
	2010	DODGE					3D4PH6FV7AT157819		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>								
	<b>Address</b>			<b>City</b>		<b>Province</b>	<b>Postal Code</b>		

CONTINUED

<b>Type of Search</b>	Business Debtor					
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY					
<b>File Currency</b>	15JUN 2020					
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	
	881776035	4	5	24	25	
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>						
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>	<b>Registered Under</b>
		01	001		20170428 1004 1462 4393	
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>	<b>Correct Period</b>
	881776035			B RENEWAL	10	

<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>						
	<b>Business Debtor Name</b>								
	GENERAL NUTRITION CENTRES COMPANY								
<b>Other Change</b>	<b>Other Change</b>								
<b>Reason / Description</b>	<b>Reason / Description</b>								
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>					
		<b>Business Debtor Name</b>			<b>Ontario Corporation Number</b>				
		<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>				
<b>Assignor Name</b>	<b>Assignor Name</b>								
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>								
		<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>				
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>		<b>Model</b>		<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>								
	ELEMENT FLEET MANAGEMENT INC.								
	<b>Address</b>			<b>City</b>		<b>Province</b>	<b>Postal Code</b>		
	940 RIDGEBROOK ROAD			SPARKS		MD	21152		

END OF FAMILY

<b>Type of Search</b>	Business Debtor				
<b>Search Conducted On</b>	GENERAL NUTRITION CENTRES COMPANY				
<b>File Currency</b>	15JUN 2020				
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>
	900818559	5	5	25	25
<b>DISPLAY CSRA REGISTRATION</b>					
THIS REGISTRATION WAS MADE UNDER THE CORPORATION SECURITIES REGISTRATION ACT (R.S.O.1980, C.94) OR A PREDECESSOR THEREOF. A COPY OF THE INSTRUMENT IS AVAILABLE FOR INSPECTION IN THE OFFICES OF THE MINISTRY OF CONSUMER AND BUSINESS SERVICES LOCATED AT:					

375 UNIVERSITY AVENUE, 3RD FLOOR TORONTO, ONTARIO M7A 2H6 TEL. (416) 325-8810		
<b>File Number</b>	<b>CSRA Number</b>	<b>Status</b>
900818559	81855	
<b>Page Number</b>	<b>of Total Pages</b>	
001	001	
<b>Debtor Name</b>	<b>Business Name</b>	
	GENERAL NUTRITION CENTRE LTD.	
<b>Debtor Name</b>	<b>Business Name</b>	
	CENTRE DE NUTRITION GENERALE LTEE	

LAST PAGE

**Note: All pages have been returned.**

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Web Page ID: **WEnqResult**

System Date: **16JUN2020**

Last Modified: November 03, 2019

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This report lists registrations in the Personal Property Registry that match the following search criteria:

<b>Province or Territory Searched:</b>	Prince Edward Island
<b>Type of Search:</b>	Debtors (Enterprise)
<b>Search Criteria:</b>	General Nutrition Centres Company
<b>Date and Time of Search (YYYY-MM-DD hh:mm):</b>	2020-06-16 10:39 (Atlantic)
<b>Transaction Number:</b>	20025072
<b>Searched By:</b>	S185207

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
*	*	4458893	GENERAL NUTRITION CENTRES COMPANY	PITTSBURGH
*	*	4458973	GENERAL NUTRITION CENTRES COMPANY	PITTSBURGH

An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

#### Included Column Legend

- An asterisk (\*) in the 'Included' column indicates that the registration's details are included within the Search Result Report.

#### Registration Counts

- 2 registration(s) contained information that **exactly** matched the search criteria you specified.

- 0 registration(s) contained information that **closely** matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

### Registration Details for Registration Number: 4458893

**Province or Territory:** Prince Edward Island  
**Registration Type:** PPSA Financing Statement

#### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic) (YYYY-MM-DD hh:mm)	Expiry Date (YYYY-MM-DD)	File Number
Original	4458893	2018-02-27 12:30	2026-02-27	SM004579.527

This registration has **not** been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

#### Debtors

Type: Enterprise  
GENERAL NUTRITION CENTRES COMPANY

300 SIXTH AVENUE  
PITTSBURGH PA 15222  
USA

### **Secured Parties**

Type: Enterprise  
JPMORGAN CHASE BANK, N.A., AS COLLATERAL AGENT  
10 S. DEARBORN STREET  
FLOOR L2, IL1-1145  
CHICAGO IL 60603  
USA

### **General Collateral**

A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.

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### **Registration Details for Registration Number: 4458973**

Province or Territory: Prince Edward Island  
Registration Type: PPSA Financing Statement

### **Registration History**

Registration Activity	Registration Number	Date/Time (Atlantic) (YYYY-MM-DD hh:mm)	Expiry Date (YYYY-MM-DD)	File Number
Original	4458973	2018-02-27 13:05	2026-02-27	SM004579.527

This registration has **not** been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

### **Debtors**

Type: Enterprise  
GENERAL NUTRITION CENTRES COMPANY  
300 SIXTH AVENUE  
PITTSBURGH PA 15222  
USA

### **Secured Parties**

Type: Enterprise  
GLAS TRUST COMPANY LLC, AS COLLATERAL AGENT  
230 Park Avenue, 10th Floor  
New York NY 10169  
USA

**General Collateral**

A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.

***END OF REPORT***

Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

Résultats exacts (2)

Nom organisme GENERAL NUTRITION CENTRES CO	Code postal B3J2X2
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Nom organisme GENERAL NUTRITION CENTRES CO	Code postal L4V1N3
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Résultats similaires (23)

Nom organisme CAVENDISH SHOPPING CENTRE CO LTD	Code postal H4Z1H6
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Nom organisme GENERAL CABLE CO	Code postal B3J2X2
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Nom organisme GENERAL CABLE COMPANY LTD	Code postal
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Nom organisme GENERAL CABLE COMPANY LTD	Code postal B3J3N2
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Nom organisme GENERAL CABLE COMPANY LTD	Code postal G7S3G6
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Nom organisme GENERAL CABLE COMPANY LTD	Code postal G7S4L3
--	-----------------------

Nom organisme GENERAL CABLE COMPANY LTD	Code postal G9N6W3
--	-----------------------

Nom organisme GENERAL CABLE COMPANY LTD	Code postal J7Z5V9
--	-----------------------

Nom organisme GENERAL CABLE COMPANY LTD	Code postal L6T5M1
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Nom organisme GENERAL ELECTRIC CANADA CO	Code postal B3J3N2
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Nom organisme GENERAL ELECTRIC CANADA CO	Code postal G0C1H0
Nom organisme GENERAL ELECTRIC CANADA CO	Code postal H4T1T9
Nom organisme GENERAL ELECTRIC CANADA CO	Code postal L5N5P9
Nom organisme GENERAL ELECTRIC CO	Code postal J4Z0N5
Nom organisme GENERAL ELECTRIC CO	Code postal M5J2M2
Nom organisme GENERAL INSULATION COMPANY INC	Code postal H4T4L6
Nom organisme GENERAL INTERNATIONAL MFG CO LTD	Code postal H1P1Y3
Nom organisme GENERAL MFG CO LTD	Code postal J2B5A8
Nom organisme GENERAL NUTRITION CENTERS INC	Code postal
Nom organisme GENERALYS INC	Code postal G2C0M4
Nom organisme ORLEANS GENERAL INSURANCE CO	Code postal G2K2B4
Nom organisme THE SOVEREIGN GENERAL INSURANCE CO	Code postal H3A3H3
Nom organisme THE SOVEREIGN GENERAL INSURANCE CO	Code postal T2H0L3

Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

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INSCRIPTION	DATE-HEURE-MINUTE	DATE EXTRÊME D'EFFET
18-1196983-0001	2018-10-29 13:44	2028-10-29
DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR		

Il s'agit d'une inscription globale (art.2961.1 Code civil).

### PARTIES

#### Crédit-bailleur

ARI Financial Services Inc.  
600-1270 Central Parkway West, Mississauga, ON L5C 4P4

#### Crédit-preneur

GENERAL NUTRITION CENTERS, INC.  
300 SIXTH AVENUE, PITTSBURGH, PA 15222 USA

#### Crédit-preneur

GENERAL NUTRITION CENTRES COMPANY  
1959 UPPER WATER STREET, STE 800, HALIFAX, NS B3J 2X2

### BIENS

THE UNIVERSALITY OF ALL PRESENT AND FUTURE VEHICLES AND EQUIPMENT LEASED UNDER A MASTER LEASE BETWEEN ARI FINANCIAL SERVICES INC. AND GENERAL NUTRITION CENTERS, INC. DATED MAY 19, 2017, TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES, ACCESSIONS, REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS THERETO AND ALL PROCEEDS IN ANY FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY DEALING WITH ANY OF THE FOREGOING AND ALL RIGHTS TO ANY INSURANCE PAYMENTS OR ANY OTHER PAYMENTS THAT INDEMNIFES OR COMPENSATES FOR A LOST OR DAMAGE TO ANY OF THE FOREGOING OR OF THE PROCEEDS OF ANY OF THE FOREGOING. THIS IS A GLOBAL REGISTRATION (ARTICLE 2961.1 OF THE CIVIL CODE OF QUEBEC).

### MENTIONS

#### Référence à l'acte constitutif

Forme de l'acte : Sous seing privé  
Date : 2017-05-19  
Lieu : PENNSYLVANIA, USA AND MISSISSAUGA, ONTARIO

#### Autres mentions :

REF: (7V83 GENERAL NUTR / BCCS1F155638-1 / 10967275)

Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

---

INSCRIPTION	DATE-HEURE-MINUTE	DATE EXTRÊME D'EFFET
02-0132248-0001	2002-04-05 13:20	2012-04-05
DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR		

Il s'agit d'une inscription globale (art.2961.1 Code civil).

### PARTIES

#### Crédit-bailleur

PHH VEHICLE MANAGEMENT SERVICES INC.  
350 BURNHAMTHORPE RD WEST 700, Mississauga, ON L5B 3P9

#### Crédit-preneur

General Nutrition Centres Company  
6299 Airport Road, Suite 201, Mississauga, ON L4V 1N3

### BIENS

All present and future motor vehicles (including, without limitation, passenger automobiles, trucks, truck tractors, truck trailers, truck chassis, or truck bodies), automotive equipment (including, without limitation, trailers, boxes and refrigeration units), and materials-handling equipment leased from time to time by the Lessor to the Lessee, together with all present and future attachments, accessions, appurtenances, accessories and replacement parts, and all proceeds of or relating to any of the foregoing.

### MENTIONS

#### Référence à l'acte constitutif

Forme de l'acte : Sous seing privé

Date : 2002-04-04

Lieu : Mississauga, Ontario

#### Autres mentions :

REF: (4394 / ONQPH4F524-1 / 1590398)

This application was prepared in respect of the "PHH Operating Master Lease".

### REMARQUES

INSCRIPTION	DATE-HEURE-MINUTE
03-0465017-0009	2003-09-05 09:00
Modification d'un droit publié	
10-0047327-0001	2010-01-27 14:05
Assignment of rights	
10-0047624-0002	2010-01-28 09:00

Assignment of rights 10-0050072-0002	2010-01-28 12:34
Assignment of Rights 11-0279949-0002	2011-04-26 09:00
Assignment of Rights 12-0165111-0001	2012-03-08 13:00
RENOUVELLEMENT DE LA PUBLICITÉ D'UN DROIT 14-1194933-0002	2014-12-29 09:58
CESSION D'UN DROIT 14-1194939-0002	2014-12-29 10:04
CESSION D'UN DROIT	

#### AVIS D'ADRESSE

N° 009042

#### RECTIFICATIONS

Numéro de la demande : 19-R014824 DHM : 2019-04-02 15:30  
Entre le 28 novembre 2011 et le 29 mars 2019, la consultation par Internet de cette inscription a pu afficher une (1) heure de moins pour la date/heure/minute (DHM) de publicité ou une (1) journée de moins pour toute autre date y figurant, à l'exception des dates de naissance.  
Christine Lessard, officier adjoint





Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

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INSCRIPTION  
14-1194939-0002  
CESSION D'UN DROIT

DATE-HEURE-MINUTE  
2014-12-29 10:04

### PARTIES

#### Cédant

FLR LP INC.  
2233 Argentia Road, Suite 400, Room 1, Mississauga, L5N 2X7  
Ontario

#### Cessionnaire

ELEMENT FLEET LEASE RECEIVABLES L.P.  
2233 Argentia Road, Suite 400, Room 4, Mississauga, L5N 2X7  
Ontario  
Représenté par : FLR GP 1 Inc.  
En qualité de : General Partner

### BIENS

All of the rights, title and interest of the Cédant in and to the rights registered at the Register of Personal and Movable Real Rights under the registration numbers listed below and under the heading "Référence à l'inscription visée":

LEASE	VIN	MAKE/MODEL	RPMRR
042914929	NM0LS7J7XE1162096	Ford Transit Connect	00-0002166-0002
042914396	NM0LS7J78E1162095	Ford Transit Connect	00-0002166-0002
042914308	NM0LS7J76E1162094	Ford Transit Connect	00-0002166-0002
042914410	NM0LS7J74E1162093	Ford Transit Connect	00-0002166-0002
042914321	1FTSE3EL4EDA73368	Ford E-350 Super Duty	00-0002166-0002
042914108	1GCSHAF49E1178525	Chevrolet Express 1500	00-0002166-0002
042914054	NM0LS7J76E1161673	Ford Transit Connect	00-0002166-0002
042914403	NM0LS7J79E1161666	Ford Transit Connect	00-0002166-0002
042914432	NM0LS7J72E1161721	Ford Transit Connect	00-0002166-0002
042914051	NM0LS7J74E1162062	Ford Transit Connect	00-0002166-0002
042914304	NM0LS7J70E1162060	Ford Transit Connect	00-0002166-0002
042914049	NM0LS7J78E1158323	Ford Transit Connect	00-0002166-0002
051621504	1GT422C83FF513984	GMC Sierra 3500HD	99-0190825-0002
057914025	2C3CDXJG2EH125840	Dodge Charger	00-0015060-0001
409014108	1FTFW1ET3EFB19098	Ford F-150	99-0188586-0001
412814026	NM0LS7F71E1158513	Ford Transit Connect	12-0890137-0001
423631436	1GCSHAF42E1189351	Chevrolet Express 1500	01-0098943-0001
427024930	2GNFLCE35F6196482	Chevrolet Equinox	99-0205497-0001
433914014	2FMDK4JC7EBB18821	Ford Edge	00-0316970-0001
446715003	5N1AT2MT8FC759011	Nissan Rogue	00-0003236-0001
449014010	1FTFX1CT5EFB50062	Ford F-150	00-0011425-0001

451115006	2C4JRGAG9FR536720	RAM Cargo	00-0015201-0001
465315003	1FM5K7B99FGA98056	Ford Explorer	03-0667997-0001
465314024	2FMDK3G96EBB31503	Ford Edge	03-0667997-0001
466714163	NM0LS7F77E1161562	Ford Transit Connect	04-0249447-0001
467925458	2FMDK4JC0EBB31507	Ford Edge	04-0465067-0001
472715103	2C4RDGBGXR579608	Dodge Grand Caravan	99-0185504-0001
472715130	1FMCU9G90FUA33135	Ford Escape	99-0185504-0001
472715058	1FMCU9G98FUA29396	Ford Escape	99-0185504-0001
491915000	1FTFX1EF2EKF48912	Ford F-150	
491915002	1FA6P0H78F5108102	Ford Fusion	
496515004	1FMCU0GX1FUA33137	Ford Escape	06-0086161-0001
499901504	1FMCU9GX5FUA33145	Ford Escape	09-0623285-0001
500615001	5N1AT2MT3FC762737	Nissan Rogue	14-0862340-0001
505500053	3FA6P0T98DR129289	FORD FUSION	
505500046	2FMDK4JC7CBA31417	FORD EDGE	
801214014	3GTU2TEC4EG550109	GMC Sierra 1500	09-0760036-0001
804501727	1FDRF3G61FEB46805	Ford F-350 Chassis	10-0190403-0003
805115014	WDDGF8AB0EA961734	Mercedes-Benz C-Class	10-0498240-0001
805115013	5N1AL0MM4EC549873	Infiniti QX60	10-0498240-0001
805115011	WBA3C3G56ENS68968	BMW 320	10-0498240-0001
810514009	1FMCU9G97FUA29390	Ford Escape	11-0522662-0001
813015001	2GNFLGEK5F6170897	Chevrolet Equinox	11-0960498-0002
852814003	1FDUF5GY4FEA90527	Ford F-550 Chassis	06-0657150-0001
855414064	1FMCU9GX6EUD53802	Ford Escape	08-0172574-0001
855414003	1FMCU9GX2EUD19436	Ford Escape	08-0172574-0001
866415016	5N1AT2MM6FC761431	Nissan Rogue	00-0184770-0001
926714030	5TDJK3DCXES091397	Toyota Sienna	00-0188726-0003
042914050	NM0LS7J74E1162059	Ford Transit Connect	00-0002166-0002
042914101	1FTEX1EM5EKG14086	Ford F-150	00-0002166-0002
042914184	1GCSHAF45E1173094	Chevrolet Express 1500	00-0002166-0002
042914404	NM0LS7J72E1162092	Ford Transit Connect	00-0002166-0002
042914404	NM0LS7J72E1162092	Ford Transit Connect	00-0002166-0002
042914505	NM0LS7J73E1168287	Ford Transit Connect	00-0002166-0002
044014025	5N1AR2MM0EC641833	Nissan Pathfinder	00-0169272-0001
045615008	1FMCU0F73FUA69719	Ford Escape	00-0000994-0001
045615018	1FMCU0F7XFUA69720	Ford Escape	00-0000994-0001
050015002	2FMDK4JCXE8B07845	Ford Edge	00-0087615-0001
057915002	2C4RDGBG0FR592898	Dodge Grand Caravan	00-0015060-0001
403114015	4T3ZA3BB6EU089547	Toyota Venza	00-0187500-0001
403115001	5N1AT2MV5FC752423	Nissan Rogue	00-0187500-0001
404815001	2C4RDGBG2FR544173	Dodge Grand Caravan	04-0098565-0001
407015006	5N1AT2MT9FC776951	Nissan Rogue	00-0050867-0001
409015009	1FM5K8D82FGB04063	Ford Explorer	99-0188586-0001
412814019	NM0LS7F76E1158488	Ford Transit Connect	12-0890137-0001
412814025	NM0LS7F76E1158507	Ford Transit Connect	12-0890137-0001
412814027	NM0LS7F7XE1158512	Ford Transit Connect	12-0890137-0001
412814028	NM0LS7F78E1158511	Ford Transit Connect	12-0890137-0001
412814029	NM0LS7F76E1158510	Ford Transit Connect	12-0890137-0001
412814030	NM0LS7F7XE1158509	Ford Transit Connect	12-0890137-0001
412814031	NM0LS7F78E1158508	Ford Transit Connect	12-0890137-0001
412814032	NM0LS7F73E1158514	Ford Transit Connect	12-0890137-0001
412814034	NM0LS7F78E1158489	Ford Transit Connect	12-0890137-0001
412815001	2T2BK1BA6FC281116	Lexus RX 350	12-0890137-0001
412815107	2T3ZFREV5FW137440	Toyota RAV4	12-0890137-0001
414000142	1GC1KUEG0FF517669	Chevrolet Silverado	13-0184065-0001
2500HD			
414094146	WAUFFCFL7FN019875	Audi A4	13-0184065-0001
417915008	1FAHP2H80FG101890	Ford Taurus	01-0045412-0001
419515001	2GNFLFEK5F6207604	Chevrolet Equinox	00-0384168-0001
423631435	1GCSHAF44E1190162	Chevrolet Express 1500	01-0098943-0001
427024919	1FMCU0G91FUA69671	Ford Escape	99-0205497-0001
427024921	2GNFLCE33F6196254	Chevrolet Equinox	99-0205497-0001
427024926	1FMCU0J95FUA69715	Ford Escape	99-0205497-0001
427024931	2GNFLCE39F6199739	Chevrolet Equinox	99-0205497-0001
428615007	4S4BSCDC7F3255515	Subaru Outback	00-0004285-0001
428615040	4S4BSCDC5F3201730	Subaru Outback	00-0004285-0001
439415005	1C4NJRABXFD188468	Jeep Patriot	02-0132248-0001

441615069	WVGJV7AX0FW523370	Volkswagen Tiguan	13-0763738-0001
441615070	WVGJV7AX9FW535212	Volkswagen Tiguan	13-0763738-0001
447606645	2GNALAEK8F6213393	Chevrolet Equinox	02-0563902-0001
448015023	1FMCU0F78FUA33136	Ford Escape	13-0967079-0001
449014027	1FTFX1CT8EFC20105	Ford F-150	00-0011425-0001
449014039	1FTFX1EF4EKF97576	Ford F-150	00-0011425-0001
450015001	1C3CCCFB3FN617486	Chrysler 200	08-0724567-0001
450015021	1C4PJLAS7FW596307	Jeep Cherokee	08-0724567-0001
451115005	2C4JRGAG2FR567517	RAM Cargo	00-0015201-0001
452615006	2C4RDGBG4FR563923	Dodge Grand Caravan	00-0114661-0001
452615007	2C4RDGBG8FR579607	Dodge Grand Caravan	00-0114661-0001
452615008	2C4RDGBG3FR563931	Dodge Grand Caravan	00-0114661-0001
456914092	1FTMF1EM3EKE99258	Ford F-150	00-0004596-0001
456914109	1FMCU9GXXEUE02032	Ford Escape	00-0004596-0001
456914114	1FMCU9GX4EUE02012	Ford Escape	00-0004596-0001
456914123	1FMCU9GX6EUE02013	Ford Escape	00-0004596-0001
460805543	1FM5K8B84FGB33647	Ford Explorer	03-0036219-0001
465314023	2FMGK5B88EBD42709	Ford Flex	03-0667997-0001
465314034	2FMGK5B81EBD44110	Ford Flex	03-0667997-0001
466714164	NM0LS7F75E1161561	Ford Transit Connect	04-0249447-0001
466715004		Toyota Tacoma	04-0249447-0001
466715006		Toyota Tacoma	04-0249447-0001
468314012	1GCSGAFXXE1166638	GMC Savana 1500	04-0641394-0001
468315006	1FTFX1ET6EFC76735	Ford F-150	04-0641394-0001
469000844	5TDDK3DCXFS532015	Toyota Sienna	04-0708673-0001
472715022	1FMCU0G93FUA69722	Ford Escape	99-0185504-0001
472715024	1FMCU0G94FUA54551	Ford Escape	99-0185504-0001
472715072	1FMCU9G95FUA54546	Ford Escape	99-0185504-0001
472715134	1FMCU0G96FUA54552	Ford Escape	99-0185504-0001
472715149	1FM5K8D84FGB04064	Ford Explorer	99-0185504-0001
474815015	JF2SJCCXFH521607	Subaru Forester	14-0052093-0001
479614028	1FTFW1EF8EKF57066	Ford F-150	00-0000526-0001
481215019	JF2SJCBC4FH474771	Subaru Forester	14-0407068-0001
481215020	JF2SJCBC9FH487709	Subaru Forester	14-0407068-0001
481215021	4S3BNCD67F3013653	Subaru Legacy	14-0407068-0001
481215022	JF2SJCBC2FH475112	Subaru Forester	14-0407068-0001
481215023	JF2SJCBCXFH524766	Subaru Forester	14-0407068-0001
481215032	YV1612SK7F1247241	Volvo V60	14-0407068-0001
484715008	2T3BFREV5FW256350	Toyota RAV4	99-0190952-0001
486501506	2G11X5SLXF9162892	Chevrolet Impala	05-0571003-0001
486501512	2C4RDGBG5FR640198	Dodge Grand Caravan	05-0571003-0001
486501517	2C4RDGBG7FR640199	Dodge Grand Caravan	05-0571003-0001
488615008	1C4PJMDS1FW618397	Jeep Cherokee	05-0650962-0001
488615012	4S4BSFDC8F3219091	Subaru Outback	05-0650962-0001
488615013	4S4BSFDC2F3207602	Subaru Outback	05-0650962-0001
490310361	3FA6P0HD8FR187130	Ford Fusion	06-0086161-0001
490310362	3FA6P0HD4FR174617	Ford Fusion	06-0086161-0001
491715001	1FM5K8D8XFGB13965	Ford Explorer	99-0204582-0002
496515002	1FMCU0GX7FUA33143	Ford Escape	06-0086161-0001
496515003	1FMCU0GX9FUA33144	Ford Escape	06-0086161-0001
498215001	5N1AT2MV5FC779993	Nissan Rogue	06-0170386-0001
498215004	2C4RDGBG7FR544136	Dodge Grand Caravan	06-0170386-0001
498815041	1N4AL3APXFN366834	Nissan Altima	
498815068	5N1AT2MV5FC775796	Nissan Rogue	
498815071	5N1ZT2MV0FC761062	Nissan Rogue	
498815089	2C4RDGBG7FR612449	Dodge Grand Caravan	
498815101	YV4902NL5F1215525	Volvo XC70	
501625237	1FTVW1EF7EKG14515	Ford F-150	14-0939958-0001
501625238	1FTVW1EF9EKG14516	Ford F-150	14-0939958-0001
501625239	1FTVW1EF0EKG14517	Ford F-150	14-0939958-0001
501625240	1FTVW1EF2EKG4518	Ford F-150	14-0939958-0001
501625241	1FT7W2B6XFEB99029	Ford F-250	14-0939958-0001
800415058	JF2SJECC5FH422446	Subaru Forester	09-0643016-0001
800415060	JF2SJECC0FH508036	Subaru Forester	09-0643016-0001
800415061	JF2SJECC1FH485737	Subaru Forester	09-0643016-0001
800715002	1VWCS7A33FC028923	Volkswagen Passat	09-0689074-0001
801201415	1GCNKPEC7FZ177046	Chevrolet Silverado	09-0760036-0001

1500			
801214015	3GTU2TEC7FG161062	GMC Sierra 1500	09-0760036-0001
801615035	4S4BSCDC0F3218824	Subaru Outback	09-0780402-0001
801615041	4S4BSCDC1F3218251	Subaru Outback	09-0780402-0001
801615050	4S4BSCDC9F3215503	Subaru Outback	09-0780402-0001
802514022	3C6JR7DR4EG200591	RAM 1500	10-0027141-0001
804501952	1FMCU9GX1FUA20635	Ford Escape	10-0190403-0003
805114069	2FMDK3G90EBA27203	Ford Edge	10-0498240-0001
805115001	WP1AB2A57FLB61195	Porsche Macan	10-0498240-0001
805115005	5TDJKRFH7FS104524	Toyota Highlander	10-0498240-0001
805115006	4S4BSCNC7F3259336	Subaru Outback	10-0498240-0001
805115007	1FM5K8D84FGB27327	Ford Explorer	10-0498240-0001
807515001	5UXMX9C53F0D51559	BMW X3	10-0588728-0002
807900394	1FTFX1EF5EKF81354	Ford F-150	10-0685398-0001
808915007	1FMCU0GX1FUA54554	Ford Escape	11-0181515-0001
809615512	3FA6P0H77FR187128	Ford Fusion	11-0235852-0001
809615513	3FA6P0H79FR187129	Ford Fusion	11-0235852-0001
810420173	1FTVW1EF1EKG12212	Ford F-150	11-0420447-0001
813015002	2GNFLGEK3F6175015	Chevrolet Equinox	11-0960498-0002
815713013	3CTWRNBL9EG225804	RAM 5500 HD Chassis	12-0692074-0001
815713014	1C6RR7UT1ES430813	RAM 1500	12-0692074-0001
820315012	1FMCU9G96FUA69718	Ford Escape	99-0226320-0001
820315016	1FMCU9G93FUA69725	Ford Escape	99-0226320-0001
842415004	2C4RDGBG2FR604078	Dodge Grand Caravan	13-0046588-0001
842415006	2C4RDGDG0FR598424	Dodge Grand Caravan	13-0046588-0001
842415009	2C4RDGBG3FR612450	Dodge Grand Caravan	13-0046588-0001
842415021	WVGJV7AXXFW529404	Volkswagen Tiguan	13-0046588-0001
842415023	WA1CMCFP8FA052772	Audi Q5	13-0046588-0001
851414105		Little Rock 5 X 8	06-0353016-0001
Open Top Cargo			
851414106		Little Rock 6 X 10	06-0353016-0001
Enclosed Cargo			
855414007	1FMCU9GX2EUC62338	Ford Escape	08-0172574-0001
859414003	WAUKFCFL2EN042607	Audi A4	08-0703872-0001
859415001	WAUKFCFL1FN016629	Audi A4	08-0703872-0001
860415001	1N6AD0CU8FN725278	Nissan Frontier	08-0721763-0001
860415002	WA1WGCFE1FD011014	Audi Q7	08-0721763-0001
863378615	3GCUKREH5FG145683	Chevrolet Silverado	01-0071821-0001
1500			
866415005	5N1AT2MM2FC750085	Nissan Rogue	00-0184770-0001
866415007	5N1AT2MM2FC753195	Nissan Rogue	00-0184770-0001
866415015	1FMCU9G9XFUA69723	Ford Escape	00-0184770-0001
926715004	YV4612RJ0F2660791	Volvo XC60	00-0188726-0003
926715005	WAUBFRFFXF1058124	Audi A3	00-0188726-0003

## MENTIONS

### Référence à l'inscription visée

\*\*\*\*\*  
\* \*  
\* En raison du nombre élevé d'inscriptions visées, \*  
\* leur numéro n'est pas affiché. \*  
\* \*  
\* Pour obtenir un état de l'inscription ou une copie de la réquisition \*  
\* d'inscription, communiquer par téléphone avec le Bureau de la \*  
\* publicité des droits personnels et réels mobiliers : \*  
\* 514 864-4949 (Montréal), 418 646-4949 (Québec) ou \*  
\* 1 800 465-4949 (sans frais). \*  
\* \*  
\*\*\*\*\*

### Référence à l'acte constitutif

Forme de l'acte : Sous seing privé

Date : 2014-12-23

## REMARQUES



Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

---

INSCRIPTION  
14-1194933-0002  
CESSION D'UN DROIT

DATE-HEURE-MINUTE  
2014-12-29 09:58

### PARTIES

#### Cédant

ELEMENT FLEET MANAGEMENT II INC.  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7

#### Cessionnaire

FLR LP INC.  
2233 Argentia Road, Suite 400, Room 1, Mississauga, L5N 2X7  
Ontario

### BIENS

All of the rights, title and interest of the Assignor in and to the rights registered at the Register of Personal and Movable Real Rights under the registration numbers listed below and under the heading "Référence à l'inscription visée":

LEASE	VIN	MAKE/MODEL	RPMRR
042914929	NM0LS7J7XE1162096	Ford Transit Connect	00-0002166-0002
042914396	NM0LS7J78E1162095	Ford Transit Connect	00-0002166-0002
042914308	NM0LS7J76E1162094	Ford Transit Connect	00-0002166-0002
042914410	NM0LS7J74E1162093	Ford Transit Connect	00-0002166-0002
042914321	1FTSE3EL4EDA73368	Ford E-350 Super Duty	00-0002166-0002
042914108	1GCSHAF49E1178525	Chevrolet Express 1500	00-0002166-0002
042914054	NM0LS7J76E1161673	Ford Transit Connect	00-0002166-0002
042914403	NM0LS7J79E1161666	Ford Transit Connect	00-0002166-0002
042914432	NM0LS7J72E1161721	Ford Transit Connect	00-0002166-0002
042914051	NM0LS7J74E1162062	Ford Transit Connect	00-0002166-0002
042914304	NM0LS7J70E1162060	Ford Transit Connect	00-0002166-0002
042914049	NM0LS7J78E1158323	Ford Transit Connect	00-0002166-0002
051621504	1GT422C83FF513984	GMC Sierra 3500HD	99-0190825-0002
057914025	2C3CDXJG2EH125840	Dodge Charger	00-0015060-0001
409014108	1FTFW1ET3EFB19098	Ford F-150	99-0188586-0001
412814026	NM0LS7F71E1158513	Ford Transit Connect	12-0890137-0001
423631436	1GCSHAF42E1189351	Chevrolet Express 1500	01-0098943-0001
427024930	2GNFLCE35F6196482	Chevrolet Equinox	99-0205497-0001
433914014	2FMDK4JC7EBB18821	Ford Edge	00-0316970-0001
446715003	5N1AT2MT8FC759011	Nissan Rogue	00-0003236-0001
449014010	1FTFX1CT5EFB50062	Ford F-150	00-0011425-0001
451115006	2C4JRGAG9FR536720	RAM Cargo	00-0015201-0001
465315003	1FM5K7B99FGA98056	Ford Explorer	03-0667997-0001
465314024	2FMDK3G96EBB31503	Ford Edge	03-0667997-0001
466714163	NM0LS7F77E1161562	Ford Transit Connect	04-0249447-0001

467925458	2FMDK4JC0EBB31507	Ford Edge	04-0465067-0001
472715103	2C4RDGBGXR579608	Dodge Grand Caravan	99-0185504-0001
472715130	1FMCU9G90FUA33135	Ford Escape	99-0185504-0001
472715058	1FMCU9G98FUA29396	Ford Escape	99-0185504-0001
491915000	1FTFX1EF2EKF48912	Ford F-150	
491915002	1FA6P0H78F5108102	Ford Fusion	
496515004	1FMCU0GX1FUA33137	Ford Escape	06-0086161-0001
499901504	1FMCU9GX5FUA33145	Ford Escape	09-0623285-0001
500615001	5N1AT2MT3FC762737	Nissan Rogue	14-0862340-0001
505500053	3FA6P0T98DR129289	FORD FUSION	
505500046	2FMDK4JC7CBA31417	FORD EDGE	
801214014	3GTU2TEC4EG550109	GMC Sierra 1500	09-0760036-0001
804501727	1FDRF3G61FEB46805	Ford F-350 Chassis	10-0190403-0003
805115014	WDDGF8AB0EA961734	Mercedes-Benz C-Class	10-0498240-0001
805115013	5N1AL0MM4EC549873	Infiniti QX60	10-0498240-0001
805115011	WBA3C3G56ENS68968	BMW 320	10-0498240-0001
810514009	1FMCU9G97FUA29390	Ford Escape	11-0522662-0001
813015001	2GNFLGEK5F6170897	Chevrolet Equinox	11-0960498-0002
852814003	1FDUF5GY4FEA90527	Ford F-550 Chassis	06-0657150-0001
855414064	1FMCU9GX6EUD53802	Ford Escape	08-0172574-0001
855414003	1FMCU9GX2EUD19436	Ford Escape	08-0172574-0001
866415016	5N1AT2MM6FC761431	Nissan Rogue	00-0184770-0001
926714030	5TDJK3DCXES091397	Toyota Sienna	00-0188726-0003
042914050	NM0LS7J74E1162059	Ford Transit Connect	00-0002166-0002
042914101	1FTEX1EM5EKG14086	Ford F-150	00-0002166-0002
042914184	1GCSHAF45E1173094	Chevrolet Express 1500	00-0002166-0002
042914404	NM0LS7J72E1162092	Ford Transit Connect	00-0002166-0002
042914404	NM0LS7J72E1162092	Ford Transit Connect	00-0002166-0002
042914505	NM0LS7J73E1168287	Ford Transit Connect	00-0002166-0002
044014025	5N1AR2MM0EC641833	Nissan Pathfinder	00-0169272-0001
045615008	1FMCU0F73FUA69719	Ford Escape	00-0000994-0001
045615018	1FMCU0F7XFUA69720	Ford Escape	00-0000994-0001
050015002	2FMDK4JXCXEBB07845	Ford Edge	00-0087615-0001
057915002	2C4RDGBG0FR592898	Dodge Grand Caravan	00-0015060-0001
403114015	4T3ZA3BB6EU089547	Toyota Venza	00-0187500-0001
403115001	5N1AT2MV5FC752423	Nissan Rogue	00-0187500-0001
404815001	2C4RDGBG2FR544173	Dodge Grand Caravan	04-0098565-0001
407015006	5N1AT2MT9FC776951	Nissan Rogue	00-0050867-0001
409015009	1FM5K8D82FGB04063	Ford Explorer	99-0188586-0001
412814019	NM0LS7F76E1158488	Ford Transit Connect	12-0890137-0001
412814025	NM0LS7F76E1158507	Ford Transit Connect	12-0890137-0001
412814027	NM0LS7F7XE1158512	Ford Transit Connect	12-0890137-0001
412814028	NM0LS7F78E1158511	Ford Transit Connect	12-0890137-0001
412814029	NM0LS7F76E1158510	Ford Transit Connect	12-0890137-0001
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412814031	NM0LS7F78E1158508	Ford Transit Connect	12-0890137-0001
412814032	NM0LS7F73E1158514	Ford Transit Connect	12-0890137-0001
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412815107	2T3ZFREV5FW137440	Toyota RAV4	12-0890137-0001
414000142	1GC1KUEG0FF517669	Chevrolet Silverado	13-0184065-0001
2500HD			
414094146	WAUFFCFL7FN019875	Audi A4	13-0184065-0001
417915008	1FAHP2H80FG101890	Ford Taurus	01-0045412-0001
419515001	2GNFLFEK5F6207604	Chevrolet Equinox	00-0384168-0001
423631435	1GCSHAF44E1190162	Chevrolet Express 1500	01-0098943-0001
427024919	1FMCU0G91FUA69671	Ford Escape	99-0205497-0001
427024921	2GNFLCE33F6196254	Chevrolet Equinox	99-0205497-0001
427024926	1FMCU0J95FUA69715	Ford Escape	99-0205497-0001
427024931	2GNFLCE39F6199739	Chevrolet Equinox	99-0205497-0001
428615007	4S4BSCDC7F3255515	Subaru Outback	00-0004285-0001
428615040	4S4BSCDC5F3201730	Subaru Outback	00-0004285-0001
439415005	1C4NJRABXFD188468	Jeep Patriot	02-0132248-0001
441615069	WVGJV7AX0FW523370	Volkswagen Tiguan	13-0763738-0001
441615070	WVGJV7AX9FW535212	Volkswagen Tiguan	13-0763738-0001
447606645	2GNALAEK8F6213393	Chevrolet Equinox	02-0563902-0001
448015023	1FMCU0F78FUA33136	Ford Escape	13-0967079-0001

449014027	1FTFX1CT8EFC20105	Ford F-150	00-0011425-0001
449014039	1FTFX1EF4EKF97576	Ford F-150	00-0011425-0001
450015001	1C3CCCFB3FN617486	Chrysler 200	08-0724567-0001
450015021	1C4PJLAS7FW596307	Jeep Cherokee	08-0724567-0001
451115005	2C4JRGAG2FR567517	RAM Cargo	00-0015201-0001
452615006	2C4RDGBG4FR563923	Dodge Grand Caravan	00-0114661-0001
452615007	2C4RDGBG8FR579607	Dodge Grand Caravan	00-0114661-0001
452615008	2C4RDGBG3FR563931	Dodge Grand Caravan	00-0114661-0001
456914092	1FTMF1EM3EKE99258	Ford F-150	00-0004596-0001
456914109	1FMCU9GXEU02032	Ford Escape	00-0004596-0001
456914114	1FMCU9GX4EUE02012	Ford Escape	00-0004596-0001
456914123	1FMCU9GX6EUE02013	Ford Escape	00-0004596-0001
460805543	1FM5K8B84FGB33647	Ford Explorer	03-0036219-0001
465314023	2FMGK5B88EBD42709	Ford Flex	03-0667997-0001
465314034	2FMGK5B81EBD44110	Ford Flex	03-0667997-0001
466714164	NM0LS7F75E1161561	Ford Transit Connect	04-0249447-0001
466715004		Toyota Tacoma	04-0249447-0001
466715006		Toyota Tacoma	04-0249447-0001
468314012	1GCSGAFXXE1166638	GMC Savana 1500	04-0641394-0001
468315006	1FTFX1ET6EFC76735	Ford F-150	04-0641394-0001
469000844	5TDKK3DCXFS532015	Toyota Sienna	04-0708673-0001
472715022	1FMCU0G93FUA69722	Ford Escape	99-0185504-0001
472715024	1FMCU0G94FUA54551	Ford Escape	99-0185504-0001
472715072	1FMCU9G95FUA54546	Ford Escape	99-0185504-0001
472715134	1FMCU0G96FUA54552	Ford Escape	99-0185504-0001
472715149	1FM5K8D84FGB04064	Ford Explorer	99-0185504-0001
474815015	JF2SJCCXFH521607	Subaru Forester	14-0052093-0001
479614028	1FTFW1EF8EKF57066	Ford F-150	00-0000526-0001
481215019	JF2SJCBC4FH474771	Subaru Forester	14-0407068-0001
481215020	JF2SJCBC9FH487709	Subaru Forester	14-0407068-0001
481215021	4S3BNCD67F3013653	Subaru Legacy	14-0407068-0001
481215022	JF2SJCBC2FH475112	Subaru Forester	14-0407068-0001
481215023	JF2SJCBCXFH524766	Subaru Forester	14-0407068-0001
481215032	YV1612SK7F1247241	Volvo V60	14-0407068-0001
484715008	2T3BFREV5FW256350	Toyota RAV4	99-0190952-0001
486501506	2G11X5SLXF9162892	Chevrolet Impala	05-0571003-0001
486501512	2C4RDGBG5FR640198	Dodge Grand Caravan	05-0571003-0001
486501517	2C4RDGBG7FR640199	Dodge Grand Caravan	05-0571003-0001
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488615012	4S4BSFDC8F3219091	Subaru Outback	05-0650962-0001
488615013	4S4BSFDC2F3207602	Subaru Outback	05-0650962-0001
490310361	3FA6P0HD8FR187130	Ford Fusion	06-0086161-0001
490310362	3FA6P0HD4FR174617	Ford Fusion	06-0086161-0001
491715001	1FM5K8D8XFGB13965	Ford Explorer	99-0204582-0002
496515002	1FMCU0GX7FUA33143	Ford Escape	06-0086161-0001
496515003	1FMCU0GX9FUA33144	Ford Escape	06-0086161-0001
498215001	5N1AT2MV5FC779993	Nissan Rogue	06-0170386-0001
498215004	2C4RDGBG7FR544136	Dodge Grand Caravan	06-0170386-0001
498815041	1N4AL3APXFN366834	Nissan Altima	
498815068	5N1AT2MV5FC775796	Nissan Rogue	
498815071	5N1ZT2MV0FC761062	Nissan Rogue	
498815089	2C4RDGBG7FR612449	Dodge Grand Caravan	
498815101	YV4902NL5F1215525	Volvo XC70	
501625237	1FTVW1EF7EKG14515	Ford F-150	14-0939958-0001
501625238	1FTVW1EF9EKG14516	Ford F-150	14-0939958-0001
501625239	1FTVW1EF0EKG14517	Ford F-150	14-0939958-0001
501625240	1FTVW1EF2EKG4518	Ford F-150	14-0939958-0001
501625241	1FT7W2B6XFEB99029	Ford F-250	14-0939958-0001
800415058	JF2SJEC5FH422446	Subaru Forester	09-0643016-0001
800415060	JF2SJEC0FH508036	Subaru Forester	09-0643016-0001
800415061	JF2SJEC1FH485737	Subaru Forester	09-0643016-0001
800715002	1VWCS7A33FC028923	Volkswagen Passat	09-0689074-0001
801201415	1GCNKPEC7FZ177046	Chevrolet Silverado	09-0760036-0001
1500			
801214015	3GTU2TEC7FG161062	GMC Sierra 1500	09-0760036-0001
801615035	4S4BSCDC0F3218824	Subaru Outback	09-0780402-0001
801615041	4S4BSCDC1F3218251	Subaru Outback	09-0780402-0001



801615050	4S4BSCDC9F3215503	Subaru Outback	09-0780402-0001
802514022	3C6JR7DR4EG200591	RAM 1500	10-0027141-0001
804501952	1FMCU9GX1FUA20635	Ford Escape	10-0190403-0003
805114069	2FMDK3G90EBA27203	Ford Edge	10-0498240-0001
805115001	WP1AB2A57FLB61195	Porsche Macan	10-0498240-0001
805115005	5TDJKRFH7FS104524	Toyota Highlander	10-0498240-0001
805115006	4S4BSCNC7F3259336	Subaru Outback	10-0498240-0001
805115007	1FM5K8D84FGB27327	Ford Explorer	10-0498240-0001
807515001	5UXMX9C53F0D51559	BMW X3	10-0588728-0002
807900394	1FTFX1EF5EKF81354	Ford F-150	10-0685398-0001
808915007	1FMCU0GX1FUA54554	Ford Escape	11-0181515-0001
809615512	3FA6P0H77FR187128	Ford Fusion	11-0235852-0001
809615513	3FA6P0H79FR187129	Ford Fusion	11-0235852-0001
810420173	1FTVW1EF1EKG12212	Ford F-150	11-0420447-0001
813015002	2GNFLGEK3F6175015	Chevrolet Equinox	11-0960498-0002
815713013	3CTWRNBL9EG225804	RAM 5500 HD Chassis	12-0692074-0001
815713014	1C6RR7UT1ES430813	RAM 1500	12-0692074-0001
820315012	1FMCU9G96FUA69718	Ford Escape	99-0226320-0001
820315016	1FMCU9G93FUA69725	Ford Escape	99-0226320-0001
842415004	2C4RDGBG2FR604078	Dodge Grand Caravan	13-0046588-0001
842415006	2C4RDGDG0FR598424	Dodge Grand Caravan	13-0046588-0001
842415009	2C4RDGBG3FR612450	Dodge Grand Caravan	13-0046588-0001
842415021	WVGJV7AXXFW529404	Volkswagen Tiguan	13-0046588-0001
842415023	WA1CMCFP8FA052772	Audi Q5	13-0046588-0001
851414105		Little Rock 5 X 8	06-0353016-0001
Open Top Cargo			
851414106		Little Rock 6 X 10	06-0353016-0001
Enclosed Cargo			
855414007	1FMCU9GX2EUC62338	Ford Escape	08-0172574-0001
859414003	WAUKFCFL2EN042607	Audi A4	08-0703872-0001
859415001	WAUKFCFL1FN016629	Audi A4	08-0703872-0001
860415001	1N6AD0CU8FN725278	Nissan Frontier	08-0721763-0001
860415002	WA1WGCFE1FD011014	Audi Q7	08-0721763-0001
863378615	3GCUKREH5FG145683	Chevrolet Silverado	01-0071821-0001
1500			
866415005	5N1AT2MM2FC750085	Nissan Rogue	00-0184770-0001
866415007	5N1AT2MM2FC753195	Nissan Rogue	00-0184770-0001
866415015	1FMCU9G9XFUA69723	Ford Escape	00-0184770-0001
926715004	YV4612RJ0F2660791	Volvo XC60	00-0188726-0003
926715005	WAUBFRFFXF1058124	Audi A3	00-0188726-0003

**MENTIONS**

**Référence à l'inscription visée**

\*\*\*\*\*  
\*  
\* En raison du nombre élevé d'inscriptions visées, \*  
\* leur numéro n'est pas affiché. \*  
\* \*  
\* Pour obtenir un état de l'inscription ou une copie de la réquisition \*  
\* d'inscription, communiquer par téléphone avec le Bureau de la \*  
\* publicité des droits personnels et réels mobiliers : \*  
\* 514 864-4949 (Montréal), 418 646-4949 (Québec) ou \*  
\* 1 800 465-4949 (sans frais). \*  
\* \*  
\*\*\*\*\*

**Référence à l'acte constitutif**

Forme de l'acte : Sous seing privé  
Date : 2014-12-23

**REMARQUES**

Inscriptions de radiation - Quant à l'inscription visée

\*\*\*\*\*  
\* \*  
\* En raison du nombre élevé d'inscriptions visées, la radiation de ces \*  
\* inscriptions ne sera pas affichée dans le champ «Remarques». \*  
\* \*  
\* Pour obtenir un état de l'inscription ou une copie de la réquisition \*  
\* d'inscription, communiquer par téléphone avec le Bureau de la \*  
\* publicité des droits personnels et réels mobiliers : \*  
\* 514 864-4949 (Montréal), 418 646-4949 (Québec) ou \*  
\* 1 800 465-4949 (sans frais). \*  
\* \*  
\*\*\*\*\*

Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

---

INSCRIPTION	DATE-HEURE-MINUTE
14-1189455-0001	2014-12-23 10:05
Re-Assignment of Rights	

### PARTIES

#### Assignor

FLEET LEASING RECEIVABLES TRUST  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7

#### Issuer Trustee

BNY TRUST COMPANY OF CANADA  
4 King Street West, Suite 1101, Toronto, Ontario M5H 1B6

#### Assignee

ELEMENT FLEET LEASE RECEIVABLES L.P.  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7  
Représenté par : FLR GP 1 INC.  
En qualité de : General Partner

### BIENS

The Assignor assigns all of its rights, title and interest in and to the universality of rights previously assigned to the Assignor and registered at the Register of Personal and Movable Real Rights under the numbers listed under the heading "Référence à l'inscription visée".

### MENTIONS

#### Référence à l'inscription visée

NUMÉRO	NATURE
14-1130324-0002	Assignment of Rights
11-0279949-0002	Assignment of Rights
11-0558187-0002	Assignment of rights
12-0205337-0002	Assignment of Rights
10-0611826-0004	Assignment of Rights
10-0888717-0002	Assignment of Rights
11-0964598-0002	Assignment of Rights
12-0538956-0002	Assignment of Rights
12-0802645-0002	Assignment of Rights
13-0014727-0002	Assignment of Rights
13-0235964-0002	Assignment of Rights
13-0625175-0002	Assignment of Rights
13-0871659-0002	Assignment of Rights
13-1126385-0002	Assignment of Rights
14-0280935-0002	Assignment of Rights
14-0568050-0002	Assignment of Rights
14-0726093-0002	Assignment of Rights

14-0805862-0002	Assignment of Rights
14-0985100-0002	Assignment of Rights
14-1044747-0002	Assignment of Rights

**Référence à l'acte constitutif**

Forme de l'acte : Sous seing privé

Date : 2014-12-19

**Autres mentions :**

BNY Trust Company of Canada is acting in its capacity as issuer trustee of Fleet Leasing Receivables Trust.

PHH Fleet Lease Receivables L.P. changed its name to Element Fleet Lease Receivables L.P. pursuant to a change of name registered under number 14-0687236-0001.

Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

---

INSCRIPTION	DATE-HEURE-MINUTE
13-0300592-0002 Re-Assignment of Rights	2013-04-18 09:00

### PARTIES

#### **Assignor**

FLEET LEASING RECEIVABLES TRUST  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7

#### **Issuer Trustee**

BNY TRUST COMPANY OF CANADA  
4 King Street West, Suite 1101, Toronto, Ontario M5H 1B6

#### **Assignee**

PHH FLEET LEASE RECEIVABLES L.P.  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7  
Représenté par : FLR GP 1 INC.  
En qualité de : General Partner

### BIENS

The Assignor assigns all of its rights, title and interest in and to the universality of rights previously assigned to the Assignor and registered at the Register of Personal and Movable Real Rights under number 10-0050072-0002.

### MENTIONS

#### **Référence à l'inscription visée**

NUMÉRO	NATURE
10-0050072-0002	Assignment of Rights

#### **Référence à l'acte constitutif**

Forme de l'acte : Sous seing privé  
Date : 2013-01-18

#### **Autres mentions :**

BNY Trust Company of Canada is acting in its capacity as issuer trustee of Fleet Leasing Receivables Trust.

Fleet Leasing Receivables Trust is represented by PHH Vehicle Management Services Inc. in its capacity as Financial Services Agent.

Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

---

INSCRIPTION	DATE-HEURE-MINUTE	DATE EXTRÊME D'EFFET
12-0165111-0001	2012-03-08 13:00	2022-03-06
RENOUVELLEMENT DE LA PUBLICITÉ D'UN DROIT		

### PARTIES

#### Titulaire

PHH VEHICLE MANAGEMENT SERVICES INC.  
350 BURNHAMTHORPE RD WEST 700, Mississauga, ON L5B 3P9

#### Constituant

General Nutrition Centres Company  
6299 Airport Road, Suite 201, Mississauga, ON L4V 1N3

### MENTIONS

#### Référence à l'inscription visée

NUMÉRO	NATURE
02-0132248-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR

#### Autres mentions :

REF: (4394 / ONQPH4C524-2 / 7584940)

### AVIS D'ADRESSE

N° 009042

Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

---

INSCRIPTION  
11-0279949-0002  
Assignment of Rights

DATE-HEURE-MINUTE  
2011-04-26 09:00

### PARTIES

#### Assignee

FLEET LEASING RECEIVABLES TRUST  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7

#### Issuer Trustee

BNY TRUST COMPANY OF CANADA  
4 King Street West, Suite 1101, Toronto, Ontario M5H 1B6

#### Assignor

PHH FLEET LEASE RECEIVABLES L.P.  
2233 Argentia Road, Suite 400, Room 4, Mississauga, Ontario L5N 2X7  
Ontario  
Représenté par : FLR GP 1 INC.  
En qualité de : General Partner

### BIENS

All of the right, title and interest of the Assignor in and to the rights registered at the Register of Personal and Movable Real Rights under the registration numbers listed below under the heading "Référence à l'inscription visée" but only as they relate to the Equipment identified below by its vehicle identification number (VIN):

CLIENT	UNIT	PROVINCE	VIN#	RPMRR#
0417	11023	PQ	1GNKREED9BJ262790	99-0179420-0003
0417	11016	PQ	1FMCU9DG2BKA94298	99-0179420-0003
0417	11017	PQ	1GNKREED5BJ264990	99-0179420-0003
0417	11002	PQ	1FMCU9DG0BKA94297	99-0179420-0003
0417	11403	PQ	5TFHY5F12BX179130	99-0179420-0003
0417	11020	PQ	3FAHP0JA2BR240164	99-0179420-0003
0417	11013	PQ	1FMCU9DG2BKB30460	99-0179420-0003
0417	11005	PQ	1FMCU9DGXBKB30450	99-0179420-0003
0417	11026	PQ	1GNKREED4BJ285572	99-0179420-0003
0426	11141	PQ	3FAHP0JA3BR204161	00-0175495-0001
0426	11605	PQ	3FAHP0JA5BR204159	00-0175495-0001
0426	11431	PQ	3FAHP0HA4BR204160	00-0175495-0001
0426	11019	PQ	3FAHP0HA3BR186783	00-0175495-0001
0426	11006	PQ	3FAHP0JA2BR186784	00-0175495-0001
0426	11423	PQ	3FAHP0HA2BR226593	00-0175495-0001
0426	11027	PQ	3FAHP0HA2BR215884	00-0175495-0001
0426	11012	PQ	1FMCU9D75BKB04693	00-0175495-0001

0426	11025	PQ	1FMCU0D70BKB39735	00-0175495-0001
0426	11105	PQ	3FAHP0JA9BR239156	00-0175495-0001
0426	11014	PQ	3FAHP0JA1BR245291	00-0175495-0001
0426	11802	PQ	3FAHP0HAXBR181449	00-0175495-0001
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0429	10303	PQ	5TEUU4ENXAZ747589	00-0002166-0002
0429	10304	PQ	2T1KU4EE4AC361814	00-0002166-0002
0429	21027	PQ	0	00-0002166-0002
0429	11027	PQ	3FAHP0HA0BR204687	00-0002166-0002
0429	11210	PQ	3FAHP0JA2BR169743	00-0002166-0002
0429	11021	PQ	2T1LE4EE6BC019249	00-0002166-0002
0429	21007	PQ	0	00-0002166-0002
0429	21006	PQ	0	00-0002166-0002
0429	21004	PQ	0	00-0002166-0002
0429	21002	PQ	0	00-0002166-0002
0429	11001	PQ	NM0LS7DN2BT047115	00-0002166-0002
0456	11027	PQ	1FMCU0DG2BKA94300	00-0000994-0001
0456	11009	PQ	2D4RN4DG6BR651734	00-0000994-0001
0456	11005	PQ	2D4RN4DG1BR646957	00-0000994-0001
0456	11002	PQ	1FMCU0DGXBKB30458	00-0000994-0001
0539	61716	PQ	2FMDK3JC0BBA31963	99-0167620-0003
0539	61699	PQ	2FMGK5CC0BBD09606	99-0167620-0003
0539	61735	PQ	2D4RN4DE2AR424800	99-0167620-0003
0539	61731	PQ	2FMDK4JXCXBBA48727	99-0167620-0003
0539	61752	PQ	2FMGK5CC7BBD20957	99-0167620-0003
0558	10026	PQ	JN8AZ2KRXAT165365	99-0185041-0004
0558	10022	PQ	2D4RN4DE6AR470064	99-0185041-0004
0558	99120	PQ	3FAHP0HG0BR240223	99-0185041-0004
0579	11012	PQ	2G1WA5EK5B1218689	00-0015060-0001
0579	11005	PQ	2G1WA5EK1B1198845	00-0015060-0001
0579	11016	PQ	2G1WA5EKXB1217781	00-0015060-0001
4008	11004	PQ	1FMCU9DG6BKA94286	10-0015913-0006
4008	11003	PQ	1FMCU9DG4BKA94285	10-0015913-0006
4008	11000	PQ	3FAHP0CG9BR175296	10-0015913-0006
4048	11001	PQ	JM3ER4C30B0354104	04-0098565-0001
4090	99154	PQ	1FMCU9D75BKB41386	99-0188586-0001
4090	99153	PQ	1FMCU9D73BKB41385	99-0188586-0001
4090	99158	PQ	1FMCU9D77BKB41387	99-0188586-0001
4090	99162	PQ	1FMCU9D78BKB41382	99-0188586-0001
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4090	11105	PQ	NM0LS7BNXAT007947	99-0188586-0001
4110	08111	PQ	1FTNE1EL0BDA22916	00-0039414-0001
4110	61101	PQ	1FTNE2EW1BDA14100	00-0039414-0001
4110	61103	PQ	2D4RN1AG8BR625526	00-0039414-0001
4132	11803	PQ	2D4RN4DG4BR651733	99-0167620-0001
4160	11031	PQ	2FMHK6DT3BBD13707	99-0167627-0006
4160	11030	PQ	WBAFR1C5XBC673275	99-0167627-0006
4160	11029	PQ	2FMGK5CC7BBD18433	99-0167627-0006
4160	11032	PQ	2FMHK6CC9BBD24549	99-0167627-0006
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4160	11057	PQ	2FMGK5BC4BBD27415	99-0167627-0006
4160	11054	PQ	2FMGK5BC2BBD27414	99-0167627-0006
4160	11052	PQ	2FMGK5BC1BBD26674	99-0167627-0006



4160	11051	PQ	2FMGK5BC9BBD27412	99-0167627-0006
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4160	11047	PQ	2FMGK5BC8BBD27417	99-0167627-0006
4160	11046	PQ	2FMGK5BC0BBD27413	99-0167627-0006
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4225	11011	PQ	1FMCU9DG1BKA88332	00-0050264-0001
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4270	24468	PQ	2CNFLDE57B6312612	99-0205497-0001
4270	24482	PQ	1GCRCSEA4BZ266342	99-0205497-0001
4270	24481	PQ	1GCRCSEA6BZ263992	99-0205497-0001
4337	21008	PQ	1FMCU0DG4BKB00386	01-0403579-0001
4337	21105	PQ	3FAHP0CG5BR175649	01-0403579-0001
4337	21102	PQ	3FAHP0CG2BR169680	01-0403579-0001
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4389	11001	PQ	JTHBK1EG4B2421255	02-0232754-0001
4394	10002	PQ	1J4PN2GK6BW545987	02-0132248-0001
4467	11014	PQ	JN8AS5MV5BW256172	00-0003236-0001
4467	11012	PQ	1N4AL2AP5BC121715	00-0003236-0001
4476	06096	PQ	1GTW7FBA8B1111469	02-0563902-0001
4476	06095	PQ	2D4RN4DE4AR485212	02-0563902-0001
4476	06093	PQ	2D4RN4DE3AR476890	02-0563902-0001
4476	06063	PQ	1GCWGFBA4B1112750	02-0563902-0001
4490	11010	PQ	1FTNE1EW0BDA39435	00-0011425-0001
4490	11004	PQ	1FTNE1EW2BDA39436	00-0011425-0001
4498	16218	PQ	2FMDK3JC2BBA48635	00-0012990-0002
4498	16219	PQ	2FMDK3JC3BBA07057	00-0012990-0002
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4500	11009	PQ	3D4PG5FG9BT524302	08-0724567-0001
4511	11017	PQ	1FAHP3FN6BW203533	00-0015201-0001
4513	11017	PQ	3FAHP0HG4BR198333	99-0227857-0001
4513	11007	PQ	3FAHP0HG6BR198334	99-0227857-0001
4513	11003	PQ	3FAHP0HG9BR226594	99-0227857-0001
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4533	00269	PQ	1FTNE2EW4BDA43266	00-0038094-0001
4533	00268	PQ	1FTNE2EW2BDA43265	00-0038094-0001
4533	00266	PQ	1FTNE2EW0BDA43264	00-0038094-0001
4533	04015	PQ	1FTNE2EW3BDA50872	00-0038094-0001

4556	03834	PQ	2G1WA5EK0B1152326	00-0050264-0002
4556	03819	PQ	2G1WA5EK9B1146606	00-0050264-0002
4556	03809	PQ	2G1WA5EK9B1142393	00-0050264-0002
4556	03787	PQ	2G1WA5EKXB1166251	00-0050264-0002
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4556	03723	PQ	2D4RN4DE6AR490587	00-0050264-0002
4556	03861	PQ	2G1WA5EK2B1196411	00-0050264-0002
4556	03859	PQ	2G1WA5EK9B1198947	00-0050264-0002
4556	03833	PQ	2G1WA5EK8B1142207	00-0050264-0002
4569	10068	PQ	1GCUHAD47A1159476	00-0004596-0001
4569	10067	PQ	1GCUHAD4XA1159858	00-0004596-0001
4569	11032	PQ	4S4BRGLC2B3375558	00-0004596-0001
4569	11024	PQ	1N4AL2AP8BC122017	00-0004596-0001
4569	10061	PQ	NM0LS7BN1AT040951	00-0004596-0001
4569	11019	PQ	1GCSHAF4XB1121276	00-0004596-0001
4569	11017	PQ	1GCSHAF44B1121564	00-0004596-0001
4569	11016	PQ	1GCSHAF46B1121002	00-0004596-0001
4667	10046	PQ	NM0KS9BNXAT040955	04-0249447-0001
4667	10045	PQ	NM0KS9BN1AT040956	04-0249447-0001
4682	11003	PQ	2D4RN4DE5AR445768	04-0640927-0001
4689	29030	PQ	2FMGK5BC4BBD24546	04-0687317-0001
4689	29023	PQ	2FMGK5BC4BBD23400	04-0687317-0001
4690	00770	PQ	5TDKK3DC2BS069863	04-0708673-0001
4690	00774	PQ	5TDKK3DC7BS060043	04-0708673-0001
4690	00777	PQ	5TDKK3DC5BS060915	04-0708673-0001
4699	11007	PQ	3GCPKTE34BG160149	05-0096415-0001
4713	00597	PQ	3D4PG5FV9AT266540	00-0159811-0001
4719	11025	PQ	2FMGK5BC9BBD18435	10-0015913-0002
4719	11019	PQ	3FAHP0HG2BR181448	10-0015913-0002
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4719	11007	PQ	1FMCU9D76BKA83661	10-0015913-0002
4719	11005	PQ	1FMCU9D74BKA83660	10-0015913-0002
4719	11035	PQ	4S4BRJGC4B2370018	10-0015913-0002
4719	11036	PQ	JN8AS5MT7BW152989	10-0015913-0002
4727	11534	PQ	1FMCU9DG7BKA88304	99-0185504-0001
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4727	11524	PQ	2FMDK3GC6BBA57894	99-0185504-0001
4727	11640	PQ	2FMGK5BC0BBD20090	99-0185504-0001
4727	11533	PQ	1FMCU9DG2BKA88324	99-0185504-0001
4727	11635	PQ	2FMDK3JC4BBA48636	99-0185504-0001
4727	11619	PQ	2FMDK3GC8BBA57895	99-0185504-0001
4727	11526	PQ	2FMDK3GC4BBA57893	99-0185504-0001
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4727	11525	PQ	2D4RN4DG1BR659756	99-0185504-0001
4727	11716	PQ	2FMDK3GC8BBA89827	99-0185504-0001
4727	11689	PQ	1FMCU0DG4BKB30410	99-0185504-0001
4746	85393	PQ	5TDBK3EH4BS065338	05-0513508-0001
4770	00651	PQ	4T1BK3EKXBU617122	99-0179420-0001
4770	00646	PQ	4S4WX9JD2B4400564	99-0179420-0001
4770	00655	PQ	WVGDF9BP7BD000969	99-0179420-0001
4770	00652	PQ	WBAFU7C5XBC872649	99-0179420-0001
4770	00650	PQ	JN8AZ2NC9B9301510	99-0179420-0001
4777	91527	PQ	WBSKG9C56BE369203	99-0185041-0001
4777	91536	PQ	WA1MMCFE9BD004600	99-0185041-0001
4796	11007	PQ	3FAHP0HA2BR181445	00-0000526-0001

4796	11017	PQ	1FMCU0D73BKB04901	00-0000526-0001
4796	99064	PQ	3FAHP0HA0BR181444	00-0000526-0001
4803	55311	PQ	WA1MKCFP8BA042103	99-0176501-0001
4828	21024	PQ	2D4RN4DG0BR643614	00-0110610-0001
4828	21030	PQ	2D4RN4DG8BR643604	00-0110610-0001
4828	21029	PQ	2D4RN4DG1BR657277	00-0110610-0001
4828	21023	PQ	2D4RN4DG7BR643612	00-0110610-0001
4847	11019	PQ	4T1BF3EK2BU196744	99-0190952-0001
4847	11022	PQ	4S4BRGBC8B3327290	99-0190952-0001
4847	11018	PQ	4T1BF3EK8BU158872	99-0190952-0001
4847	11067	PQ	WAUFFCFL9BN031181	99-0190952-0001
4847	11065	PQ	4T3BK3BB7BU048791	99-0190952-0001
4847	11058	PQ	4S4BRGGCXB3375155	99-0190952-0001
4847	11079	PQ	2T1KU4EE2BC575038	99-0190952-0001
4847	11048	PQ	4T1BF3EK5BU616903	99-0190952-0001
4854	11017	PQ	1FMCU4K38BKB00382	99-0226320-0001
4854	11011	PQ	1FMCU4K35BKA94301	99-0226320-0001
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9389	11010	PQ	1FMCU9DG7BKB06638	00-0047348-0001

Definitions:

"Equipment" means an automobile, truck (light, medium or heavy duty), truck body, trailer, forklift or other material handling equipment or other equipment, together with all equipment, attachments and accessories attached thereto.

MENTIONS

**Référence à l'inscription visée**

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\* \*  
\* En raison du nombre élevé d'inscriptions visées, \*  
\* leur numéro n'est pas affiché. \*  
\* \*  
\* Pour obtenir un état de l'inscription ou une copie de la réquisition \*  
\* d'inscription, communiquer par téléphone avec le Bureau de la \*  
\* publicité des droits personnels et réels mobiliers : \*  
\* 514 864-4949 (Montréal), 418 646-4949 (Québec) ou \*  
\* 1 800 465-4949 (sans frais). \*  
\* \*  
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**Référence à l'acte constitutif**

Forme de l'acte : Sous seing privé  
Date : 2011-04-19

**Autres mentions :**

BNY TRUST COMPANY OF CANADA is acting in its capacity as issuer trustee of Fleet Leasing Receivables Trust.

REMARQUES

INSCRIPTION	DATE-HEURE-MINUTE
14-1189455-0001	2014-12-23 10:05
Re-Assignment of Rights	

Inscriptions de radiation - Quant à l'inscription





Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

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INSCRIPTION	DATE-HEURE-MINUTE
10-0432095-0003	2010-07-02 09:00
RECTIFICATION D'UNE INSCRIPTION	

### PARTIES

#### Assignor

PHH VEHICLE MANAGEMENT SERVICES INC.  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7

#### Assignee

FLR LP INC.  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7

### MENTIONS

#### Référence à l'inscription visée

NUMÉRO	NATURE
00-0007000-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0195133-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0185041-0004	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0110610-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0187500-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0039414-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0167627-0006	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0221276-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0384168-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
01-0098943-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0205497-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0004285-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0227857-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0038094-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0050264-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0004596-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-

04-0221476-0001	BAILLEUR
	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
04-0685134-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
99-0185504-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
99-0185041-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
00-0000526-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
99-0176501-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
99-0190952-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
10-0015913-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
09-0643016-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
09-0708508-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
08-0240815-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
08-0492475-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
08-0721763-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
99-0190851-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
00-0184770-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
99-0188171-0003	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
00-0095854-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
99-0185041-0005	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
10-0047327-0001	Assignment of rights
99-0188586-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR
99-0179420-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-
	BAILLEUR

### Objet de la rectification :

The registration number 10-0047327-0001 ("Original Registration") is corrected as follows:

1. To DELETE the following equipment under the heading "Biens" and under "Référence à l'inscription visée" :

UNIT	CLIENT	VIN	PROVINCE	QUEBEC REGISTRATION #
00819	0440	1J8FF48W48D779943	PQ	00-0169272-0001
09061	4090	2FMDK48C39BA78250	PQ	99-0188586-0001
00622	4770	YV4BZ982591048591	PQ	99-0179420-0001

2. To ADD the following equipment under the heading "Biens" and under "Référence à l'inscription visée" :

UNIT	CLIENT	VIN	PROVINCE	QUEBEC REGISTRATION #
01012	0423	2CNALDEW4A6258994	PQ	00-0007000-0001
21007	0423	2CNFLEEY4A6289563	PQ	00-0007000-0001
21003	0423	2CNFLEEY5A6289264	PQ	00-0007000-0001
01021	0423	2CNALDEW3A6289282	PQ	00-0007000-0001
10008	0512	2CNFLCEW7A6230414	PQ	00-0195133-0002

10010	0558	2D4RN4DE0AR199728	PQ	99-0185041-0004
10013	0558	JN8AS5MT0AW007470	PQ	99-0185041-0004
10006	4022	2D4RN4DE3AR187590	PQ	00-0110610-0001
08004	4031	3D4PH6FV5AT139691	PQ	00-0187500-0001
61001	4110	1FTNE2EW6ADA11546	PQ	00-0039414-0001
10002	4160	2FMGK5BC0ABA81168	PQ	99-0167627-0006
10003	4160	2FMGK5CC3ABA81177	PQ	99-0167627-0006
10004	4160	2FMGK5BC9ABA81184	PQ	99-0167627-0006
10005	4160	2FMGK5BC2ABA81172	PQ	99-0167627-0006
10007	4160	2FMGK5CC1ABA81176	PQ	99-0167627-0006
10010	4160	2FMGK5CCXABA81175	PQ	99-0167627-0006
10011	4160	2FMGK5BC4ABA81173	PQ	99-0167627-0006
10012	4160	2FMGK5BC2ABA81169	PQ	99-0167627-0006
10017	4160	2FMGK5BC1ABA81180	PQ	99-0167627-0006
10021	4160	2FMGK5BC3ABA81181	PQ	99-0167627-0006
10022	4160	2FMGK5BC9ABA81170	PQ	99-0167627-0006
10024	4160	2FMGK5BC6ABA81174	PQ	99-0167627-0006
10026	4160	2FMGK5BC5ABA81182	PQ	99-0167627-0006
10028	4160	2FMGK5BC0ABA81171	PQ	99-0167627-0006
10029	4160	2FMGK5BC7ABA81183	PQ	99-0167627-0006
10035	4160	2FMGK5CC5ABA81178	PQ	99-0167627-0006
10006	4160	2FMGK5CC4ABA81186	PQ	99-0167627-0006
10009	4160	2FMGK5CC8ABA81191	PQ	99-0167627-0006
10014	4160	2FMGK5BC5ABA81179	PQ	99-0167627-0006
10015	4160	2FMGK5CC2ABA81185	PQ	99-0167627-0006
10018	4160	2FMGK5CCXABA81192	PQ	99-0167627-0006
10020	4160	2FMGK5CC1ABA81193	PQ	99-0167627-0006
10023	4160	2FMGK5CC8ABA81188	PQ	99-0167627-0006
10027	4160	2FMGK5CC3ABA81194	PQ	99-0167627-0006
10031	4160	2FMGK5BC4ABA81190	PQ	99-0167627-0006
10034	4160	2FMGK5CCXABA81189	PQ	99-0167627-0006
10037	4160	2FMGK5BC4ABA81187	PQ	99-0167627-0006
10008	4160	2FMGK5BC0ABA81199	PQ	99-0167627-0006
10013	4160	2FMGK5BC7ABA81197	PQ	99-0167627-0006
10016	4160	2FMGK5CC5ABA81200	PQ	99-0167627-0006
10030	4160	2FMGK5BC9ABA81198	PQ	99-0167627-0006
10032	4160	2FMGK5BC5ABA81196	PQ	99-0167627-0006
10033	4160	2FMGK5CC5ABA81195	PQ	99-0167627-0006
10025	4160	2FMGK5CC9ABA81202	PQ	99-0167627-0006
10006	4191	1N4AA5AP5AC807260	PQ	99-0221276-0001
10002	4195	2D4RN4DEXAR222609	PQ	00-0384168-0001
31006	4236	1GCUGADX8A1108033	PQ	01-0098943-0001
24317	4270	2CNFLDEY0A6275847	PQ	99-0205497-0001
10004	4286	1FMEU7DE5AUA34868	PQ	00-0004285-0001
10043	4286	1N4AL2AP1AC110385	PQ	00-0004285-0001
10013	4286	5N1AR1NB1AC610981	PQ	00-0004285-0001
10030	4286	1FMEU7DE9AUA36624	PQ	00-0004285-0001
10061	4513	3FAHP0HG5AR257159	PQ	99-0227857-0001
10016	4513	WVWML9AN9AE524002	PQ	99-0227857-0001
03056	4533	1FTNE1EW9ADA20087	PQ	00-0038094-0001
00250	4533	1GD3G2AA0A1108931	PQ	00-0038094-0001
02008	4533	1GC2GUBG0A1100746	PQ	00-0038094-0001
00251	4533	2D4RN4DE1AR157200	PQ	00-0038094-0001
03644	4556	2D4RN4DEXAR187599	PQ	00-0050264-0002
03647	4556	2G1WA5EK2A1157574	PQ	00-0050264-0002
03683	4556	2G1WA5EK5A1161716	PQ	00-0050264-0002
03621	4556	2D4RN4DE6AR187597	PQ	00-0050264-0002
10044	4569	1N4AL2AP6AC119728	PQ	00-0004596-0001
29015	4569	1FMCU9DG9AKA06801	PQ	00-0004596-0001
10003	4569	1GTUHAD48A1103725	PQ	00-0004596-0001
21003	4664	WVWVK9AN0AE075616	PQ	04-0221476-0001
21001	4664	1J4PR4GK4AC124107	PQ	04-0221476-0001
01007	4681	1G1ZC5E02A4156631	PQ	04-0685134-0001
01056	4727	2FMMDK3JC0ABA74696	PQ	99-0185504-0001
01064	4727	2FMMDK3JC2ABA77504	PQ	99-0185504-0001
01109	4727	2D4RN4DE1AR187605	PQ	99-0185504-0001
01112	4727	2FMMDK3GC9ABA79760	PQ	99-0185504-0001

01117	4727	2FMDK3GC8ABA77501	PQ	99-0185504-0001
01028	4727	1FMCU0DG8AKB16380	PQ	99-0185504-0001
01101	4727	2D4RN4DE2AR220790	PQ	99-0185504-0001
91505	4777	WVGDK6A93AD000091	PQ	99-0185041-0001
91506	4777	YV4CZ9821A1532914	PQ	99-0185041-0001
10008	4796	2D4RN4DE9AR187609	PQ	00-0000526-0001
52210	4803	4S3BMHB65A3226421	PQ	99-0176501-0001
72610	4803	WDDGF8FB2AF431450	PQ	99-0176501-0001
10020	4847	4T1BF3EK1AU075461	PQ	99-0190952-0001
10066	4847	4T1BF3EK4AU097003	PQ	99-0190952-0001
10020	4998	3VWJL7AJ9AM041282	PQ	10-0015913-0001
10031	4998	3VWJL7AJXAM027987	PQ	10-0015913-0001
10033	4998	3VWJL7AJ8AM054945	PQ	10-0015913-0001
10028	8004	WAUBFCFL7AN030916	PQ	09-0643016-0001
10002	8009	1FMCU0D77AKB26382	PQ	09-0708508-0001
10162	8576	2D4RN4DE8AR221037	PQ	08-0240815-0001
10170	8576	2D4RN4DEXAR221038	PQ	08-0240815-0001
10161	8576	2FMGK5BC5ABA81201	PQ	08-0240815-0001
10140	8576	2FMGK5BC9ABA81167	PQ	08-0240815-0001
31046	8583	1FMCU0DG9AKB38887	PQ	08-0492475-0001
10003	8604	1GKLVMED0AJ156945	PQ	08-0721763-0001
09609	8649	2D4HN11E49R690619	PQ	99-0190851-0002
09300	8649	1HTMNAAP9AH170786	PQ	99-0190851-0002
09301	8649	1HTMNAAP0AH170787	PQ	99-0190851-0002
09302	8649	1HTMNAAP4AH170789	PQ	99-0190851-0002
09310	8649	1HTMNAAP7AH170799	PQ	99-0190851-0002
09313	8649	1HTMNAAPXAH170795	PQ	99-0190851-0002
09317	8649	1HTMNAAP1AH170796	PQ	99-0190851-0002
09321	8649	1HTMNAAP4AH195899	PQ	99-0190851-0002
09322	8649	1HTMNAAP0AH206168	PQ	99-0190851-0002
09324	8649	1HTMNAAP5AH206165	PQ	99-0190851-0002
09325	8649	1HTMNAAP7AH206166	PQ	99-0190851-0002
09326	8649	1HTMNAAP7AH195900	PQ	99-0190851-0002
09700	8649	1HTWYAHT49J170783	PQ	99-0190851-0002
10032	8664	1FMCU9DG8AKB26315	PQ	00-0184770-0001
10042	8664	1FMCU9DG1AKB16354	PQ	00-0184770-0001
10004	8667	2A4RR5DX9AR222023	PQ	99-0188171-0003
10001	9249	3N1AB6AP7AL615424	PQ	00-0095854-0001
10002	9249	3N1AB6AP1AL613734	PQ	00-0095854-0001
10003	9249	3N1AB6AP8AL645421	PQ	00-0095854-0001
10004	9249	3N1AB6AP8AL608692	PQ	00-0095854-0001
01013	9358	JN8AS5MV1AW105215	PQ	99-0185041-0005
01029	9358	JN8AS5MV9AW105821	PQ	99-0185041-0005
91500	4777	WBANV1C59AC159083	PQ	99-0185041-0001

The foregoing corrections are effective the date of the Original Registration.

#### Autres mentions :

BLAKE, CASSELS & GRAYDON LLP represents the Assignor and the Assignee in the present correction of registration.

Signature: Stella PANTAZOPOULOS for Blake, Cassels & Graydon LLP, authorized representative of the Assignor and the Assignee.

#### REMARQUES

Inscriptions de radiation - Quant à l'inscription visée

14-0393707-0004	2014-05-07 09:30	Radiation quant à	04-0221476-0001
14-0952758-0018	2014-10-10 10:45	Radiation quant à	99-0167627-0006
14-0972968-0003	2014-10-17 09:30	Radiation quant à	99-0176501-0001
14-0972968-0005	2014-10-17 09:30	Radiation quant à	99-0179420-0001
14-1037821-0002	2014-11-05 11:15	Radiation quant à	99-0185041-0004
14-1037821-0004	2014-11-05 11:15	Radiation quant à	99-0185504-0001

15-0004753-0018	2015-01-06 09:30	Radiation quant à	00-0000526-0001
15-0005711-0020	2015-01-06 13:15	Radiation quant à	00-0004596-0001
15-0028387-0026	2015-01-14 14:00	Radiation quant à	00-0007000-0001
15-0087423-0009	2015-02-04 10:15	Radiation quant à	00-0039414-0001
15-0087423-0011	2015-02-04 10:15	Radiation quant à	00-0047348-0001
15-0141710-0057	2015-02-23 09:30	Radiation quant à	00-0050264-0002
20-0117923-0020	2020-02-05 10:45	Radiation quant à	10-0015913-0001
20-0330554-0009	2020-04-09 14:00	Radiation quant à	00-0095854-0001

Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

---

INSCRIPTION	DATE-HEURE-MINUTE
10-0432095-0002	2010-07-02 09:00
RECTIFICATION D'UNE INSCRIPTION	

### PARTIES

#### Assignor

FLR LP INC.  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7

#### Assignee

PHH FLEET LEASE RECEIVABLES L.P.  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7  
Représenté par : FLR GP INC.  
En qualité de : General Partner

### MENTIONS

#### Référence à l'inscription visée

NUMÉRO	NATURE
00-0007000-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0195133-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0185041-0004	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0110610-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0187500-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0039414-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0167627-0006	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0221276-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0384168-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
01-0098943-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0205497-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0004285-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0227857-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0038094-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0050264-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT-

00-0004596-0001	BAILLEUR
04-0221476-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0685134-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0185504-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0185041-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0000526-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0176501-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0190952-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
10-0015913-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
09-0643016-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
09-0708508-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0240815-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0492475-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0721763-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0190851-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0184770-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0188171-0003	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0095854-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0185041-0005	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
10-0047624-0002	Assignment of rights
99-0188586-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0179420-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR

### Objet de la rectification :

The registration number 10-0047624-0002 ("Original Registration") is corrected as follows:

1. To DELETE the following equipment under the heading "Biens" and under "Référence à l'inscription visée" :

UNIT	CLIENT	VIN	PROVINCE	QUEBEC REGISTRATION #
00819	0440	1J8FF48W48D779943	PQ	00-0169272-0001
09061	4090	2FMDK48C39BA78250	PQ	99-0188586-0001
00622	4770	YV4BZ982591048591	PQ	99-0179420-0001

2. To ADD the following equipment under the heading "Biens" and under "Référence à l'inscription visée" :

UNIT	CLIENT	VIN	PROVINCE	QUEBEC REGISTRATION #
01012	0423	2CNALDEW4A6258994	PQ	00-0007000-0001
21007	0423	2CNFLEEY4A6289563	PQ	00-0007000-0001
21003	0423	2CNFLEEY5A6289264	PQ	00-0007000-0001

01021	0423	2CNALDEW3A6289282	PQ	00-0007000-0001
10008	0512	2CNFLCEW7A6230414	PQ	00-0195133-0002
10010	0558	2D4RN4DE0AR199728	PQ	99-0185041-0004
10013	0558	JN8AS5MT0AW007470	PQ	99-0185041-0004
10006	4022	2D4RN4DE3AR187590	PQ	00-0110610-0001
08004	4031	3D4PH6FV5AT139691	PQ	00-0187500-0001
61001	4110	1FTNE2EW6ADA11546	PQ	00-0039414-0001
10002	4160	2FMGK5BC0ABA81168	PQ	99-0167627-0006
10003	4160	2FMGK5CC3ABA81177	PQ	99-0167627-0006
10004	4160	2FMGK5BC9ABA81184	PQ	99-0167627-0006
10005	4160	2FMGK5BC2ABA81172	PQ	99-0167627-0006
10007	4160	2FMGK5CC1ABA81176	PQ	99-0167627-0006
10010	4160	2FMGK5CCXABA81175	PQ	99-0167627-0006
10011	4160	2FMGK5BC4ABA81173	PQ	99-0167627-0006
10012	4160	2FMGK5BC2ABA81169	PQ	99-0167627-0006
10017	4160	2FMGK5BC1ABA81180	PQ	99-0167627-0006
10021	4160	2FMGK5BC3ABA81181	PQ	99-0167627-0006
10022	4160	2FMGK5BC9ABA81170	PQ	99-0167627-0006
10024	4160	2FMGK5BC6ABA81174	PQ	99-0167627-0006
10026	4160	2FMGK5BC5ABA81182	PQ	99-0167627-0006
10028	4160	2FMGK5BC0ABA81171	PQ	99-0167627-0006
10029	4160	2FMGK5BC7ABA81183	PQ	99-0167627-0006
10035	4160	2FMGK5CC5ABA81178	PQ	99-0167627-0006
10006	4160	2FMGK5CC4ABA81186	PQ	99-0167627-0006
10009	4160	2FMGK5CC8ABA81191	PQ	99-0167627-0006
10014	4160	2FMGK5BC5ABA81179	PQ	99-0167627-0006
10015	4160	2FMGK5CC2ABA81185	PQ	99-0167627-0006
10018	4160	2FMGK5CCXABA81192	PQ	99-0167627-0006
10020	4160	2FMGK5CC1ABA81193	PQ	99-0167627-0006
10023	4160	2FMGK5CC8ABA81188	PQ	99-0167627-0006
10027	4160	2FMGK5CC3ABA81194	PQ	99-0167627-0006
10031	4160	2FMGK5BC4ABA81190	PQ	99-0167627-0006
10034	4160	2FMGK5CCXABA81189	PQ	99-0167627-0006
10037	4160	2FMGK5BC4ABA81187	PQ	99-0167627-0006
10008	4160	2FMGK5BC0ABA81199	PQ	99-0167627-0006
10013	4160	2FMGK5BC7ABA81197	PQ	99-0167627-0006
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91500	4777	WBANV1C59AC159083	PQ	99-0185041-0001

The foregoing corrections are effective the date of the Original Registration.

**Autres mentions :**

BLAKE, CASSELS & GRAYDON LLP represents the Assignor and the Assignee in the present correction of registration.

Signature: Stella PANTAZOPOULOS for Blake, Cassels & Graydon LLP, authorized representative of the Assignor and the Assignee.

**REMARQUES**

Inscriptions de radiation - Quant à l'inscription visée

14-0393707-0004	2014-05-07 09:30	Radiation quant à	04-0221476-0001
14-0952758-0018	2014-10-10 10:45	Radiation quant à	99-0167627-0006
14-0972968-0003	2014-10-17 09:30	Radiation quant à	99-0176501-0001
14-0972968-0005	2014-10-17 09:30	Radiation quant à	99-0179420-0001

14-1037821-0002	2014-11-05 11:15	Radiation quant à	99-0185041-0004
14-1037821-0004	2014-11-05 11:15	Radiation quant à	99-0185504-0001
15-0004753-0018	2015-01-06 09:30	Radiation quant à	00-0000526-0001
15-0005711-0020	2015-01-06 13:15	Radiation quant à	00-0004596-0001
15-0028387-0026	2015-01-14 14:00	Radiation quant à	00-0007000-0001
15-0087423-0009	2015-02-04 10:15	Radiation quant à	00-0039414-0001
15-0087423-0011	2015-02-04 10:15	Radiation quant à	00-0047348-0001
15-0141710-0057	2015-02-23 09:30	Radiation quant à	00-0050264-0002
20-0117923-0020	2020-02-05 10:45	Radiation quant à	10-0015913-0001
20-0330554-0009	2020-04-09 14:00	Radiation quant à	00-0095854-0001

Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

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INSCRIPTION  
10-0050072-0002  
Assignment of Rights

DATE-HEURE-MINUTE  
2010-01-28 12:34

### PARTIES

#### Assignee

FLEET LEASING RECEIVABLES TRUST  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7

#### Issuer Trustee

BNY TRUST COMPANY OF CANADA  
4 King Street West, Suite 1101, Toronto, Ontario M5H 1B6

#### Assignor

PHH FLEET LEASE RECEIVABLES L.P.  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7  
Représenté par : FLR GP 1 INC.  
En qualité de : General Partner

### BIENS

All of the right, title and interest of the Assignor in and to the rights registered at the Register of Personal and Movable Real Rights under the registration numbers listed below under the heading "Référence à l'inscription visée" but only as they relate to the Equipment identified below by its vehicle identification number (VIN):

UNIT	CLIENT	VIN	PROVINCE	RPMRR
28055	0417	2D8HN44P68R819052	PQ	99-0179420-0003
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28063	0417	1FMCU93108KD97828	PQ	99-0179420-0003
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08106	8512	3GNCA13D88S714226	PQ	06-0297958-0001
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76766	8802	1FDAF57P47EA40903	PQ	99-0167627-0001
76768	8802	1FDAF57P67EA40904	PQ	99-0167627-0001
76773	8802	1FDAW57P77EA50762	PQ	99-0167627-0001
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78257	8802	1GCHK33K28F164757	PQ	99-0167627-0001
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90001	9249	2T1BU40E59C086392	PQ	00-0095854-0001
90002	9249	2T1BU40E69C084330	PQ	00-0095854-0001
90004	9249	2T1BU40E59C100811	PQ	00-0095854-0001
90005	9249	3N1AB61E39L612515	PQ	00-0095854-0001
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11904	9323	1FTNE14W89DA41381	PQ	00-0240082-0001
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16041	9337	2D8HN44H18R653581	PQ	00-0218941-0003
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16043	9337	2D8HN44H38R650326	PQ	00-0218941-0003
16044	9337	2D8HN44H38R653582	PQ	00-0218941-0003
16045	9337	2D8HN44H58R653583	PQ	00-0218941-0003
16046	9337	2D8HN44H78R653584	PQ	00-0218941-0003
16047	9337	2D8HN44H98R653585	PQ	00-0218941-0003
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16052	9337	2D8HN44H58R656967	PQ	00-0218941-0003
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29014	9350	1J8GR48K99C545619	PQ	02-0044806-0001
29016	9350	1J8GR48K39C559144	PQ	02-0044806-0001
29017	9350	1J8GR48K69C503991	PQ	02-0044806-0001
29018	9350	2FMDK49C79BA90819	PQ	02-0044806-0001
29019	9350	1FMEU73E19UA18566	PQ	02-0044806-0001
08004	9377	1GCFG15X381215492	PQ	05-0633481-0001
08006	9389	3GSDL43N58S501143	PQ	00-0047348-0001
10003	9389	JF2SH6BC8AH723031	PQ	00-0047348-0001
29001	9389	4T1BK46K09U084132	PQ	00-0047348-0001

Definitions:

"Equipment" means an automobile, truck (light, medium or heavy duty), truck body, trailer, forklift or other material handling equipment or other equipment, together with all equipment, attachments and accessories attached thereto.

MENTIONS

**Référence à l'inscription visée**

NUMÉRO	NATURE
99-0179420-0003	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0175495-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR

00-0002166-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0000994-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0190825-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0167620-0003	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0185041-0004	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0015060-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0149119-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0168204-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0167627-0004	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
10-0015913-0006	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0236770-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0187500-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
04-0098565-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0050867-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0050264-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0210538-0005	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0039414-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0167620-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0167627-0006	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0212142-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
01-0045412-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0221276-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
01-0007977-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0050264-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0185041-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
01-0098943-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0054558-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0205497-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
01-0403579-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0316970-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
02-0232754-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
02-0132248-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0211403-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0012598-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-



02-0161046-0001	BAILLEUR DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0003236-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
02-0252090-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
02-0563902-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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00-0012990-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0006630-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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99-0227857-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0114661-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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02-0361206-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0004596-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
03-0036219-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
03-0071461-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
03-0243916-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
03-0282013-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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03-0667997-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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04-0640927-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0687317-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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99-0185504-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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04-0109819-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
05-0650962-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
06-0086161-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
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06-0657150-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
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07-0065042-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
08-0172574-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
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08-0240815-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
08-0692987-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
08-0721763-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
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99-0167627-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-

00-0193129-0001	BAILLEUR DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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00-0201997-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0188726-0003	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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05-0633481-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0047348-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR

### Référence à l'acte constitutif

Forme de l'acte : Sous seing privé

Date : 2010-01-27

### Autres mentions :

BNY Trust Company of Canada is acting in its capacity as issuer trustee of Fleet Leasing Receivables Trust.

### REMARQUES

INSCRIPTION	DATE-HEURE-MINUTE
13-0300592-0002	2013-04-18 09:00
Re-Assignment of Rights	

### Inscriptions de radiation - Quant à l'inscription visée

12-0691734-0001	2012-08-23 14:51	Radiation quant à	03-0282013-0001
12-0954504-0001	2012-11-19 14:48	Radiation quant à	00-0149119-0001
13-0417275-0007	2013-05-21 10:45	Radiation quant à	03-0243916-0001
14-0949787-0001	2014-10-10 09:30	Radiation quant à	99-0167620-0001
14-0952758-0016	2014-10-10 10:45	Radiation quant à	99-0167627-0001
14-0952758-0017	2014-10-10 10:45	Radiation quant à	99-0167627-0004
14-0952758-0018	2014-10-10 10:45	Radiation quant à	99-0167627-0006
14-0969855-0020	2014-10-16 14:45	Radiation quant à	99-0174025-0001
14-0972968-0003	2014-10-17 09:30	Radiation quant à	99-0176501-0001
14-1028038-0017	2014-11-03 10:45	Radiation quant à	99-0185041-0002
14-1037821-0002	2014-11-05 11:15	Radiation quant à	99-0185041-0004
14-1037821-0004	2014-11-05 11:15	Radiation quant à	99-0185504-0001
14-1129712-0068	2014-12-03 10:45	Radiation quant à	99-0226320-0001
14-1154378-0013	2014-12-11 09:30	Radiation quant à	04-0708673-0001
15-0004753-0018	2015-01-06 09:30	Radiation quant à	00-0000526-0001
15-0004753-0019	2015-01-06 09:30	Radiation quant à	00-0000994-0001
15-0004753-0020	2015-01-06 09:30	Radiation quant à	00-0001058-0001
15-0005137-0001	2015-01-06 10:45	Radiation quant à	00-0002166-0002
15-0005137-0002	2015-01-06 10:45	Radiation quant à	00-0003236-0001
15-0005711-0020	2015-01-06 13:15	Radiation quant à	00-0004596-0001
15-0028387-0025	2015-01-14 14:00	Radiation quant à	00-0006630-0001
15-0028387-0034	2015-01-14 14:00	Radiation quant à	00-0009236-0001
15-0028690-0024	2015-01-14 14:00	Radiation quant à	00-0012990-0002
15-0028690-0025	2015-01-14 14:00	Radiation quant à	00-0015201-0001

15-0029075-0002	2015-01-15 09:30	Radiation quant à	00-0011425-0001
15-0029075-0005	2015-01-15 09:30	Radiation quant à	00-0012598-0001
15-0087423-0009	2015-02-04 10:15	Radiation quant à	00-0039414-0001
15-0087423-0011	2015-02-04 10:15	Radiation quant à	00-0047348-0001
15-0141710-0056	2015-02-23 09:30	Radiation quant à	00-0050264-0001
15-0141710-0057	2015-02-23 09:30	Radiation quant à	00-0050264-0002
15-0141710-0059	2015-02-23 09:30	Radiation quant à	00-0050867-0001
15-0141710-0060	2015-02-23 09:30	Radiation quant à	00-0054558-0001
15-0252838-0008	2015-03-27 09:30	Radiation quant à	05-0160897-0001
15-1100639-0001	2015-11-11 12:45	Radiation quant à	05-0633481-0001
15-1124204-0042	2015-11-18 10:45	Radiation quant à	05-0650962-0001
16-0071634-0014	2016-01-28 10:15	Radiation quant à	06-0044865-0001
16-0154942-0048	2016-02-24 11:15	Radiation quant à	06-0086161-0001
16-0301086-0049	2016-04-07 09:30	Radiation quant à	06-0170386-0001
16-0519144-0019	2016-06-02 09:30	Radiation quant à	06-0297958-0001
16-0746348-0009	2016-08-01 14:00	Radiation quant à	06-0352452-0001
16-1082473-0022	2016-11-03 11:15	Radiation quant à	06-0613477-0001
17-0213646-0088	2017-03-10 10:45	Radiation quant à	07-0065042-0001
19-0073943-0014	2019-01-25 10:45	Radiation quant à	09-0036271-0001
19-0678679-0045	2019-06-20 09:15	Radiation quant à	09-0359433-0001
20-0117923-0020	2020-02-05 10:45	Radiation quant à	10-0015913-0001
20-0117923-0021	2020-02-05 10:45	Radiation quant à	10-0015913-0002
20-0330554-0009	2020-04-09 14:00	Radiation quant à	00-0095854-0001



Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

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### INSCRIPTION

10-0047624-0002

Assignment of rights

### DATE-HEURE-MINUTE

2010-01-28 09:00

### PARTIES

#### Assignor

FLR LP INC.

2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7

#### Assignee

PHH FLEET LEASE RECEIVABLES L.P.

2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7

Représenté par : FLR GP 1 INC.

En qualité de : General Partner

### BIENS

All of the right, title and interest of the Assignor in and to the rights registered at the Register of Personal and Movable Real Rights under the registration numbers listed below under the heading "Référence à l'inscription visée" but only as they relate to the Equipment identified below by its vehicle identification number (VIN):

UNIT	CLIENT	VIN	PROVINCE	RPMRR
28055	0417	2D8HN44P68R819052	PQ	99-0179420-0003
28058	0417	1FMCU93108KE44081	PQ	99-0179420-0003
28059	0417	1FMCU931X8KD97819	PQ	99-0179420-0003
28063	0417	1FMCU93108KD97828	PQ	99-0179420-0003
28056	0417	1FTWW31R68ED84792	PQ	99-0179420-0003
28302	0417	3FAHP071X8R245354	PQ	99-0179420-0003
28068	0417	2D8HN44P48R754895	PQ	99-0179420-0003
28057	0417	1G6DF577880164627	PQ	99-0179420-0003
28996	0417	5TBDV581X8S499498	PQ	99-0179420-0003
28054	0417	1J8HR48N28C201854	PQ	99-0179420-0003
28051	0417	1FMCU93178KD63398	PQ	99-0179420-0003
28024	0417	1G8ZR57548F259878	PQ	99-0179420-0003
28053	0417	3LNHM26T68R641889	PQ	99-0179420-0003
28052	0417	1FMCU931X8KD77893	PQ	99-0179420-0003
28050	0417	1FMCU931X8KC41120	PQ	99-0179420-0003
28049	0417	1GMDU231X8D146993	PQ	99-0179420-0003
28046	0417	1FMCU93188KD77892	PQ	99-0179420-0003
28048	0417	2D8HN44P48R658815	PQ	99-0179420-0003
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28039	0417	2G4WF582381256737	PQ	99-0179420-0003
28037	0417	1FMDK02W98GA35017	PQ	99-0179420-0003
28065	0417	1FMCU93138KC41119	PQ	99-0179420-0003

28044	0417	1FMCU93118KE07976	PQ	99-0179420-0003
28043	0417	2D8FV47T48H242270	PQ	99-0179420-0003
28042	0417	1FMDK02W58GA38688	PQ	99-0179420-0003
28041	0417	1J8FF47W78D665484	PQ	99-0179420-0003
28038	0417	1FMDK02W58GA37167	PQ	99-0179420-0003
28032	0417	1J8GR48K78C215489	PQ	99-0179420-0003
28031	0417	1FMDK02W48GA35023	PQ	99-0179420-0003
28029	0417	1FMDK02W28GA35022	PQ	99-0179420-0003
28067	0417	1FMDK02W08GA32118	PQ	99-0179420-0003
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29303	0417	3FAHP0HG6AR125849	PQ	99-0179420-0003
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29179	0417	1G6DU57V590162419	PQ	99-0179420-0003
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29156	0417	1G6DF577290169260	PQ	99-0179420-0003
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09006	0456	3D4GG57V09T561830	PQ	00-0000994-0001
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07150	8514	1FTNS24W38DB48545	PQ	06-0353016-0001
27124	8514	1FTNS24W17DB01240	PQ	06-0353016-0001
07159	8514	1FTNS24W97DB33921	PQ	06-0353016-0001
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07152	8514	1FTNS24W17DA54422	PQ	06-0353016-0001
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31027	8583	3FAHP0HA5AR174424	PQ	08-0492475-0001
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09005	8594	WDCGG8HB8AF343078	PQ	08-0703872-0001
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09033	8897	2D8HN44E19R644631	PQ	00-0072191-0001
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09196	9322	1FTNE24LX9DA73549	PQ	00-0012645-0001
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28016	9324	WBAWC335X8PD09682	PQ	00-0167774-0001
28017	9324	5N1BV28U98N101190	PQ	00-0167774-0001
28018	9324	1N4AL21E58C170422	PQ	00-0167774-0001
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29019	9324	1FTSW31579EB25385	PQ	00-0167774-0001

21001	9324	1FTWF3B59AEA07973	PQ	00-0167774-0001
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04024	9333	2G1WT58K589286507	PQ	00-0082320-0002
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02149	9333	2G1WB5EK6A1155288	PQ	00-0082320-0002
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29022	9358	3D4GH57V89T585161	PQ	99-0185041-0005
27046	9358	1D4GP25R17B220102	PQ	99-0185041-0005
27047	9358	1D4GP25R27B218648	PQ	99-0185041-0005
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28029	9358	1D8GU28K88W259530	PQ	99-0185041-0005
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28033	9358	1D8GU28K08W252961	PQ	99-0185041-0005
29025	9358	3D4GH57V79T543323	PQ	99-0185041-0005
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08968	9388	1GCGG25C281146298	PQ	00-0034891-0001
08066	9388	1GCGG25C781147396	PQ	00-0034891-0001
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08071	9388	1GCGG25C781144935	PQ	00-0034891-0001
08916	9388	1GCGG25CX81146825	PQ	00-0034891-0001
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08065	9388	1GCGG25C281146138	PQ	00-0034891-0001
07017	9388	2G1WB58N579343462	PQ	00-0034891-0001
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28002	9388	1GTHG39C981141233	PQ	00-0034891-0001
28003	9388	1GTHG35C381130590	PQ	00-0034891-0001
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28008	9388	1GNDU23W58D152000	PQ	00-0034891-0001
20810	9388	1GCHC29K18E129227	PQ	00-0034891-0001
28009	9388	1GCHC24K18E151042	PQ	00-0034891-0001
28011	9388	2T1BU40E59C023096	PQ	00-0034891-0001
28012	9388	1GTHG39C781212624	PQ	00-0034891-0001
28013	9388	1GTHG39C881214026	PQ	00-0034891-0001
28014	9388	1GTHG39C381212975	PQ	00-0034891-0001



28015	9388	1GTHG39C281211638	PQ	00-0034891-0001
80002	9388	SALFR24N48H063237	PQ	00-0034891-0001
09053	9388	5Y2SP67819Z400340	PQ	00-0034891-0001
28001	9396	2G1WB58K389144434	PQ	00-0091546-0001
28010	9396	1GNDV33128D112741	PQ	00-0091546-0001
28018	9396	2G1WB58K089270198	PQ	00-0091546-0001
29000	9396	1G2ZJ57B194253749	PQ	00-0091546-0001
28022	9396	2G1WB58K181242683	PQ	00-0091546-0001

Definitions:

"Equipment" means an automobile, truck (light, medium or heavy duty), truck body, trailer, forklift or other material handling equipment or other equipment, together with all equipment, attachments and accessories attached thereto.

MENTIONS

**Référence à l'inscription visée**

NUMÉRO	NATURE
04-0588910-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
06-0662471-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
07-0727304-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0007000-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0169272-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0114997-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0087615-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0169266-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0005706-0003	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0188586-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0384168-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0004285-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
09-0606504-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0179420-0004	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
08-0724567-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
03-0324350-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
03-0440295-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
04-0221476-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
04-0465067-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0179420-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0188171-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
05-0571003-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
05-0678860-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0179420-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT-

09-0689074-0001	BAILLEUR DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
06-0353016-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
06-0395868-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0051467-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0442387-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0492475-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0505040-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0703872-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0175537-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0072191-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0169751-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0012645-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0167774-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
01-0022211-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0082320-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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00-0034891-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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00-0317941-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0344169-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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99-0209806-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0177718-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0179420-0003	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0175495-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0002166-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0000994-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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99-0167627-0004	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
10-0015913-0006	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR

00-0236770-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0187500-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
04-0098565-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0050867-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0050264-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0210538-0005	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0039414-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
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00-0212142-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
01-0045412-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0221276-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
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99-0205497-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
01-0403579-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
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02-0361206-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-

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03-0313269-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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04-0249447-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0279176-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0372032-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0685134-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0640927-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0687317-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0708673-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0159811-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
10-0015913-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0185504-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
05-0160897-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
05-0242601-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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00-0000526-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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00-0001058-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
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06-0297958-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
06-0352452-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
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06-0657150-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
07-0059798-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
07-0065042-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
08-0172574-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
07-0597377-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
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00-0171689-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
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02-0044806-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
05-0633481-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0047348-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR

### Référence à l'acte constitutif

Forme de l'acte : Sous seing privé

Date : 2010-01-27

### REMARQUES

INSCRIPTION

10-0432095-0002

RECTIFICATION D'UNE INSCRIPTION

DATE-HEURE-MINUTE

2010-07-02 09:00

Inscriptions de radiation - Quant à l'inscription

visée

10-0235325-0001	2010-04-16	09:18	Radiation quant à	00-0082320-0002
10-0235341-0045	2010-04-16	09:22	Radiation quant à	00-0087615-0001
11-0392661-0001	2011-05-26	10:45	Radiation quant à	01-0178387-0001
11-0957299-0002	2011-12-13	14:41	Radiation quant à	99-0209806-0001
12-0691734-0001	2012-08-23	14:51	Radiation quant à	03-0282013-0001
13-0417275-0007	2013-05-21	10:45	Radiation quant à	03-0243916-0001
13-0553765-0036	2013-06-27	11:00	Radiation quant à	03-0324350-0001
14-0393707-0004	2014-05-07	09:30	Radiation quant à	04-0221476-0001
14-0952758-0017	2014-10-10	10:45	Radiation quant à	99-0167627-0004
14-0952758-0018	2014-10-10	10:45	Radiation quant à	99-0167627-0006
14-0952758-0019	2014-10-10	10:45	Radiation quant à	99-0169751-0002
14-0958050-0007	2014-10-14	09:30	Radiation quant à	04-0588910-0001
14-0969855-0020	2014-10-16	14:45	Radiation quant à	99-0174025-0001
14-0972968-0003	2014-10-17	09:30	Radiation quant à	99-0176501-0001
14-0972968-0005	2014-10-17	09:30	Radiation quant à	99-0179420-0001
14-0972968-0006	2014-10-17	09:30	Radiation quant à	99-0179420-0004
14-1037821-0002	2014-11-05	11:15	Radiation quant à	99-0185041-0004
14-1037821-0003	2014-11-05	11:15	Radiation quant à	99-0185041-0005
14-1037821-0004	2014-11-05	11:15	Radiation quant à	99-0185504-0001
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15-0004753-0019	2015-01-06	09:30	Radiation quant à	00-0000994-0001
15-0004753-0020	2015-01-06	09:30	Radiation quant à	00-0001058-0001
15-0005137-0001	2015-01-06	10:45	Radiation quant à	00-0002166-0002
15-0005137-0002	2015-01-06	10:45	Radiation quant à	00-0003236-0001
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15-0006049-0001	2015-01-07	09:30	Radiation quant à	00-0005706-0003
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15-0028387-0026	2015-01-14	14:00	Radiation quant à	00-0007000-0001
15-0028387-0034	2015-01-14	14:00	Radiation quant à	00-0009236-0001
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15-0028690-0025	2015-01-14	14:00	Radiation quant à	00-0015201-0001
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15-0029075-0005	2015-01-15	09:30	Radiation quant à	00-0012598-0001
15-0029075-0006	2015-01-15	09:30	Radiation quant à	00-0012645-0001
15-0087423-0009	2015-02-04	10:15	Radiation quant à	00-0039414-0001
15-0087423-0011	2015-02-04	10:15	Radiation quant à	00-0047348-0001
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15-0141710-0057	2015-02-23	09:30	Radiation quant à	00-0050264-0002
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15-0141710-0060	2015-02-23	09:30	Radiation quant à	00-0054558-0001
15-0150603-0013	2015-02-25	10:00	Radiation quant à	00-0072191-0001
15-0252838-0008	2015-03-27	09:30	Radiation quant à	05-0160897-0001
15-1100639-0001	2015-11-11	12:45	Radiation quant à	05-0633481-0001
15-1124204-0042	2015-11-18	10:45	Radiation quant à	05-0650962-0001
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16-1129530-0051	2016-11-17	09:30	Radiation quant à	06-0662471-0001
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18-0240642-0051	2018-03-14	09:30	Radiation quant à	08-0051467-0001
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18-0964037-0003	2018-08-31	09:15	Radiation quant à	08-0505040-0001
19-0073943-0014	2019-01-25	10:45	Radiation quant à	09-0036271-0001
19-0678679-0045	2019-06-20	09:15	Radiation quant à	09-0359433-0001
19-1119467-0050	2019-10-03	09:15	Radiation quant à	09-0606504-0001
20-0117923-0020	2020-02-05	10:45	Radiation quant à	10-0015913-0001
20-0117923-0021	2020-02-05	10:45	Radiation quant à	10-0015913-0002
20-0330554-0008	2020-04-09	14:00	Radiation quant à	00-0091546-0001

20-0330554-0009	2020-04-09 14:00	Radiation quant à	00-0095854-0001
20-0339463-0016	2020-04-15 14:00	Radiation quant à	00-0114997-0001
20-0361244-0004	2020-04-28 09:00	Radiation quant à	99-0179420-0002
20-0414113-0006	2020-05-15 10:00	Radiation quant à	00-0169272-0001

Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

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INSCRIPTION	DATE-HEURE-MINUTE
10-0047327-0001	2010-01-27 14:05
Assignment of rights	

### PARTIES

#### Assignor

PHH Vehicle Management Services Inc.  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7

#### Assignee

FLR LP Inc.  
2233 Argentia Road, Suite 400, Mississauga, Ontario L5N 2X7

### BIENS

All of the right, title and interest of the Assignor in and to the rights registered at the Register of Personal and Movable Real Rights under the registration numbers listed below under the heading "Référence à l'inscription visée" but only as they relate to the Equipment identified below by its vehicle identification number (VIN):

UNIT	CLIENT	VIN	PROVINCE	RPMRR
28055	0417	2D8HN44P68R819052	PQ	99-0179420-0003
28058	0417	1FMCU93108KE44081	PQ	99-0179420-0003
28059	0417	1FMCU931X8KD97819	PQ	99-0179420-0003
28063	0417	1FMCU93108KD97828	PQ	99-0179420-0003
28056	0417	1FTWW31R68ED84792	PQ	99-0179420-0003
28302	0417	3FAHP071X8R245354	PQ	99-0179420-0003
28068	0417	2D8HN44P48R754895	PQ	99-0179420-0003
28057	0417	1G6DF577880164627	PQ	99-0179420-0003
28996	0417	5TBDV581X8S499498	PQ	99-0179420-0003
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28051	0417	1FMCU93178KD63398	PQ	99-0179420-0003
28024	0417	1G8ZR57548F259878	PQ	99-0179420-0003
28053	0417	3LNHM26T68R641889	PQ	99-0179420-0003
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28049	0417	1GMDU231X8D146993	PQ	99-0179420-0003
28046	0417	1FMCU93188KD77892	PQ	99-0179420-0003
28048	0417	2D8HN44P48R658815	PQ	99-0179420-0003
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28037	0417	1FMDK02W98GA35017	PQ	99-0179420-0003
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27124	8514	1FTNS24W17DB01240	PQ	06-0353016-0001
07159	8514	1FTNS24W97DB33921	PQ	06-0353016-0001
07149	8514	1FTNS24L17DA72215	PQ	06-0353016-0001
07163	8514	1FTNS24W07DA03851	PQ	06-0353016-0001
07152	8514	1FTNS24W17DA54422	PQ	06-0353016-0001
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09046	8580	1GTGG256291164702	PQ	08-0442387-0001
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41873	8583	3FAHP0HA9AR179478	PQ	08-0492475-0001
31036	8583	3FAHP0HA0AR179501	PQ	08-0492475-0001
41876	8583	3FAHP0HA5AR204487	PQ	08-0492475-0001
31041	8583	3FAHP0HA7AR225860	PQ	08-0492475-0001
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09033	8584	1FMDK02W59GA05904	PQ	08-0505040-0001
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09004	8594	1HGCP36829A800606	PQ	08-0703872-0001
09005	8594	WDCCG8HB8AF343078	PQ	08-0703872-0001
09001	8689	4S3BL616297219827	PQ	00-0175537-0001
09005	8897	2D8HN44E09R515831	PQ	00-0072191-0001
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09029	8897	2D8HN44E39R644632	PQ	00-0072191-0001
09033	8897	2D8HN44E19R644631	PQ	00-0072191-0001
09050	8897	WVWAK73C89E108816	PQ	00-0072191-0001
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07014	8897	4T1BE46K98U197616	PQ	00-0072191-0001
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07169	9322	1GBDV13127D196432	PQ	00-0012645-0001

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07254	9322	3GCDA25P07S636386	PQ	00-0012645-0001
07353	9322	3GCDA25P07S636212	PQ	00-0012645-0001
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08198	9322	1GBDV13168D161331	PQ	00-0012645-0001
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29001	9324	1FMFU20569LA05877	PQ	00-0167774-0001
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28015	9324	2HNYD285X8H003377	PQ	00-0167774-0001
28016	9324	WBWC335X8PD09682	PQ	00-0167774-0001
28017	9324	5N1BV28U98N101190	PQ	00-0167774-0001
28018	9324	1N4AL21E58C170422	PQ	00-0167774-0001
28019	9324	WBAVC93508K041654	PQ	00-0167774-0001
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29015	9324	WBALM53599E160543	PQ	00-0167774-0001
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29017	9324	WBWL135X9PX25802	PQ	00-0167774-0001
29018	9324	WBAPK73529A457373	PQ	00-0167774-0001
29019	9324	1FTSW31579EB25385	PQ	00-0167774-0001
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02139	9333	2G1WT57KX91202196	PQ	00-0082320-0002
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29022	9358	3D4GH57V89T585161	PQ	99-0185041-0005
27046	9358	1D4GP25R17B220102	PQ	99-0185041-0005
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29025	9358	3D4GH57V79T543323	PQ	99-0185041-0005
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08071	9388	1GCCG25C781144935	PQ	00-0034891-0001
08916	9388	1GCCG25CX81146825	PQ	00-0034891-0001
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08065	9388	1GCCG25C281146138	PQ	00-0034891-0001
07017	9388	2G1WB58N579343462	PQ	00-0034891-0001
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28003	9388	1GTHG35C381130590	PQ	00-0034891-0001
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28008	9388	1GNDU23W58D152000	PQ	00-0034891-0001
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28009	9388	1GCHC24K18E151042	PQ	00-0034891-0001
28011	9388	2T1BU40E59C023096	PQ	00-0034891-0001
28012	9388	1GTHG39C781212624	PQ	00-0034891-0001
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28014	9388	1GTHG39C381212975	PQ	00-0034891-0001
28015	9388	1GTHG39C281211638	PQ	00-0034891-0001
80002	9388	SALFR24N48H063237	PQ	00-0034891-0001

09053	9388	5Y2SP67819Z400340	PQ	00-0034891-0001
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28010	9396	1GNDV33128D112741	PQ	00-0091546-0001
28018	9396	2G1WB58K089270198	PQ	00-0091546-0001
29000	9396	1G2ZJ57B194253749	PQ	00-0091546-0001
28022	9396	2G1WB58K181242683	PQ	00-0091546-0001

Definitions:

"Equipment" means an automobile, truck (light, medium or heavy duty), truck body, trailer, forklift or other material handling equipment or other equipment, together with all equipment, attachments and accessories attached thereto.

MENTIONS

**Référence à l'inscription visée**

NUMÉRO	NATURE
04-0588910-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
06-0662471-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
07-0727304-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0169272-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0114997-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0087615-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0169266-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0005706-0003	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0188586-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0384168-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0004285-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
09-0606504-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0179420-0004	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
08-0724567-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
03-0324350-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
03-0440295-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
04-0221476-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
04-0465067-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0179420-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0188171-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
05-0571003-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
05-0678860-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0179420-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
09-0689074-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
06-0353016-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-

06-0395868-0001	BAILLEUR DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0051467-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0442387-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0492475-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0505040-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0703872-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0175537-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0072191-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0169751-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0012645-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0167774-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
01-0022211-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0082320-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0185041-0005	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0034891-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0091546-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0196707-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0317941-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0344169-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
01-0178387-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0209806-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0177718-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0179420-0003	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0175495-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0002166-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0000994-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0190825-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0185041-0004	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0015060-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0167627-0004	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
10-0015913-0006	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0236770-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0187500-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR

04-0098565-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0050867-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0050264-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0210538-0005	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0039414-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0167627-0006	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0212142-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
01-0045412-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
99-0221276-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
01-0007977-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0050264-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
01-0098943-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
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99-0205497-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
01-0403579-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0316970-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
02-0232754-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
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99-0211403-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
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02-0361206-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
00-0004596-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR
03-0036219-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT-

03-0071461-0001	BAILLEUR DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
03-0243916-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
03-0282013-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
03-0313269-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
03-0667997-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0249447-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0279176-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0372032-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0685134-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0640927-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0687317-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0708673-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0159811-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
10-0015913-0002	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0185504-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
05-0160897-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
05-0242601-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0174025-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0000526-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0176501-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
05-0506058-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0190952-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
99-0226320-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0009236-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
04-0109819-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
05-0650962-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
06-0044865-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0338774-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
06-0170386-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0001058-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
10-0015913-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0212580-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
06-0297958-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR

06-0352452-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
06-0613477-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
06-0657150-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
07-0059798-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
07-0065042-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0172574-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
07-0597377-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0240815-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0692987-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
08-0721763-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
09-0036271-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0184770-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
09-0359433-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0193129-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0207115-0007	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0095854-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0171689-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0189138-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0201997-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0188726-0003	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0240082-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0218941-0003	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
02-0044806-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
05-0633481-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0047348-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR
00-0007000-0001	DROITS DE PROPRIÉTÉ DU CRÉDIT- BAILLEUR

### Référence à l'acte constitutif

Forme de l'acte : Sous seing privé

Date : 2010-01-27

### REMARQUES

INSCRIPTION

10-0432095-0003

RECTIFICATION D'UNE INSCRIPTION

DATE-HEURE-MINUTE

2010-07-02 09:00

Inscriptions de radiation - Quant à l'inscription

visée

10-0235325-0001 2010-04-16 09:18 Radiation quant à 00-0082320-0002



10-0235341-0045	2010-04-16	09:22	Radiation quant à	00-0087615-0001
11-0392661-0001	2011-05-26	10:45	Radiation quant à	01-0178387-0001
11-0957299-0002	2011-12-13	14:41	Radiation quant à	99-0209806-0001
12-0691734-0001	2012-08-23	14:51	Radiation quant à	03-0282013-0001
13-0417275-0007	2013-05-21	10:45	Radiation quant à	03-0243916-0001
13-0553765-0036	2013-06-27	11:00	Radiation quant à	03-0324350-0001
14-0393707-0004	2014-05-07	09:30	Radiation quant à	04-0221476-0001
14-0952758-0017	2014-10-10	10:45	Radiation quant à	99-0167627-0004
14-0952758-0018	2014-10-10	10:45	Radiation quant à	99-0167627-0006
14-0952758-0019	2014-10-10	10:45	Radiation quant à	99-0169751-0002
14-0958050-0007	2014-10-14	09:30	Radiation quant à	04-0588910-0001
14-0969855-0020	2014-10-16	14:45	Radiation quant à	99-0174025-0001
14-0972968-0003	2014-10-17	09:30	Radiation quant à	99-0176501-0001
14-0972968-0005	2014-10-17	09:30	Radiation quant à	99-0179420-0001
14-0972968-0006	2014-10-17	09:30	Radiation quant à	99-0179420-0004
14-1037821-0002	2014-11-05	11:15	Radiation quant à	99-0185041-0004
14-1037821-0003	2014-11-05	11:15	Radiation quant à	99-0185041-0005
14-1037821-0004	2014-11-05	11:15	Radiation quant à	99-0185504-0001
14-1051380-0029	2014-11-10	10:00	Radiation quant à	99-0196707-0002
14-1129712-0068	2014-12-03	10:45	Radiation quant à	99-0226320-0001
14-1154378-0013	2014-12-11	09:30	Radiation quant à	04-0708673-0001
15-0004753-0018	2015-01-06	09:30	Radiation quant à	00-0000526-0001
15-0004753-0019	2015-01-06	09:30	Radiation quant à	00-0000994-0001
15-0004753-0020	2015-01-06	09:30	Radiation quant à	00-0001058-0001
15-0005137-0001	2015-01-06	10:45	Radiation quant à	00-0002166-0002
15-0005137-0002	2015-01-06	10:45	Radiation quant à	00-0003236-0001
15-0005711-0020	2015-01-06	13:15	Radiation quant à	00-0004596-0001
15-0006049-0001	2015-01-07	09:30	Radiation quant à	00-0005706-0003
15-0028387-0025	2015-01-14	14:00	Radiation quant à	00-0006630-0001
15-0028387-0026	2015-01-14	14:00	Radiation quant à	00-0007000-0001
15-0028387-0034	2015-01-14	14:00	Radiation quant à	00-0009236-0001
15-0028690-0024	2015-01-14	14:00	Radiation quant à	00-0012990-0002
15-0028690-0025	2015-01-14	14:00	Radiation quant à	00-0015201-0001
15-0029075-0002	2015-01-15	09:30	Radiation quant à	00-0011425-0001
15-0029075-0005	2015-01-15	09:30	Radiation quant à	00-0012598-0001
15-0029075-0006	2015-01-15	09:30	Radiation quant à	00-0012645-0001
15-0087423-0009	2015-02-04	10:15	Radiation quant à	00-0039414-0001
15-0087423-0011	2015-02-04	10:15	Radiation quant à	00-0047348-0001
15-0141710-0056	2015-02-23	09:30	Radiation quant à	00-0050264-0001
15-0141710-0057	2015-02-23	09:30	Radiation quant à	00-0050264-0002
15-0141710-0059	2015-02-23	09:30	Radiation quant à	00-0050867-0001
15-0141710-0060	2015-02-23	09:30	Radiation quant à	00-0054558-0001
15-0150603-0013	2015-02-25	10:00	Radiation quant à	00-0072191-0001
15-0252838-0008	2015-03-27	09:30	Radiation quant à	05-0160897-0001
15-1100639-0001	2015-11-11	12:45	Radiation quant à	05-0633481-0001
15-1124204-0042	2015-11-18	10:45	Radiation quant à	05-0650962-0001
16-0071634-0014	2016-01-28	10:15	Radiation quant à	06-0044865-0001
16-0301086-0049	2016-04-07	09:30	Radiation quant à	06-0170386-0001
16-0519144-0019	2016-06-02	09:30	Radiation quant à	06-0297958-0001
16-0746348-0009	2016-08-01	14:00	Radiation quant à	06-0352452-0001
16-0746622-0026	2016-08-02	09:05	Radiation quant à	06-0353016-0001
16-0756301-0005	2016-08-03	14:00	Radiation quant à	06-0395868-0001
16-1082473-0022	2016-11-03	11:15	Radiation quant à	06-0613477-0001
16-1129530-0051	2016-11-17	09:30	Radiation quant à	06-0662471-0001
17-0213646-0088	2017-03-10	10:45	Radiation quant à	07-0065042-0001
18-0129677-0021	2018-02-13	09:30	Radiation quant à	07-0727304-0001
18-0240642-0051	2018-03-14	09:30	Radiation quant à	08-0051467-0001
18-0810394-0007	2018-07-25	10:42	Radiation quant à	00-0175537-0001
18-0964037-0003	2018-08-31	09:15	Radiation quant à	08-0505040-0001
19-0073943-0014	2019-01-25	10:45	Radiation quant à	09-0036271-0001
19-0678679-0045	2019-06-20	09:15	Radiation quant à	09-0359433-0001
19-1119467-0050	2019-10-03	09:15	Radiation quant à	09-0606504-0001
20-0117923-0020	2020-02-05	10:45	Radiation quant à	10-0015913-0001
20-0117923-0021	2020-02-05	10:45	Radiation quant à	10-0015913-0002
20-0330554-0008	2020-04-09	14:00	Radiation quant à	00-0091546-0001
20-0330554-0009	2020-04-09	14:00	Radiation quant à	00-0095854-0001
20-0339463-0016	2020-04-15	14:00	Radiation quant à	00-0114997-0001

20-0361244-0004	2020-04-28 09:00	Radiation quant à	99-0179420-0002
20-0414113-0006	2020-05-15 10:00	Radiation quant à	00-0169272-0001

Date, heure, minute de certification : 2020-06-11 13:03

Date, heure, minute de consultation : 2020-06-16 09:40

Recherche effectuée par organisme - Nom : General Nutrition Centres Company

## Détail de l'inscription

---

INSCRIPTION DATE-HEURE-MINUTE

03-0465017-0009

2003-09-05 09:00

Modification d'un droit publié

### PARTIES

#### Crédit-bailleur

PHH VEHICLE MANAGEMENT SERVICES INC.

2233 ARGENTIA RD, SUITE 400, MISSISSAUGA, ON

L5N 2X7

### MENTIONS

#### Référence à l'inscription visée

\*\*\*\*\*  
\* \*  
\* En raison du nombre élevé d'inscriptions visées, \*  
\* leur numéro n'est pas affiché. \*  
\* \*  
\* Pour obtenir un état de l'inscription ou une copie de la réquisition \*  
\* d'inscription, communiquer par téléphone avec le Bureau de la \*  
\* publicité des droits personnels et réels mobiliers : \*  
\* 514 864-4949 (Montréal), 418 646-4949 (Québec) ou \*  
\* 1 800 465-4949 (sans frais). \*  
\* \*  
\*\*\*\*\*

#### Référence à l'acte constitutif

Forme de l'acte : Sous seing privé

#### Autres mentions :

Secured party modification:

Change the address for the lessor (leasing) PHH VEHICLE MANAGEMENT SERVICES INC. from 350 BURNHAMTHORPE RD WEST 700, MISSISSAUGA, ON, L5B 3P9 to 2233 ARGENTIA RD, SUITE 400, MISSISSAUGA, ON, L5N 2X7.

### REMARQUES

Inscriptions de radiation - Quant à l'inscription visée

\*\*\*\*\*  
\* \*  
\* En raison du nombre élevé d'inscriptions visées, la radiation de ces \*  
\* inscriptions ne sera pas affichée dans le champ «Remarques». \*  
\* \*  
\* Pour obtenir un état de l'inscription ou une copie de la réquisition \*  
\* d'inscription, communiquer par téléphone avec le Bureau de la \*  
\*\*\*\*\*

\* publicité des droits personnels et réels mobiliers : \*  
\* 514 864-4949 (Montréal), 418 646-4949 (Québec) ou \*  
\* 1 800 465-4949 (sans frais). \*  
\* \*  
\*\*\*\*\*

AVIS D'ADRESSE

N° 009042

RECTIFICATIONS

Numéro de la demande : 06-R000378 DHM : 2006-06-28 18:00  
En raison du nombre élevé d'inscriptions visées,  
leur numéro n'est pas affiché.

En raison du nombre élevé d'inscriptions de radiation  
portées en remarque, leur numéro n'est pas affiché.

Annie Maingot, officier-adjoint  
Numéro de la demande : 19-R023825 DHM : 2019-04-02 15:30  
Entre le 28 novembre 2011 et le 29 mars 2019, la consultation par Internet  
de cette inscription a pu afficher une (1) heure de moins pour la  
date/heure/minute (DHM) de publicité ou une (1) journée de moins pour  
toute autre date y figurant, à l'exception des dates de naissance.  
Christine Lessard, officier adjoint



## Saskatchewan Personal Property Registry Search Result

**Searching Party:** OnCorp Direct Inc.  
**Search Date:** 16-Jun-2020 07:40:18  
**Search Type:** Standard

**Search #:** 203313792  
**Client Reference:**  
**Control #:**

**Search Criteria**

**Search By:** Business Debtor Name

**Business Name**

General Nutrition Centres Company

The following list displays all matches & indicates the ones that were selected.

8 Registration(s) Found: Exacts (2) - Similar (6)

Selected	Match	Reg #	Registration Type	Debtor Name	City	Enforcement Instruction Reg #
Yes	Exact	301735317	Personal Property Security Agreement	General Nutrition Centres Company	Pittsburgh	N/A
Yes	Exact	301735318	Personal Property Security Agreement	General Nutrition Centres Company	Pittsburgh	N/A
Yes	Similar	300111992	Personal Property Security Agreement	GENERAL MANAGEMENT SERVICES LTD.	Saskatoon	N/A
Yes	Similar	111925230	Personal Property Security Agreement	GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA, LIMITED	Edmonton	N/A
Yes	Similar	100336606	Personal Property Security Agreement	GENERAL NUTRITION CENTRE LTD	ST. LAURENT	N/A
Yes	Similar	100445934	Personal Property Security Agreement	GENERAL NUTRITION CENTRE LTD	ST. LAURENT	N/A
Yes	Similar	100336606	Personal Property Security Agreement	GENERAL NUTRITION CENTRE LTD ,CENTRE DE NUTRITION	ST. LAURENT	N/A
Yes	Similar	300983493	Personal Property Security Agreement	GENERAL, MECHANICAL & CIVIL CONTRACTORS LTD.	EDMONTON	N/A



# Saskatchewan Personal Property Registry Search Result

## Current - Exact

**Registration Type:** Personal Property Security Agreement  
**Registration Date:** 27-Feb-2018 15:50:42

**Registration #:** 301735317  
**Expiry Date:** 27-Feb-2026

**Event Type:** Setup  
**Transaction Reason:** Regular

### Notations

**Trust Indenture:** No

### Registrant

---

<b>Party ID:</b>	152698791-1	<b>Address:</b>	1500 - 1874 SCARTH ST.
<b>Entity Type:</b>	Business		REGINA, Saskatchewan
<b>Name:</b>	MLT Aikins LLP		S4P4E9 Canada

### Secured Party

---

<b>Item #:</b>	1	<b>Address:</b>	10 S. Dearborn, Floor L2, IL1-1145
<b>Party ID:</b>	152952616-1		Chicago, Illinois
<b>Entity Type:</b>	Business		60603
<b>Name:</b>	JPMorgan Chase Bank, N.A., as Collateral Agent		United States of America

### Debtor Party

---

<b>* Item #:</b>	1	<b>Address:</b>	300 Sixth Avenue
<b>Party ID:</b>	152952617-1		Pittsburgh, Pennsylvania
<b>Entity Type:</b>	Business		15222
<b>Name:</b>	General Nutrition Centres Company		United States of America

### General Property

---

ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.

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# Saskatchewan Personal Property Registry Search Result

## Current - Exact

**Registration Type:** Personal Property Security Agreement  
**Registration Date:** 27-Feb-2018 15:51:24

**Registration #:** 301735318  
**Expiry Date:** 27-Feb-2026

**Event Type:** Setup  
**Transaction Reason:** Regular

### Notations

**Trust Indenture:** No

### Registrant

---

<b>Party ID:</b>	152698791-1	<b>Address:</b>	1500 - 1874 SCARTH ST.
<b>Entity Type:</b>	Business		REGINA, Saskatchewan
<b>Name:</b>	MLT Aikins LLP		S4P4E9 Canada

### Secured Party

---

<b>Item #:</b>	1	<b>Address:</b>	230 Park Avenue, 10th Floor
<b>Party ID:</b>	152952619-1		New York, New York
<b>Entity Type:</b>	Business		10169
<b>Name:</b>	GLAS Trust Company LLC, as Collateral Agent		United States of America

### Debtor Party

---

<b>* Item #:</b>	1	<b>Address:</b>	300 Sixth Avenue
<b>Party ID:</b>	152952617-1		Pittsburgh, Pennsylvania
<b>Entity Type:</b>	Business		15222
<b>Name:</b>	General Nutrition Centres Company		United States of America

### General Property

---

ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.

---

---



# Saskatchewan Personal Property Registry Search Result

## Current - Similar

**Registration Type:** Personal Property Security Agreement  
**Registration Date:** 06-Dec-2006 16:10:08

**Registration #:** 300111992  
**Expiry Date:** 19-Oct-2033

**Event Type:** Amendment  
**Transaction Reason:** Regular

**Transaction Description:** Global Change

### Notations

**Trust Indenture:** No

#### Registrant

<b>Party ID:</b>	152920204-1	<b>Address:</b>	PO Box 1330
<b>Entity Type:</b>	Business		Saskatoon, Saskatchewan
<b>Name:</b>	Affinity Credit Union 2013		S7K3P4 Canada

#### Secured Party

<b>Item #:</b>	1	<b>Address:</b>	PO Box 1330
<b>Party ID:</b>	152920204-1		Saskatoon, Saskatchewan
<b>Entity Type:</b>	Business		S7K3P4
<b>Name:</b>	Affinity Credit Union 2013		Canada

#### Debtor Party

<b>* Item #:</b>	1	<b>Address:</b>	#1 - 821 Eastlake Avenue
<b>Party ID:</b>	150249698-1		Saskatoon, Saskatchewan
<b>Entity Type:</b>	Business		S7N1A5
<b>Name:</b>	GENERAL MANAGEMENT SERVICES LTD.		Canada

#### General Property

All present and after acquired property of the debtor including all cash and non-cash proceeds of the collateral of whatever nature and kind and includes any interest earned on or any dividend or payment made in relation to the collateral.

## History - Setup

**Registration Type:** Personal Property Security Agreement  
**Registration Date:** 06-Dec-2006 16:10:08

**Registration #:** 300111992  
**Transaction #:** 1  
**Expiry Date:** 06-Dec-2016

**Event Type:** Setup  
**Transaction Reason:** Regular

**Transaction Description:** SCU - General Management registration

### Notations

**Trust Indenture:** No





## Saskatchewan Personal Property Registry Search Result

### Registrant

---

<b>Party ID:</b>	150000054-1	<b>Address:</b>	800 - 230 - 22ND STREET EAST
<b>Entity Type:</b>	Business		SASKATOON, SASK
<b>Name:</b>	LELAND & COMPANY		S7K0E9 Canada

### Secured Party

---

<b>Item #:</b>	1	<b>Address:</b>	300, 310 20th Street East
<b>Party ID:</b>	150221326-1		Saskatoon, Saskatchewan
<b>Entity Type:</b>	Business		S7K0A7
<b>Name:</b>	SASKATOON CREDIT UNION (2002)		Canada

### Debtor Party

---

<b>Item #:</b>	1	<b>Address:</b>	#1 - 821 Eastlake Avenue
<b>Party ID:</b>	150249698-1		Saskatoon, Saskatchewan
<b>Entity Type:</b>	Business		S7N1A5
<b>Name:</b>	GENERAL MANAGEMENT SERVICES LTD.		Canada

### General Property

---

All present and after acquired property of the debtor located at 521 and 601 1st Avenue North, Saskatoon SK including all cash and non-cash proceeds of the collateral of whatever nature and kind and includes any interest earned on or any dividend or payment made in relation to the collateral.

## History - Amendment

**Amendment Date:** 19-Oct-2007 15:33:52

**Registration #:** 300111992

**Transaction #:** 2

**Expiry Date:** 19-Oct-2032

**Event Type:** Amendment  
**Transaction Reason:** Regular

**Transaction Description:** FSCU and General Management Services Ltd.

**Life Time:** Life Time Amended

### Registrant

---

<b>Party ID:</b>	150000054-1	<b>Address:</b>	800 - 230 - 22ND STREET EAST
<b>Entity Type:</b>	Business		SASKATOON, SASK
<b>Name:</b>	LELAND & COMPANY		S7K0E9 Canada

### General Property

---

All present and after acquired property of the debtor including all cash and non-cash proceeds of the collateral of whatever nature and kind and includes any interest earned on or any dividend or payment made in relation to the collateral.

## History - Amendment

**Amendment Date:** 13-Nov-2007 14:39:38

**Registration #:** 300111992

**Transaction #:** 3

**Event Type:** Amendment  
**Transaction Reason:** Regular



## Saskatchewan Personal Property Registry Search Result

**Transaction Description:** FSCU and General Management Services Ltd.

### Registrant

<b>Party ID:</b>	150000054-1	<b>Address:</b>	800 - 230 - 22ND STREET EAST
<b>Entity Type:</b>	Business		SASKATOON, SASK
<b>Name:</b>	LELAND & COMPANY		S7K0E9
			Canada

### Secured Party

<b>Action:</b>	Update	<b>Address:</b>	300, 310 20th Street East
<b>Item #:</b>	1		Saskatoon, Saskatchewan
<b>Party ID:</b>	150284186-1		S7K0A7
<b>Entity Type:</b>	Business		Canada
<b>Name:</b>	FIRSTSASK CREDIT UNION		

## History - Amendment

**Amendment Date:** 03-Apr-2008 15:52:43

**Registration #:** 300111992  
**Transaction #:** 4  
**Expiry Date:** 19-Oct-2033

**Event Type:** Amendment  
**Transaction Reason:** Regular

**Life Time:** Life Time Amended

### Registrant

<b>Party ID:</b>	150000054-1	<b>Address:</b>	800 - 230 - 22ND STREET EAST
<b>Entity Type:</b>	Business		SASKATOON, SASK
<b>Name:</b>	LELAND & COMPANY		S7K0E9
			Canada

## History - Amendment

**Amendment Date:** 03-Apr-2008 15:55:54

**Registration #:** 300111992  
**Transaction #:** 5

**Event Type:** Amendment  
**Transaction Reason:** Regular

### Registrant

<b>Party ID:</b>	150000054-1	<b>Address:</b>	800 - 230 - 22ND STREET EAST
<b>Entity Type:</b>	Business		SASKATOON, SASK
<b>Name:</b>	LELAND & COMPANY		S7K0E9
			Canada



# Saskatchewan Personal Property Registry Search Result

## Secured Party

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<b>Action:</b>	Update	<b>Address:</b>	300, 310 20th Street East
<b>Item #:</b>	1		Saskatoon, Saskatchewan
<b>Party ID:</b>	150605042-1		S7K0A7
<b>Entity Type:</b>	Business		Canada
<b>Name:</b>	AFFINITY CREDIT UNION		

## History - Amendment

**Amendment Date:** 10-Jan-2018 03:14:50

**Registration #:** 300111992

**Transaction #:** 6

**Event Type:** Amendment  
**Transaction Reason:** Regular

**Transaction Description:** Global Change

### Registrant

---

<b>Party ID:</b>	152920204-1	<b>Address:</b>	PO Box 1330
<b>Entity Type:</b>	Business		Saskatoon, Saskatchewan
<b>Name:</b>	Affinity Credit Union 2013		S7K3P4
			Canada

### Secured Party

---

<b>Action:</b>	Update	<b>Address:</b>	PO Box 1330
<b>Item #:</b>	1		Saskatoon, Saskatchewan
<b>Party ID:</b>	152920204-1		S7K3P4
<b>Entity Type:</b>	Business		Canada
<b>Name:</b>	Affinity Credit Union 2013		

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# Saskatchewan Personal Property Registry Search Result

## Current - Similar

**Registration Type:** Personal Property Security Agreement  
**Registration Date:** 13-Mar-1998 10:17:11

**Registration #:** 111925230  
**Expiry Date:** 13-Mar-2023

**Event Type:** Amendment  
**Transaction Reason:** Regular

**Notations**

**Trust Indenture:** No

**Registrant**

<b>Party ID:</b>	150000519-1	<b>Address:</b>	4126 Norland Avenue
<b>Entity Type:</b>	Business		Burnaby, British Columbia
<b>Name:</b>	Canadian Securities Registration Systems		V5G3S8 Canada

**Secured Party**

<b>Item #:</b>	3	<b>Address:</b>	180 Wellington St W BSC 3rd Fl
<b>Party ID:</b>	150034051-1		Toronto, Ontario
<b>Entity Type:</b>	Business		M5J1J1
<b>Name:</b>	ROYAL BANK OF CANADA		Canada

**Debtor Party**

<b>Item #:</b>	1	<b>Address:</b>	P.O. BOX 580
<b>Party ID:</b>	152321444-1		Humboldt, Saskatchewan
<b>Entity Type:</b>	Business		S0K2A0
<b>Name:</b>	Colony Chevrolet GMC Buick Ltd.		Canada
<b>* Item #:</b>	2	<b>Address:</b>	17703 103 AVENUE, P.O. BOX 2270
<b>Party ID:</b>	101447152-1		Edmonton, Alberta
<b>Entity Type:</b>	Business		
<b>Name:</b>	GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA, LIMITED		Canada

**General Property**

PMSI, PROCEEDS CLAIMED PRIORITY AGREEMENT DATED FEBRUARY 23, 1998 BETWEEN COLONY PONTIAC BUICK LTD. AND ROYAL BANK OF CANADA IN FAVOUR OF SECURITY AGREEMENT BETWEEN ROYAL BANK OF CANADA AND GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA, LIMITED. (GMAC). PROCEEDS, INCLUDING BUT NOT LIMITED TO, TRADE-INS, EQUIPMENT, CASH, BANK ACCOUNTS, NOTES, CHATTEL PAPER, GOODS, CONTRACT RIGHTS, ACCOUNTS AND ANY OTHER PROPERTY OR OBLIGATION RECEIVED WHEN SUCH COLLATERAL OR PROCEEDS ARE SOLD, EXCHANGED, COLLECTED OR OTHERWISE DISPOSED OF. ALL PREVIOUS GENERAL COLLATERAL HAS BEEN AMENDED TO READ THE FOLLOWING: PRIORITY AGREEMENT DATED FEBRUARY 23, 1998 BETWEEN GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA LIMITED (GMAC) AND ROYAL BANK OF CANADA FAVOUR OF SECURITY AGREEMENT BETWEEN ROYAL BANK OF CANADA AND COLONY PONTIAC BUICK LTD. PROCEEDS, INCLUDING BUT NOT LIMITED TO, TRADE-INS, EQUIPMENT, CASH, BANK ACCOUNTS, NOTES, CHATTEL PAPER, GOODS, CONTRACT RIGHTS, ACCOUNTS AND ANY OTHER PROPERTY OR OBLIGATION RECEIVED WHEN SUCH COLLATERAL OR PROCEEDS ARE SOLD, EXCHANGED, COLLECTED OR OTHERWISE DISPOSED OF.

## History - Setup

**Registration Type:** Personal Property Security Agreement  
**Registration Date:** 13-Mar-1998 10:17:11

**Registration #:** 111925230  
**Transaction #:** 1  
**Expiry Date:** 13-Mar-2003



# Saskatchewan Personal Property Registry Search Result

Event Type: Setup  
Transaction Reason: Regular

## Registrant

---

<b>Party ID:</b>	101329309-1	<b>Address:</b>	SUITE 180-13571 COMMERCE PARKWAY
<b>Entity Type:</b>	Business		RICHMOND , British Columbia
<b>Name:</b>	CANADIAN SECURITIES REGISTRATION SYSTEMS		V6V2L1
			Canada

## Secured Party

---

<b>Item #:</b>	1	<b>Address:</b>	5104 DONNELLEY CRESCENT
<b>Party ID:</b>	100819987-1		Regina, Saskatchewan
<b>Entity Type:</b>	Business		S4X4C9
<b>Name:</b>	ROYAL BANK OF CANADA		Canada

## Debtor Party

---

<b>Item #:</b>	1	<b>Address:</b>	P.O. BOX 580
<b>Party ID:</b>	101447150-1		Humboldt, Saskatchewan
<b>Entity Type:</b>	Business		S0K2A0
<b>Name:</b>	COLONY PONTIAC BUICK LTD		Canada

<b>Item #:</b>	2	<b>Address:</b>	17703 103 AVENUE, P.O. BOX 2270
<b>Party ID:</b>	101447152-1		Edmonton, Alberta
<b>Entity Type:</b>	Business		
<b>Name:</b>	GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA, LIMITED		Canada

## General Property

PMSI, PROCEEDS CLAIMED PRIORITY AGREEMENT DATED FEBRUARY 23, 1998 BETWEEN COLONY PONTIAC BUICK LTD. AND ROYAL BANK OF CANADA IN FAVOUR OF SECURITY AGREEMENT BETWEEN ROYAL BANK OF CANADA AND GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA, LIMITED. (GMAC). PROCEEDS, INCLUDING BUT NOT LIMITED TO, TRADE-INS, EQUIPMENT, CASH, BANK ACCOUNTS, NOTES, CHATTEL PAPER, GOODS, CONTRACT RIGHTS, ACCOUNTS AND ANY OTHER PROPERTY OR OBLIGATION RECEIVED WHEN SUCH COLLATERAL OR PROCEEDS ARE SOLD, EXCHANGED, COLLECTED OR OTHERWISE DISPOSED OF.

## History - Amendment

Amendment Date: 31-Aug-1999 15:00:01

Registration #: 111925230

Transaction #: 2

Event Type: Amendment  
Transaction Reason: Regular

## Registrant

---

<b>Party ID:</b>	101329309-1	<b>Address:</b>	SUITE 180-13571 COMMERCE PARKWAY
<b>Entity Type:</b>	Business		RICHMOND , British Columbia
<b>Name:</b>	CANADIAN SECURITIES REGISTRATION SYSTEMS		V6V2L1
			Canada

## General Property

PMSI, PROCEEDS CLAIMED PRIORITY AGREEMENT DATED FEBRUARY 23, 1998 BETWEEN COLONY PONTIAC BUICK LTD. AND ROYAL BANK OF CANADA IN FAVOUR OF SECURITY AGREEMENT BETWEEN ROYAL BANK OF CANADA AND GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA, LIMITED. (GMAC). PROCEEDS, INCLUDING BUT NOT LIMITED TO, TRADE-INS, EQUIPMENT, CASH, BANK ACCOUNTS, NOTES, CHATTEL PAPER, GOODS, CONTRACT RIGHTS, ACCOUNTS AND ANY OTHER PROPERTY OR OBLIGATION



## Saskatchewan Personal Property Registry Search Result

RECEIVED WHEN SUCH COLLATERAL OR PROCEEDS ARE SOLD, EXCHANGED, COLLECTED OR OTHERWISE DISPOSED OF. ALL PREVIOUS GENERAL COLLATERAL HAS BEEN AMENDED TO READ THE FOLLOWING: PRIORITY AGREEMENT DATED FEBRUARY 23, 1998 BETWEEN GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA LIMITED (GMAC) AND ROYAL BANK OF CANADA FAVOUR OF SECURITY AGREEMENT BETWEEN ROYAL BANK OF CANADA AND COLONY PONTIAC BUICK LTD. PROCEEDS, INCLUDING BUT NOT LIMITED TO, TRADE-INS, EQUIPMENT, CASH, BANK ACCOUNTS, NOTES, CHATTEL PAPER, GOODS, CONTRACT RIGHTS, ACCOUNTS AND ANY OTHER PROPERTY OR OBLIGATION RECEIVED WHEN SUCH COLLATERAL OR PROCEEDS ARE SOLD, EXCHANGED, COLLECTED OR OTHERWISE DISPOSED OF.

### History - Amendment

**Amendment Date:** 21-Jan-2003 08:31:36

**Registration #:** 111925230

**Transaction #:** 3

**Expiry Date:** 13-Mar-2008

**Event Type:** Amendment

**Transaction Reason:** Regular

**Life Time:** Life Time Amended

**Notations**

**Trust Indenture:** No

**Registrant**

<b>Party ID:</b>	100817442-33	<b>Address:</b>	4126 NORLAND AVENUE
<b>Entity Type:</b>	Business		BURNABY , British Columbia
<b>Name:</b>	CANADIAN SECURITIES REGISTRATION SYSTEMS		V5G3S8
			Canada

**Secured Party**

<b>Action:</b>	Delete	<b>Address:</b>	5104 DONNELLEY CRESCENT
<b>Item #:</b>	1		Regina, Saskatchewan
<b>Party ID:</b>	100819987-1		S4X4C9
<b>Entity Type:</b>	Business		Canada
<b>Name:</b>	ROYAL BANK OF CANADA		
<b>Action:</b>	Add	<b>Address:</b>	102 - 8 AVENUE SW
<b>Item #:</b>	2		Calgary, Alberta
<b>Party ID:</b>	102059098-1		T2P1B3
<b>Entity Type:</b>	Business		Canada
<b>Name:</b>	ROYAL BANK OF CANADA		

### History - Amendment

**Amendment Date:** 13-Feb-2008 15:37:10

**Registration #:** 111925230

**Transaction #:** 4

**Event Type:** Amendment

**Transaction Reason:** Regular



# Saskatchewan Personal Property Registry Search Result

## Registrant

---

<b>Party ID:</b>	150242198-1	<b>Address:</b>	4126 NORLAND AVENUE
<b>Entity Type:</b>	Business		BURNABY, British Columbia
<b>Name:</b>	CANADIAN SECURITIES REGISTRATION SYSTEMS		V5G3S8
			Canada

## Secured Party

---

<b>Action:</b>	Delete		
<b>Item #:</b>	2	<b>Address:</b>	102 - 8 AVENUE SW
<b>Party ID:</b>	102059098-1		Calgary, Alberta
<b>Entity Type:</b>	Business		T2P1B3
<b>Name:</b>	ROYAL BANK OF CANADA		Canada
<b>Action:</b>	Add		
<b>Item #:</b>	3	<b>Address:</b>	180 Wellington St W BSC 3rd Fl
<b>Party ID:</b>	150034051-1		Toronto, Ontario
<b>Entity Type:</b>	Business		M5J1J1
<b>Name:</b>	ROYAL BANK OF CANADA		Canada

## History - Amendment

**Amendment Date:** 14-Feb-2008 13:19:55

**Registration #:** 111925230  
**Transaction #:** 5  
**Expiry Date:** 13-Mar-2013

**Event Type:** Amendment  
**Transaction Reason:** Regular

**Life Time:** Life Time Amended

## Registrant

---

<b>Party ID:</b>	150000519-1	<b>Address:</b>	4126 Norland Avenue
<b>Entity Type:</b>	Business		Burnaby, British Columbia
<b>Name:</b>	Canadian Securities Registration Systems		V5G3S8
			Canada

## History - Amendment

**Amendment Date:** 28-Jan-2013 15:12:21

**Registration #:** 111925230  
**Transaction #:** 6  
**Expiry Date:** 13-Mar-2018

**Event Type:** Amendment  
**Transaction Reason:** Regular

**Life Time:** Life Time Amended



# Saskatchewan Personal Property Registry Search Result

## Registrant

---

<b>Party ID:</b>	150000519-1	<b>Address:</b>	4126 Norland Avenue
<b>Entity Type:</b>	Business		Burnaby, British Columbia
<b>Name:</b>	Canadian Securities Registration Systems		V5G3S8 Canada

## History - Amendment

**Amendment Date:** 05-May-2015 13:01:16

**Registration #:** 111925230

**Transaction #:** 7

**Event Type:** Amendment  
**Transaction Reason:** Regular

**Transaction Description:** change debtor name

## Registrant

---

<b>Party ID:</b>	152185255-1	<b>Address:</b>	600, 2103 - 11th Avenue
<b>Entity Type:</b>	Business		Regina, Saskatchewan
<b>Name:</b>	Miller Thomson LLP		S4P3Z8 Canada

## Debtor Party

---

<b>Action:</b>	Update	<b>Address:</b>	P.O. BOX 580
<b>Item #:</b>	1		Humboldt, Saskatchewan
<b>Party ID:</b>	152321444-1		S0K2A0
<b>Entity Type:</b>	Business		Canada
<b>Name:</b>	Colony Chevrolet GMC Buick Ltd.		

## History - Amendment

**Amendment Date:** 09-Feb-2018 10:08:45

**Registration #:** 111925230

**Transaction #:** 8

**Expiry Date:** 13-Mar-2023

**Event Type:** Amendment  
**Transaction Reason:** Regular

**Life Time:** Life Time Amended

## Registrant

---

<b>Party ID:</b>	150000519-1	<b>Address:</b>	4126 Norland Avenue
<b>Entity Type:</b>	Business		Burnaby, British Columbia
<b>Name:</b>	Canadian Securities Registration Systems		V5G3S8 Canada

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# Saskatchewan Personal Property Registry Search Result

## Current - Similar

**Registration Type:** Personal Property Security Agreement  
**Registration Date:** 01-Dec-1986 09:00:00

**Registration #:** 100336606  
**Expiry Date:** Infinity

**Event Type:** Setup  
**Transaction Reason:** Regular

### Notations

**Trust Indenture:** Yes

### Registrant

---

<b>Party ID:</b>	100041885-1	<b>Address:</b>	405-230-22 STREET EAST
<b>Entity Type:</b>	Business		Saskatoon, Saskatchewan
<b>Name:</b>	GOLDENBERG, BUCKWOLD, HALSTEAD & CRAIK		S7K7C1 Canada

### Secured Party

---

<b>Item #:</b>	1	<b>Address:</b>	630 DORCHESTER BLVD. WEST
<b>Party ID:</b>	100056106-1		MONTREAL , Quebec
<b>Entity Type:</b>	Business		H3B1P7
<b>Name:</b>	COMPAGNIE TRUST ROYAL		Canada

### Debtor Party

---

<b>* Item #:</b>	1	<b>Address:</b>	4001 COTE VERTU
<b>Party ID:</b>	100056107-1		ST. LAURENT , Quebec
<b>Entity Type:</b>	Business		H4R4R5
<b>Name:</b>	GENERAL NUTRITION CENTRE LTD ,/CENTRE DE NUTRITION		Canada
<b>* Item #:</b>	2	<b>Address:</b>	4001 COTE VERTU
<b>Party ID:</b>	100056108-1		ST. LAURENT , Quebec
<b>Entity Type:</b>	Business		H4R4R5
<b>Name:</b>	GENERAL NUTRITION CENTRE LTD		Canada
<b>Item #:</b>	3	<b>Address:</b>	4001 COTE VERTU
<b>Party ID:</b>	100056109-1		ST. LAURENT , Quebec
<b>Entity Type:</b>	Business		H4R4R5
<b>Name:</b>	CENTRE DE NUTRITION GENERAL LTEE		Canada

### General Property

---

THE FULL NAME FOR DEBTOR PARTY 1 IS:GENERAL NUTRITION CENTRE LTD ,/CENTRE DE NUTRITION GENERALE LTEE. ALL OF THE DEBTORS, PRESENT AND AFTER ACQUIRED PRO

### Old Registration Number(s)

02516523

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---



Saskatchewan  
Personal Property Registry  
Search Result

Current - Similar

Registration Type: Personal Property Security Agreement  
Registration Date: 04-Mar-1988 09:00:00

Registration #: 100445934  
Expiry Date: Infinity

Event Type: Setup  
Transaction Reason: Regular

**Notations**

Trust Indenture: Yes

**Registrant**

---

<b>Party ID:</b>	100073140-1	<b>Address:</b>	405, 230 22ND STREET E.
<b>Entity Type:</b>	Business		Saskatoon, Saskatchewan
<b>Name:</b>	GOLDENBERG, BUCKWOLD, HALSTEAD & CRAIK		S7K7C1 Canada

**Secured Party**

---

<b>Item #:</b>	1	<b>Address:</b>	630 DORCHESTER BLVD. W.
<b>Party ID:</b>	100073141-1		MONTREAL , Quebec
<b>Entity Type:</b>	Business		H3B1P7
<b>Name:</b>	COMPAGNIE TRUST ROYAL		Canada

**Debtor Party**

---

<b>* Item #:</b>	1	<b>Address:</b>	4001 COTE VERTU
<b>Party ID:</b>	100056108-1		ST. LAURENT , Quebec
<b>Entity Type:</b>	Business		H4R4R5
<b>Name:</b>	GENERAL NUTRITION CENTRE LTD		Canada
<b>Item #:</b>	2	<b>Address:</b>	4001 COTE VERTU
<b>Party ID:</b>	100073142-1		ST. LAURENT , Quebec
<b>Entity Type:</b>	Business		H4R4R5
<b>Name:</b>	CENTRE DE NUTRITION		Canada

**General Property**

---

ALL OF THE DEBTORS, PRESENT AND AFTER ACQUIRED PROPERTY

**Old Registration Number(s)**

02911061

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# Saskatchewan Personal Property Registry Search Result

## Current - Similar

**Registration Type:** Personal Property Security Agreement  
**Registration Date:** 06-Feb-2013 17:43:04

**Registration #:** 300983493  
**Expiry Date:** 06-Feb-2023

**Event Type:** Setup  
**Transaction Reason:** Regular

### Notations

**Trust Indenture:** NO

### Registrant

---

<b>Party ID:</b>	150000519-1	<b>Address:</b>	4126 Norland Avenue
<b>Entity Type:</b>	Business		Burnaby, British Columbia
<b>Name:</b>	Canadian Securities Registration Systems		V5G3S8 Canada

### Secured Party

---

<b>Item #:</b>	1	<b>Address:</b>	9TH FLOOR 10250 101 STREET
<b>Party ID:</b>	150631699-1		Edmonton, Alberta
<b>Entity Type:</b>	Business		T5J3P4
<b>Name:</b>	HSBC BANK CANADA		Canada

### Debtor Party

---

<b>* Item #:</b>	1	<b>Address:</b>	3000 84TH AVENUE
<b>Party ID:</b>	151758143-1		EDMONTON, Alberta
<b>Entity Type:</b>	Business		T6P1K3
<b>Name:</b>	GENERAL, MECHANICAL & CIVIL CONTRACTORS LTD.		Canada

### General Property

---

Security Agreement (Saskatchewan)  
Box A: .ALL OF THE DEBTOR'S PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF EVERY NATURE AND KIND AND WHERESOEVER SITUATE, AND ALL PROCEEDS INCLUDING ACCOUNTS RECEIVABLE, BILLS OF EXCHANGE, INSURANCE PROCEEDS, CHATTEL PAPER, INTANGIBLES, MOTOR VEHICLES AND ALL OTHER AFTER-ACQUIRED PROPERTY CONSTITUTING PROCEEDS.

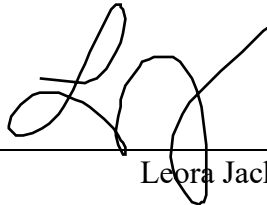
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End of Search Result



TABU

THIS IS **EXHIBIT “U”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', is written over a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits

**Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.**

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## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of GNC Holdings, Inc.

### ***Opinions on the Financial Statements and Internal Control over Financial Reporting***

We have audited the accompanying consolidated balance sheets of GNC Holdings, Inc. and its subsidiaries (the “Company”) as of December 31, 2019 and 2018, and the related consolidated statements of operations, comprehensive (loss) income, stockholders’ (deficit) equity and cash flows for each of the three years in the period ended December 31, 2019, including the related notes and financial statement schedules of (i) condensed financial information of GNC Holdings, Inc. as of December 31, 2019 and 2018 and for each of the three years in the period ended December 31, 2019, and (ii) valuation and qualifying accounts for each of the three years in the period ended December 31, 2019 appearing under Item 15(a)(2) (collectively referred to as the “consolidated financial statements”). We also have audited the Company’s internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2019 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the COSO.

### ***Substantial Doubt About the Company’s Ability to Continue as a Going Concern***

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has significant debt (specifically the Convertible Notes and the Tranche B-2 Term Loan) maturing at the latest in March 2021. The Company has insufficient cash flows from operations to repay these debt obligations as they come due, which raises substantial doubt about its ability to continue as a going concern. Management’s plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### ***Change in Accounting Principle***

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for leases in 2019.

### ***Basis for Opinions***

The Company’s management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in Management’s Annual Report on Internal Control Over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on the Company’s consolidated financial statements and on the Company’s internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness

exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

***Definition and Limitations of Internal Control over Financial Reporting***

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers LLP

Pittsburgh, Pennsylvania  
March 25, 2020

We have served as the Company's auditor since 2003.



**GNC HOLDINGS, INC. AND SUBSIDIARIES**  
**Consolidated Balance Sheets**

	December 31,	
	2019	2018
(in thousands)		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 117,046	\$ 67,224
Receivables, net	101,234	127,317
Receivables due from related parties (Note 9)	8,946	—
Inventory (Note 4)	387,655	465,572
Forward contracts for the issuance of convertible preferred stock (Note 14)	—	88,942
Prepaid and other current assets	24,880	55,109
<b>Total current assets</b>	<b>639,761</b>	<b>804,164</b>
<b>Long-term assets:</b>		
Goodwill (Note 6)	79,109	140,764
Brand name (Note 6)	300,720	300,720
Other intangible assets, net (Note 6)	71,298	92,727
Property, plant and equipment, net (Note 7)	86,916	155,095
Right-of-use assets (Note 12)	350,579	—
Equity method investments (Note 9)	97,930	—
Deferred income taxes (Note 5)	—	8,776
Other long-term assets	24,274	25,604
<b>Total long-term assets</b>	<b>1,010,826</b>	<b>723,686</b>
<b>Total assets</b>	<b>\$ 1,650,587</b>	<b>\$ 1,527,850</b>
<b>Current liabilities:</b>		
Accounts payable	\$ 150,742	\$ 148,782
Accounts payable due to related parties (Note 9)	11,720	—
Current portion of long-term debt (Note 8)	180,566	158,756
Current lease liabilities (Note 12)	112,005	—
Deferred revenue and other current liabilities (Note 10)	105,792	120,169
<b>Total current liabilities</b>	<b>560,825</b>	<b>427,707</b>
<b>Long-term liabilities:</b>		
Long-term debt (Note 8)	681,999	993,566
Deferred income taxes (Note 5)	31,586	39,834
Lease liabilities (Note 12)	330,510	—
Other long-term liabilities	41,535	82,249
<b>Total long-term liabilities</b>	<b>1,085,630</b>	<b>1,115,649</b>
<b>Total liabilities</b>	<b>1,646,455</b>	<b>1,543,356</b>
Commitments and contingencies (Note 13)		
<b>Mezzanine equity:</b>		
Preferred stock, \$0.001 par value, 60,000 shares authorized:		
Series A convertible preferred stock - 300 shares issued and outstanding at December 31, 2019 and 100 shares issued and outstanding at December 31, 2018. (Note 14)	211,395	98,804
<b>Stockholders' deficit:</b>		
Common stock, \$0.001 par value, 300,000 shares authorized:		
Class A, 130,555 shares issued, 84,564 shares outstanding and 45,991 shares held in treasury at December 31, 2019 and 129,925 shares issued, 83,886 shares outstanding and 45,991 shares held in treasury at December 31, 2018	131	130
Additional paid-in capital	1,012,076	1,007,827
Retained earnings	518,605	613,637
Treasury stock, at cost (Note 15)	(1,725,349)	(1,725,349)
Accumulated other comprehensive loss	(12,726)	(10,555)
<b>Total stockholders' deficit</b>	<b>(207,263)</b>	<b>(114,310)</b>
<b>Total liabilities, mezzanine equity and stockholders' deficit</b>	<b>\$ 1,650,587</b>	<b>\$ 1,527,850</b>

The accompanying notes are an integral part of the Consolidated Financial Statements.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Operations**

	Year ended December 31,		
	2019	2018	2017
	(in thousands, except per share amounts)		
<b>Revenue (Note 3)</b>	\$ 2,068,188	\$ 2,353,523	\$ 2,480,962
Cost of sales, including warehousing, distribution and occupancy	1,353,806	1,581,778	1,656,540
<b>Gross profit</b>	714,382	771,745	824,422
Selling, general, and administrative	566,457	620,885	624,269
Long-lived asset impairments (Note 6)	—	38,236	457,794
Loss on net asset exchange for the formation of the joint ventures	21,293	—	—
Other loss (income), net	1,889	271	(825)
<b>Operating income (loss)</b>	124,743	112,353	(256,816)
Interest expense, net (Note 8)	106,709	127,080	64,221
Gain on convertible debt and debt refinancing costs (Note 8)	(3,214)	—	(10,996)
Loss on debt refinancing	—	16,740	—
Loss (gain) on forward contracts for the issuance of convertible preferred stock (Note 14)	16,787	(88,942)	—
<b>Income (loss) before income taxes and income from equity method investments</b>	4,461	57,475	(310,041)
Income tax expense (benefit) (Note 5)	44,869	(12,305)	(159,779)
<b>Net (loss) income before income from equity method investments</b>	\$ (40,408)	\$ 69,780	\$ (150,262)
Income from equity method investments	5,296	—	—
<b>Net (loss) income</b>	\$ (35,112)	\$ 69,780	\$ (150,262)
<b>(Loss) earnings per share (Note 16):</b>			
Basic	\$ (0.64)	\$ 0.83	\$ (2.18)
Diluted	\$ (0.64)	\$ 0.81	\$ (2.18)
<b>Weighted average common shares outstanding (Note 16):</b>			
Basic	83,720	83,364	68,789
Diluted	83,720	86,171	68,789

The accompanying notes are an integral part of the Consolidated Financial Statements.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Comprehensive (Loss) Income**

	Year ended December 31,		
	2019	2018	2017
	(in thousands)		
<b>Net (loss) income</b>	\$ (35,112)	\$ 69,780	\$ (150,262)
Other comprehensive (loss) income:			
Net change in interest rate swaps:			
Periodic revaluation of interest rate swap, net of tax benefit of \$2.0 million and \$1.5 million, respectively	(4,251)	(3,259)	—
Reclassification adjustment for interest recognized in the Consolidated Statement of Operations, net of tax expense of \$0.8 million and \$0.5 million, respectively	1,677	1,045	—
Net change in unrecognized loss on interest rate swaps, net of tax	(2,574)	(2,214)	—
Foreign currency translation gain (loss)	403	(2,510)	2,866
Other comprehensive (loss) income	(2,171)	(4,724)	2,866
<b>Comprehensive (loss) income</b>	<u>\$ (37,283)</u>	<u>\$ 65,056</u>	<u>\$ (147,396)</u>

The accompanying notes are an integral part of the Consolidated Financial Statements.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Stockholders' (Deficit) Equity**  
(in thousands, except per share amounts)

	Common Stock		Treasury Stock	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive (Loss) Income	Total Stockholders' (Deficit) Equity
	Class A						
	Shares	Dollars					
<b>Balance at December 31, 2016</b>	<b>68,399</b>	<b>\$ 114</b>	<b>\$ (1,725,349)</b>	<b>\$ 922,687</b>	<b>\$ 693,682</b>	<b>\$ (8,697)</b>	<b>\$ (117,563)</b>
Comprehensive (loss) income	—	—	—	—	(150,262)	2,866	(147,396)
Dividends forfeitures on restricted stock	—	—	—	—	394	—	394
Restricted stock awards	574	1	—	—	—	—	1
Minimum tax withholding requirements	(32)	—	—	(253)	—	—	(253)
Stock-based compensation	—	—	—	8,359	—	—	8,359
Exchange of convertible senior notes (Note 8)	14,626	15	—	70,522	—	—	70,537
<b>Balance at December 31, 2017</b>	<b>83,567</b>	<b>130</b>	<b>\$ (1,725,349)</b>	<b>\$ 1,001,315</b>	<b>\$ 543,814</b>	<b>\$ (5,831)</b>	<b>\$ (185,921)</b>
Comprehensive income (loss)	—	—	—	—	69,780	(4,724)	65,056
Dividends forfeitures on restricted stock	—	—	—	—	43	—	43
Restricted stock awards	398	—	—	—	—	—	—
Minimum tax withholding requirements	(79)	—	—	(296)	—	—	(296)
Stock-based compensation	—	—	—	6,808	—	—	6,808
<b>Balance at December 31, 2018</b>	<b>83,886</b>	<b>130</b>	<b>\$ (1,725,349)</b>	<b>\$ 1,007,827</b>	<b>\$ 613,637</b>	<b>\$ (10,555)</b>	<b>\$ (114,310)</b>
Impact of the adoption of ASC 842	—	—	—	—	(59,936)	—	(59,936)
Comprehensive (loss) income	—	—	—	—	(35,112)	(2,171)	(37,283)
Dividend forfeitures on restricted stock	—	—	—	—	16	—	16
Restricted stock awards	768	1	—	(1)	—	—	—
Minimum tax withholding requirements	(90)	—	—	(233)	—	—	(233)
Stock-based compensation	—	—	—	4,563	—	—	4,563
Repurchase of convertible senior notes	—	—	—	(80)	—	—	(80)
<b>Balance at December 31, 2019</b>	<b>84,564</b>	<b>131</b>	<b>\$ (1,725,349)</b>	<b>\$ 1,012,076</b>	<b>\$ 518,605</b>	<b>\$ (12,726)</b>	<b>\$ (207,263)</b>

The accompanying notes are an integral part of the Consolidated Financial Statements.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Cash Flows**

	Year Ended December 31,		
	2019	2018	2017
<b>Cash flows from operating activities:</b>	<b>(in thousands)</b>		
Net (loss) income	(35,112)	\$ 69,780	\$ (150,262)
Adjustments to reconcile net (loss) income to net cash provided by operating activities:			
Depreciation and amortization expense	35,422	47,105	56,809
Income from equity method investments	(5,296)	—	—
Amortization of debt costs	20,751	23,199	13,160
Stock-based compensation	4,563	6,808	8,359
Long-lived asset impairments	—	38,236	457,794
Gain on convertible debt and debt refinancing costs	(3,214)	—	(10,996)
Loss on debt refinancing	—	16,740	—
Loss on net asset exchange for the formation of the joint ventures	21,293	—	—
Loss (gain) on forward contracts for the issuance of convertible preferred stock	16,787	(88,942)	—
Third-party fees associated with refinancing	—	(16,322)	—
Distributions received from equity method investments	3,856	—	—
Deferred income tax expense (benefit)	20,596	(23,265)	(191,578)
Other	2,467	(513)	(314)
Changes in assets and liabilities:			
Increase in receivables	(4,411)	(1,358)	(448)
Decrease in inventory	18,018	16,757	72,903
(Increase) decrease in prepaid and other current assets	(11,148)	14,687	(5,529)
Increase (decrease) in accounts payable	44,497	(3,351)	(23,960)
(Decrease) increase in deferred revenue and accrued liabilities	1,006	1,252	(10,181)
Decrease in net lease liabilities	(31,880)	—	—
Other changes in assets and liabilities	(1,675)	(4,945)	4,751
<b>Net cash provided by operating activities</b>	<b>96,520</b>	<b>95,868</b>	<b>220,508</b>
<b>Cash flows from investing activities:</b>			
Capital expenditures	(15,151)	(18,981)	(32,123)
Refranchising proceeds, net of store acquisition costs	2,395	2,514	1,994
Capital contribution to the joint ventures	(13,079)	—	—
Proceeds from the assets exchange for the formation of the joint ventures	99,221	—	—
Proceeds from the sale of Lucky Vitamin	—	—	6,367
<b>Net cash provided by (used in) investing activities</b>	<b>73,386</b>	<b>(16,467)</b>	<b>(23,762)</b>
<b>Cash flows from financing activities:</b>			
Borrowings under Revolving Credit Facility	22,000	410,000	317,500
Payments on Revolving Credit Facility	(22,000)	(410,000)	(444,500)
Proceeds from the issuance of convertible preferred stock	199,950	100,000	—
Payments on Tranche B-1 Term Loan	(147,312)	(4,550)	(40,853)
Payments on Tranche B-2 Term Loan	(123,774)	(132,100)	—
Convertible notes repurchase	(24,708)	—	—
Original issuance discount and revolving credit facility fees	(10,365)	(35,235)	—
Fees associated with the issuance of convertible preferred stock	(12,814)	(3,587)	—
Minimum tax withholding requirements	(233)	(296)	(253)
<b>Net cash used in financing activities</b>	<b>(119,256)</b>	<b>(75,768)</b>	<b>(168,106)</b>
Effect of exchange rate changes on cash and cash equivalents	(828)	(410)	897
Net increase in cash and cash equivalents	49,822	3,223	29,537
Beginning balance, cash and cash equivalents	67,224	64,001	34,464
Ending balance, cash and cash equivalents	<u>\$ 117,046</u>	<u>\$ 67,224</u>	<u>\$ 64,001</u>

The accompanying notes are an integral part of the Consolidated Financial Statements.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**  
**Supplemental Cash Flow Information**  
(in thousands)

	Year Ended December 31,		
	2019	2018	2017
<b>Cash (received) paid during the period for:</b>	(in thousands)		
Income taxes *	\$ 13,808	\$ (3,841)	\$ 35,476
Interest	83,284	104,342	51,205

\* Includes a \$12.4 million tax refund received in the fourth quarter of 2018.

	As of December 31,		
	2019	2018	2017
<b>Non-cash investing activities:</b>	(in thousands)		
Capital expenditures in current liabilities	\$ 1,373	\$ 1,238	\$ 1,683
Net assets contributed to the joint ventures (Note 9)	202,487	—	—
<b>Non-cash financing activities:</b>			
Issuance of shares associated with exchange of convertible senior notes	—	—	71,670
Original issuance discount (Note 8)	—	11,445	—

The accompanying notes are an integral part of the Consolidated Financial Statements.

**GNC HOLDINGS, INC. AND SUBSIDIARIES****NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS****NOTE 1. NATURE OF BUSINESS**

GNC Holdings, Inc., a Delaware corporation ("Holdings," and collectively with its subsidiaries and, unless the context requires otherwise, its and their respective predecessors, the "Company"), is a global health and wellness brand with a diversified, omni-channel business. The Company's assortment of performance and nutritional supplements, vitamins, herbs and greens, health and beauty, food and drink and other general merchandise features innovative private-label products as well as nationally recognized third-party brands, many of which are exclusive to GNC.

The Company's operations consist of purchasing raw materials, formulating and manufacturing products prior to the formation of the manufacturing joint venture with IVC (the "Manufacturing JV") in March 2019, and selling the finished products through its three reportable segments, U.S. and Canada, International, and Manufacturing / Wholesale (refer to Note 19, "Segments" for more information). Corporate retail store operations are located in the United States, Canada, Puerto Rico, Ireland and prior to the joint venture transaction with Harbin Pharmaceutical Group Co., Ltd ("Harbin") in February 2019, China. In addition, the Company offers products on the internet through GNC.com and third-party websites. Franchise locations exist in the United States and approximately 50 other countries. Additionally, the Company licenses the use of its trademarks and trade names.

In February 2019, the Company entered into two joint ventures with Harbin to operate its e-commerce business (the "HK JV") and retail business in China (the "China JV"), which will accelerate its presence and maximize the Company's opportunities for growth in the Chinese supplement market. Under the terms of the agreement, the Company contributed its China business and retained 35% equity interest in the HK JV and China JV.

In March 2019, the Company entered into a strategic joint venture with International Vitamin Corporation ("IVC") regarding the Company's manufacturing business, which enables the Company to increase its focus on product innovation while IVC manages manufacturing and integrates with the Company's supply chain thereby driving more efficient usage of capital. Under the terms of the agreement, the Company received \$99.2 million, net of a working capital adjustment, and contributed its Nutra manufacturing and Anderson facility net assets in exchange for an initial 43% equity interest in the Manufacturing JV. IVC is expected to pay an additional \$75.0 million over a four year period from the effective date of the transaction as IVC's ownership of the joint venture increases to 100%. The subsequent purchase price for each year is \$18.8 million, adjusted up or down based on the Manufacturing JV's future performance.

*Going Concern*

The Company has continued to experience negative same store sales and declining gross profit. The Company has closed underperforming stores under its store optimization strategy and implemented cost reduction measures to help mitigate the effect of these declines and improve its financial position and liquidity. At December 31, 2019, the Company has substantial indebtedness including \$154.7 million of outstanding indebtedness under the Notes issued under that certain Indenture dated as of August 10, 2015, among the Company, certain of its subsidiaries, and The Bank of New York Mellon Trust Company, N.A, maturing on August 15, 2020 (the "Notes") and \$441.5 million of outstanding indebtedness under the Amended and Restated Term Loan Credit Agreement, dated as of February 28, 2018, among GNC Corporation, GNC Nutrition Centers, Inc., as Borrower, the lenders and agents parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent (the "Tranche B-2 Term Loan Credit Agreement" and the term loan thereunder, the "Tranche B-2 Term Loan"). The Company also has an excess cash flow payment of \$25.9 million due in April 2020 (which will reduce the outstanding amount of the Tranche B-2 Term Loan). The Tranche B-2 Term Loan becomes due on the earlier to occur of (i) the maturity date of March 4, 2021 or (ii) May 16, 2020 if more than \$50 million of the Notes are outstanding on such date. Each of the revolving credit facility (the "Revolving Credit Facility") under the Credit Agreement, dated as of February 28, 2018, among GNC Corporation, GNC Nutritional Centers, Inc., as Administrative Borrower, certain of its subsidiaries, as subsidiary borrowers, the lenders and agents parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent (the "ABL Credit Agreement") and the FILO term loan facility under the ABL Credit Agreement, which otherwise mature in August 2022 and December 2022 respectively, also include an accelerated maturity date of May 16, 2020 if more than \$50 million of the Notes are outstanding on such date.

Prior to the outbreak of the COVID-19 pandemic in the United States, management believed that the Company had the ability to pay the excess cash flow payment of \$25.9 million and reduce the outstanding balance on the Notes from \$154.7 million to below \$50 million with projected cash on hand and new borrowings under the Revolving Credit Facility, assuming such borrowings remain available subject to the covenant and reporting requirements discussed below. Given current circumstances around the COVID-19 pandemic as discussed further in Note 21, "Subsequent Events", there can be no assurances as to our ability

## GNC HOLDINGS, INC. AND SUBSIDIARIES

### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)

to do so. As a precautionary measure, given the current macro environment, we recently drew \$30 million under our Revolving Credit Facility in March 2020. However, management does not expect to have sufficient cash flows from operations to repay the indebtedness under the Notes or the Tranche B-2 Term Loan when they become due. Since the Company has not refinanced the Tranche B-2 Term Loan and it will mature less than twelve months after the issuance date of these consolidated financial statements, management has concluded there is substantial doubt regarding the Company's ability to continue as a going concern within one year from the issuance date of the Company's consolidated financial statements.

The Company was in compliance with the debt covenant reporting and compliance obligations under the Credit Facilities as of December 31, 2019. Prior to the outbreak of the COVID-19 pandemic in the United States, management believed that the Company had the ability to comply with the financial covenants under the Senior Credit Facility Agreements over the next twelve months; however, given the current circumstances around the COVID-19 pandemic as discussed further in Note 21, "Subsequent Events", there can be no assurances as to our ability to do so.

The Company is in the process of reviewing a range of refinancing options to refinance all of the Company's outstanding indebtedness. The Company has been working with an independent committee of the Board supported by independent financial and legal advisors to conduct its review and has had a series of discussions with financing sources in the United States and Asia. We became aware on March 24, 2020, by the potential financing sources in Asia, that they are no longer pursuing a refinancing with us. We will continue to explore all options to refinance and restructure our indebtedness. While we continue to work through a number of refinancing alternatives to address our upcoming debt maturities, we cannot make any assurances regarding the likelihood, certainty or exact timing of any alternatives.

Reporting requirements under both the Tranche B-2 Term Loan and the Credit Agreement, dated as of February 28, 2018, among GNC Corporation, GNC Nutrition Centers, Inc., as Administrative Borrower, certain of its subsidiaries, as subsidiary borrowers, the lenders and agents parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent (the "ABL Credit Agreement," together with the Tranche B-2 Term Loan, the "Senior Credit Agreements") require the Company to provide annual audited financial statements accompanied by an opinion of an independent public accountant without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit (other than a "going concern" statement, explanatory note or like qualification or exception resulting solely from an upcoming maturity date under the Tranche B-2 Term Loan or the Notes). Management believes the Company will satisfy this requirement. If the lenders take a contrary position, (a) they could decide to instruct the administrative agent under the Senior Credit Agreements to deliver a written notice thereof to the borrower, and if the alleged default continued uncured for 30 days thereafter it would become an alleged event of default (unless waived by the lenders) and (b) the Company intends to contest such position and any action the lenders may attempt to take as a result thereof. If the lenders were to prevail in any such dispute, the required lenders could instruct the administrative agent to exercise remedies under the Senior Credit Agreements (the "Revolving Credit Facility"), including accelerating the maturity of the loans, terminating commitments under the revolving credit facility under the ABL Credit Agreement and requiring the posting of cash collateral in respect of outstanding letters of credit issued under the Revolving Credit Facility (\$4.9 million at December 31, 2019). If this were to occur, management would enter into discussions with the lenders to waive the default or forebear from the exercise of remedies. Failure to obtain such a waiver, complete the refinancing or other restructuring prior to August 2020 or to reach an agreement with the Company's stakeholders on the terms of a restructuring would have a material adverse effect on the liquidity, financial condition and results of operations and may result in filing a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in order to implement a restructuring plan.

The Company's Consolidated Financial Statements as of December 31, 2019 are being prepared on a going concern basis, which contemplates the realization of assets and the settlement of liabilities and commitments in the normal course of business.

#### NOTE 2. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

##### Basis of Presentation

The accompanying Consolidated Financial Statements and Footnotes have been prepared by the Company in accordance with accounting principles generally accepted in the United States of America ("GAAP") and Regulation S-X. The Company's annual reporting period is based on a calendar year.

##### Summary of Significant Accounting Policies



## GNC HOLDINGS, INC. AND SUBSIDIARIES

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**Principles of Consolidation.** The Consolidated Financial Statements include the accounts of Holdings and all of its subsidiaries. All intercompany transactions have been eliminated in consolidation.

**Use of Estimates.** The preparation of financial statements in conformity with GAAP requires management to make estimates that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Management bases these estimates on assumptions that it believes to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

**Cash and Cash Equivalents.** The Company considers cash and cash equivalents to include all cash and liquid deposits and investments with an original maturity of three months or less. Payments due from banks for third-party credit and debit cards generally process within 24 to 72 hours, and are classified as cash equivalents.

**Receivables, net.** The Company extends credit terms for sales of product to its franchisees and wholesale partners. Receivables consist principally of unpaid invoices for product sales, franchisee royalties and sublease payments. Franchisees secure financing from lending institutions, which include but are not limited to the small business administration and national banks with franchise programs. These loans generally require the Company to subordinate its first lien position on inventory and furniture and fixtures at predetermined amounts.

The Company monitors the financial condition of its customers and establishes an allowance for doubtful accounts for balances estimated to be uncollectible. In addition to considering the aging of receivable balances and assessing the financial condition, the Company considers collateral including inventory and fixed assets for domestic franchisees and letters of credit for international franchisees. The allowance for doubtful accounts was \$8.6 million and \$6.6 million at December 31, 2019 and 2018, respectively.

**Inventory.** Prior to the formation of the Manufacturing JV, inventory components consisted of raw materials, work-in-process, packaging supplies and finished product. Inventory included costs associated with distribution and transportation, as well as manufacturing overhead, which were capitalized and expensed as merchandise is sold. After the transfer of the manufacturing facility to the Manufacturing JV, inventory only consists of finished product. Inventories are stated at the lower of cost or net realizable value on a first in/first out basis ("FIFO"). Inventory is recorded net of obsolescence, shrinkage and vendor allowances for product costs. The Company regularly reviews its inventory levels in order to identify slow moving and short dated products, using factors such as amount of inventory on hand, remaining shelf life, current and expected market conditions, historical trends and the likelihood of recovering the inventory costs based on anticipated demand.

**Property, Plant and Equipment.** Property, plant and equipment expenditures are recorded at cost. Depreciation and amortization are recognized using the straight-line method over the estimated useful life of the assets. The estimated useful lives are as follows:

Building	30 yrs
Machinery and equipment	3-7 yrs
Building and leasehold improvements	3-15 yrs
Furniture and fixtures	5-8 yrs
Software	3-5 yrs

Building improvements are depreciated over their estimated useful life or the remaining useful life of the related building, whichever period is shorter. Improvements to leased premises are depreciated over the estimated useful life of the improvements or the related leases including renewals that are reasonably assured, whichever period is shorter. Expenditures that materially increase the value or clearly extend the useful life of property, plant and equipment are capitalized while repair and maintenance costs incurred in the normal course of operations are expensed as incurred.

**Goodwill and Indefinite-Lived Intangible Asset.** The Company was acquired by Ares Corporate Opportunities Fund II L.P. and Ontario Teachers' Pension Plan Board in March 2007 and subsequently completed an initial public offering in 2011 of its common stock. In connection with this acquisition, the Company recorded approximately \$600 million of goodwill and a \$720 million indefinite-lived intangible asset related to its brand name.

**GNC HOLDINGS, INC. AND SUBSIDIARIES****NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Goodwill is allocated to the Company's reporting units, which are at or below the level of an operating segment as defined by Accounting Standards Codification ("ASC") 280 "Segment Reporting." The Company evaluates the carrying amount of goodwill for each of its reporting units annually in the fourth quarter. In addition, the Company performs an evaluation on an interim basis if it determines that recent events or prevailing conditions indicate a potential impairment of goodwill. A significant amount of judgment is involved in determining whether an indicator of impairment has occurred between annual impairment tests. These indicators include, but are not limited to, overall financial performance such as adverse changes in recent forecasts of operating results, industry and market considerations, a sustained decrease in the share price of the Company's common stock, updated business plans and regulatory and legal developments.

When the carrying value of a reporting unit exceeds its fair value, an impairment charge is recorded for the difference as an operating expense in the period incurred. For the year ended December 31, 2019 and 2018, no goodwill impairment was recorded. For the year ended December 31, 2017, the Company recorded a goodwill impairment charge of \$24.3 million related to the Wholesale reporting unit as a result of a triggering event based on a decline in the Company's share price and previous challenges associated with the Company's efforts to refinance its long-term debt.

The Company's indefinite-lived intangible brand asset is also evaluated annually in the fourth quarter for impairment and on an interim basis if events or changes in circumstances between annual tests indicate that the asset might be impaired. If the carrying value of the intangible asset exceeds its fair value, an impairment loss is recognized in an amount equal to the difference. During the year ended December 31, 2019, no impairment was recorded for the indefinite-lived intangible brand asset. During the year ended December 31, 2018, the Company recognized an impairment charge of \$23.7 million, which was allocated to the U.S. and Canada and International segments for \$21.6 million and \$2.1 million, respectively. During the year ended December 31, 2017, the Company recognized a \$395.6 million impairment charge, which was allocated to the U.S. and Canada and International segments for \$394.0 million and \$1.6 million, respectively.

**Impairment of Definite-Long-lived Assets.** The Company evaluates whether the carrying values of property, plant and equipment and definite-lived intangible assets have been impaired whenever events or changes in circumstances indicate that the carrying amounts may not be recoverable based on estimated undiscounted future cash flows. Factors that may trigger an impairment review include significant changes in the intended use of assets, significant negative industry or economic trends, underperforming stores and anticipated store closings. If it is determined that the carrying value of the applicable asset group is not recoverable, an impairment loss is recognized for the amount the carrying value of the long-lived asset exceeds its estimated fair value. No impairment of definite-long-lived assets was recorded during the year ended December 31, 2019. Refer to Note 7, "Property, Plant and Equipment, Net" for a description of impairment charges recorded in 2018 and 2017.

**Revenue Recognition.** Within the U.S. and Canada segment, retail sales in company-owned stores are recognized at the point of sale, net of sales tax. Revenue related to e-commerce sales is recognized upon shipment based on meeting the transfer of control criteria. The Company has made a policy election to treat shipping and handling as costs to fulfill the contract, and as a result, any fees from customers are included in the transaction price allocated to the performance obligation of providing goods with a corresponding amount accrued within cost of sales for amounts paid to applicable carriers. Taxes collected from customers relating to product sales and remitted to governmental authorities are excluded from revenue. A provision for anticipated returns is recorded through a reduction of sales and cost of sales (for product that can be resold or returned to vendors) in the period that the related sales are recorded.

Revenue was deferred on sales of the Company's Gold Cards and subsequently recognized over the one year membership period. The Gold Card Member Pricing program, which provided members product discounts, was discontinued in all domestic company-owned and franchise stores on December 28, 2016 in connection with the introduction of the One New GNC program. As a part of this launch, the Company provided former Gold Card customers that were within the membership period of generally one year with a coupon equivalent to a reimbursement of the unexpired portion of their Gold Card membership fee. As of December 31, 2016, the Company had \$24.4 million of deferred Gold Card revenue which was recognized in the first quarter of 2017 over the coupon redemption period which expired in March 2017, net of \$1.4 million of applicable redemptions.

Effective with the launch of the One New GNC program on December 29, 2016, the Company introduced myGNC Rewards, a free points-based loyalty program system-wide in the U.S. The program enables customers to earn points based on their purchases. Points earned by members are valid for one year and may be redeemed for cash discounts on any product the Company sells at both company-owned or franchise locations. The Company defers the estimated standalone selling price of points related to this program as a reduction to revenue as points are earned by allocating a portion of the transaction price the customer pays to a loyalty program liability within deferred revenue and other current liabilities on the Consolidated Balance Sheet. The estimated selling price of each point is based on the estimated value of product for which the point is expected to be redeemed,

**GNC HOLDINGS, INC. AND SUBSIDIARIES****NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

net of points not expected to be redeemed, based on historical redemption. When a customer redeems earned points, revenue is recognized with a corresponding reduction to the program liability.

Also effective with the launch of the One New GNC program, the Company introduced a paid membership program, PRO Access, which provides members with the delivery of sample boxes throughout the membership year, as well as the offering of certain other benefits including the opportunity to earn triple points on a periodic basis. The boxes include sample merchandise and other materials. The Company allocates the transaction price of the membership to the sample boxes and other benefits based on the estimated stand-alone prices. The membership price paid is recorded within deferred revenue and other current liabilities on the Consolidated Balance Sheet and subsequently recognized revenue as the underlying performance obligations are satisfied.

Revenue from gift cards is recognized when the gift card is redeemed. Gift cards do not have expiration dates and are not required to be escheated to government authorities. Utilizing historical redemption rates, the Company recognizes revenue for amounts not expected to be redeemed proportionately as other gift card balances are redeemed.

Revenues from domestic and international franchisees include wholesale product sales, franchise fees and royalties, as well as cooperative advertising and other franchise support fees specific to domestic franchisees. Revenues are recorded within the U.S. and Canada segment for domestic franchisees and the International segment for international franchisees. The Company's franchisees purchase a significant amount of the products they sell in their retail stores from the Company at wholesale prices. Revenue on product sales to franchisees and other franchise support fees (including construction, equipment and other administrative fees) are recognized upon transfer of control to the franchisee, net of estimated returns and allowances. Franchise license fees, royalties and continuing services, such as cooperative advertising, are not separate and distinct performance obligations as they are highly dependent on each other in supporting the overall brand. Franchise fees for the license are paid in advance, and are deferred and recognized over the applicable license term as the Company satisfies the performance obligation of granting the customer access to the rights of its intellectual property. Franchise royalties and cooperative advertising contributions are variable consideration based on a percentage of the franchisees' retail sales, which are recognized in the period the franchisees' underlying sales occur, and are not included in the upfront transaction price for the overall performance obligation relating to providing access to the Company's intellectual property.

The Manufacturing / Wholesale segment sells product to the Company's other segments, which is eliminated in consolidation, and third-party customers. Revenue is recognized over time, net of estimated returns and allowances, as manufacturing occurs if the customized goods have no alternative use (specially made for the end customer) and the Company has an enforceable right to payment for performance completed to date. The selection of the method to measure progress towards completion requires judgment and is based on the nature of the products or services to be provided. The Company uses the cost-to-cost measure of progress for its contracts because it best depicts the transfer of control to the customer which occurs as the Company incurs costs on its contracts. Under the cost-to-cost measure of progress, the extent of progress towards completion is measured based on the ratio of costs incurred to date to the total estimated costs at completion of the performance obligation. Revenues, including estimated fees or profits, are recorded proportionally as costs are incurred. Costs to fulfill include labor, materials, other direct costs and an allocation of indirect costs, which are recognized as cost of sales as revenue is recognized. Services for specialty manufacturing contracts typically have an expected duration of less than one year. In March 2019, the Company entered into a strategic joint venture with IVC regarding the Company's manufacturing business. The Company received \$99.2 million and contributed its Nutra manufacturing and Anderson facility net assets in exchange for an initial 43% equity interest in the Manufacturing JV. GNC expects to receive an additional \$75 million from IVC, adjusted up or down based on the Manufacturing JV's future performance, over a four year period from the effective date of the transaction as IVC's ownership of the joint venture increases to 100%. The Company's interest in the joint venture is accounted for as an equity method investment. Refer to Note 9, "Equity Method Investments" for more information. We generate revenue from sales to our wholesale business partners on products at wholesale prices, retail sales of certain consigned inventory (prior to the termination of the consignment agreement with Rite Aid in December 2018) and license fees for the store-within-a-store alliance with Rite Aid. Wholesale sales are recognized upon transfer of control, net of estimated returns and allowances. License fees are paid in advance and are deferred and recognized over the applicable license term as the Company satisfies the performance obligation of granting the customer access to the rights of its intellectual property.

**Cost of Sales.** The Company purchases products directly from third-party vendors, the Manufacturing JV, and prior to the Manufacturing JV transaction, manufactured its own products. Cost of sales includes product costs, vendor allowances, inventory obsolescence, shrinkage, manufacturing overhead, warehousing, distribution, shipping and store occupancy costs. Store occupancy costs include rent, common area maintenance charges, real estate and other asset-based taxes, general maintenance, utilities, depreciation, lease incentives and certain insurance expenses.

**GNC HOLDINGS, INC. AND SUBSIDIARIES****NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Vendor Allowances.** The Company receives allowances/credits from various vendors based on either sales or purchase volumes, right of return for expired product and non-saleable customer returns, and cooperative advertising. As the right of offset exists under these arrangements, credit earned under these arrangements are recorded as a reduction in the vendors' accounts payable balances on the Consolidated Balance Sheet and represent the estimated amounts due to the Company under the provisions of such contracts. Amounts expected to be received from vendors relating to the purchase of merchandise inventories are recognized as a reduction to cost of sales as the merchandise is sold. Amounts that represent a reimbursement of costs incurred, such as advertising, are recorded as a reduction to the related expense in the period that the expense is incurred. The Company recorded a reduction to cost of sales of \$66.7 million, \$74.0 million and \$86.7 million for the years ended December 31, 2019, 2018 and 2017, respectively, for vendor allowances associated with the purchase and sale of merchandise.

**Research and Development.** Research and development costs arising from internally generated projects are expensed as incurred. The Company recognized approximately \$4 million, \$15 million and \$9 million in each of the years ended December 31, 2019, 2018 and 2017, respectively, relating to research and development.

**Advertising Expenditures.** The Company recognizes the costs of advertising, promotion and marketing programs the first time the communication takes place. The Company recognized advertising expense of \$86.0 million, \$95.6 million and \$104.5 million for the years ended December 31, 2019, 2018 and 2017, respectively.

**Leases.** The Company leases substantially all of its retail stores in the U.S. and Canada segment, including most of the domestic franchise stores that are leased and subleased to franchisees, its distribution centers in the United States and retail stores in Ireland. In addition, the Company has leased office locations and vehicle and equipment leases to support our store and supply chain operations. All of the Company's leases are classified as operating leases.

The Company determines if a contract contains a lease at inception. The lease liabilities are recognized based on the present value of the future minimum lease payments over the term at the commencement date for leases exceeding 12 months. The lease agreements generally contain lease and non-lease components. Non-lease components primarily include payments for maintenance and utilities. The minimum lease payments include only fixed lease components, as well as any variable rate payments that depend on an index, initially measured using the index at the lease commencement date. Lease terms may include options to renew when it is reasonably certain that the Company will exercise an option. The Company estimates its incremental borrowing rate, which was estimated to approximate the interest rate on a collateralized basis with similar terms and payments for each lease, using a portfolio approach. The right-of-use assets recognized are initially equal to the lease liability, adjusted for any lease payments made on or before the commencement dates and lease incentives.

The lease liabilities for the operating leases are amortized using the effective interest method. The right-of-use asset is amortized by taking the difference between total rent expense recorded on straight-line basis and the lease liability amortization. When the right-of-use asset for an operating lease is impaired, lease expense is no longer recognized on a straight-line basis. For impaired leases, the Company continues to amortize the lease liability using the same effective interest method as before the impairment charge and the right-of-use asset is amortized on a straight-line basis.

**Contingencies.** The Company records accruals for outstanding legal matters when it believes it is probable that a loss will be incurred and the amount of such loss can be reasonably estimated. The Company evaluates, on a quarterly basis, developments in legal matters that could affect the amount of any accrual and developments that would make a loss contingency both probable and reasonably estimable. If both of the conditions above are not met, disclosure is made when there is at least a reasonable possibility that a loss contingency has been incurred. As facts concerning contingencies evolve and become known, management reassesses the likelihood of a probable loss and makes appropriate adjustments to its financial statements.

**Pre-Opening Expenditures.** The Company recognizes the cost associated with the opening of new stores, which consist primarily of rent, marketing, payroll and recruiting costs, as incurred.

**Income Taxes.** The Company accounts for income taxes using the asset and liability method. Under this method, deferred tax assets and liabilities result from (i) the future tax impact of temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases, and (ii) differences between the recorded value of assets acquired in business combinations accounted for as purchases for financial reporting purposes and their corresponding tax bases. The company regularly reviews the components of the deferred tax assets. This review is to ascertain that, based upon all the information available at the time of the preparation of the financial statements, it is more likely than not that the Company expects to utilize these deferred tax assets in the future. If the Company determines that it is more likely than not that these deferred tax assets will not be utilized, a valuation allowance is recorded, reducing the deferred tax asset to the amount expected to be realized.

**GNC HOLDINGS, INC. AND SUBSIDIARIES****NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Many factors are considered in the determination that the deferred tax assets are more likely than not to be realized, including recent cumulative earnings, the Company's ability to continue as a going concern, expectations regarding future taxable income, length of carryforward periods, and other relevant quantitative and qualitative factors. The recoverability of the deferred tax assets is determined by assessing the adequacy of future expected taxable income from all sources, including the reversal of taxable temporary differences, forecasted operating earnings, and tax planning strategies. The Company classifies interest and penalties accrued in connection with unrecognized tax benefits as income tax expense in its Consolidated Statements of Operations.

Refer to Note 5, "Income Taxes," for more information.

**Self-Insurance.** The Company is self-insured for certain losses related to workers' compensation and general liability insurance and maintains stop-loss coverage with third-party insurers to limit its liability exposure. Liabilities associated with these losses are estimated by considering historical claims experience, estimated lag time to report and pay claims, average cost per claim and other actuarial factors.

**Stock-Based Compensation.** The Company utilizes the Black-Scholes model to calculate the fair value of time-based stock option awards. The Company utilizes a Monte Carlo simulation for its performance awards with a market condition, which requires various inputs and assumptions, including the Company's own stock price. The grant-date fair value of all other stock-based compensation, including time-based and performance-based restricted stock awards, is based on the closing price for a share of the Company's common stock on the New York Stock Exchange (the "NYSE") on the grant date.

Compensation expense for time-based stock options and restricted stock awards is recognized over the applicable vesting period, net of expected forfeitures. Compensation expense for performance-based shares with a market condition is recognized over the applicable vesting period, net of expected forfeitures, regardless of whether the market condition is achieved. Compensation expense related to the performance-based units is recognized over the applicable vesting period, net of expected forfeitures, and adjusted as necessary to reflect changes in the probability that the vesting criteria will be achieved. The Company regularly reviews the probability of achieving the performance condition on these awards.

Refer to Note 17, "Stock-Based Compensation" for more information.

**Earnings Per Share.** Basic earnings per share ("EPS") is computed by dividing net income, net of cumulative undeclared dividends, by the weighted average number of shares of common stock outstanding for the period. The Company uses the treasury stock method to compute diluted EPS for its stock-based compensation to the extent that awards with performance and market conditions are probable of being achieved and stock options are in-the-money, which assumes that outstanding stock awards were converted into common stock, and the resulting proceeds (which includes unrecognized compensation expense for all awards and the exercise price associated with stock options) were used to acquire shares of common stock at the average market price during the reporting period. The Company applies the if-converted method to calculate dilution impact of the convertible debt and the convertible preferred stock.

Refer to Note 16, "Earnings Per Share" for information on the Company's underlying shares of its convertible debt and convertible preferred stock in the computation of EPS.

**Foreign Currency.** For all active foreign operations, the functional currency is generally the local currency. Assets and liabilities of foreign operations are translated into the Company's reporting currency, the U.S. dollar, using period-end exchange rates, while income and expenses are translated using the average exchange rates for the reporting period. Translation gains and losses are recorded as part of accumulated other comprehensive loss on the Consolidated Balance Sheet. The Company has intercompany balances with its foreign entities that are routinely settled primarily relating to product sales and management fees. Gains or losses resulting from these foreign currency transactions, included in the Consolidated Statements of Operations, were not material in the fiscal years ended December 31, 2019, 2018 and 2017.

**Recently Adopted Accounting Pronouncements****Adoption of New Lease Standard**

In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-02, which requires lessees to recognize a right-of-use asset and a lease liability, initially measured at the present value of the lease payments for all leases with a term greater than 12 months. This standard is effective for annual reporting periods, and interim periods therein, beginning after December 15, 2018 and is required to be applied using a modified retrospective approach. In July 2018, the FASB issued ASU 2018-11, which provides companies with the option to apply the new lease standard either at the beginning of the earliest comparative period presented or in the period of adoption. The Company adopted ASU 2016-02 and its

## GNC HOLDINGS, INC. AND SUBSIDIARIES

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)

related amendments (collectively known as "ASC 842") during the first quarter of fiscal 2019 electing the optional transition relief amendment that allows for a cumulative-effect adjustment in the period of adoption and did not restate prior periods. In transitioning to ASC 842, the Company elected to use the practical expedient package available under the guidance for leases that commenced before the effective date and did not elect to use hindsight. The Company has implemented a new lease management and accounting system and updated its processes and internal controls to comply with the new standard.

The Company leases substantially all of its retail stores in the U.S. and Canada segment, including most of the domestic franchise stores that are leased and subleased to franchisees, its distribution centers in the United States and retail stores in Ireland. In addition, the Company has leased office locations and vehicle and equipment leases to support our store and supply chain operations. All of the Company's leases are classified as operating leases.

The Company determines if a contract contains a lease at inception. The lease liabilities are recognized based on the present value of the future minimum lease payments over the term at the commencement date for leases exceeding 12 months. The lease agreements generally contain lease and non-lease components. Non-lease components primarily include payments for maintenance and utilities. The minimum lease payments include only fixed lease components, as well as any variable rate payments that depend on an index, initially measured using the index at the lease commencement date. Lease terms may include options to renew when it is reasonably certain that the Company will exercise an option. The Company estimates its incremental borrowing rate, which was estimated to approximate the interest rate on a collateralized basis with similar terms and payments for each lease, using a portfolio approach. The right-of-use assets recognized are initially equal to the lease liability, adjusted for any lease payments made on or before the commencement dates and lease incentives.

The Company recognized lease liabilities of \$550.2 million on January 1, 2019. A right-of-use asset of \$504.2 million was recognized based on the lease liability, adjusted for the reclassification of deferred rent of \$53.3 million and prepaid rent of \$7.3 million. Additionally, the Company recognized \$79.8 million of right-of-use asset impairment charges related to certain of the Company's stores for which it was previously determined that the carrying value of the stores' assets were not recoverable. The right-of-use asset impairment charges were recorded as a reduction to January 1, 2019 (opening day) retained earnings, net of tax of \$19.8 million. The new lease standard has no impact on the timing or classification of the Company's cash flows as reported in the Consolidated Statement of Cash Flows.

The lease liabilities for the operating leases are amortized using the effective interest method. The right-of-use asset is amortized by taking the difference between total rent expense recorded on straight-line basis and the lease liability amortization. When the right-of-use asset for an operating lease is impaired, lease expense is no longer recognized on a straight-line basis. For impaired leases, the Company continues to amortize the lease liability using the same effective interest method as before the impairment charge and the right-of-use asset is amortized on a straight-line basis.

Refer to Note 12 "Leases" for additional information.

**Recently Issued Accounting Pronouncements**

In December 2019, the FASB issued ASU 2019-12, *Income Taxes: Simplifying the Accounting for Income Taxes*. This ASU simplifies accounting for income taxes by eliminating certain exceptions to ASC 740 related to the general approach for intraperiod tax allocation, methodology for calculating income taxes in an interim period and recognition of deferred taxes when there are investment ownership changes. The new guidance also simplifies aspects of accounting for franchise taxes and interim period effects of enacted changes in tax laws or rates. The new guidance provides clarification on accounting for transactions that result in a step-up in the tax basis of goodwill and allocation of consolidated income tax expense to separate financial statements of entities not subject to income tax. This ASU is effective for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years, and early adoption is permitted. The Company is evaluating the impact this standard will have on its Consolidated Financial Statements and related disclosures.

In August 2018, the FASB issued ASU 2018-15, which aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-used software. This standard is effective for public business entities for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. Early adoption is permitted. The Company does not expect the adoption of the new standard to have a material impact on its Consolidated Financial Statements.

**NOTE 3. REVENUE**

Revenue is recognized when obligations under the terms of a contract with the customer are satisfied; generally, this occurs with the transfer of control of products or services. The Company satisfies performance obligations either over time or at a point in time as discussed in further detail below. Revenue is measured as the amount of consideration expected to be received in exchange for transferring goods or providing services. Applicable sales tax collected concurrent with revenue-producing activities are excluded from revenue.

**U.S. and Canada Revenue**

The following is a summary of revenue disaggregated by major source in the U.S. and Canada segment:

	Year ended December 31,		
	2019	2018	2017
	(in thousands)		
<b>U.S. company-owned product sales: <sup>(1)</sup></b>			
Protein	\$ 295,135	\$ 320,751	\$ 338,773
Performance supplements	283,473	280,835	281,532
Weight management	100,356	128,723	140,148

Vitamins	180,742	195,853	203,569
Herbs / Greens	59,578	66,025	66,324
Wellness	179,059	191,995	196,942
Health / Beauty	179,015	181,185	190,977
Food / Drink	98,134	109,094	94,390
General merchandise	22,290	24,019	28,931
<b>Total U.S. company-owned product sales</b>	<b>\$ 1,397,782</b>	<b>\$ 1,498,480</b>	<b>\$ 1,541,586</b>
Wholesale sales to franchisees	219,644	225,106	242,521
Royalties and franchise fees	31,527	32,733	35,212
Sublease income	42,282	45,506	48,972
Cooperative advertising and other franchise support fees	18,530	20,815	23,424
Gold Card revenue recognized in U.S. <sup>(2)</sup>	—	—	24,399
Other <sup>(3)</sup>	112,562	128,580	102,817
<b>Total U.S. and Canada revenue</b>	<b>\$ 1,822,327</b>	<b>\$ 1,951,220</b>	<b>\$ 2,018,931</b>

(1) Includes GNC.com sales.

(2) The Gold Card Member Pricing program in the U.S. was discontinued in December 2016 in connection with the launch of the One New GNC program which resulted in \$24.4 million of deferred Gold Card revenue being recognized in the first quarter of 2017, net of \$1.4 million in applicable coupon redemptions.

(3) Includes revenue primarily related to Canada operations and loyalty programs, myGNC Rewards and PRO Access.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**
**International Revenue**

The following is a summary of the revenue disaggregated by major source in the International reportable segment:

	Year ended December 31,		
	2019	2018	2017
	(in thousands)		
Wholesale sales to franchisees	\$ 101,609	\$ 107,627	\$ 104,384
Royalties and franchise fees	25,902	26,503	26,609
Other <sup>(1)</sup>	30,656	57,279	46,785
<b>Total International revenue</b>	<b>\$ 158,167</b>	<b>\$ 191,409</b>	<b>\$ 177,778</b>

(1) Includes revenue related to China operations prior to the transfer of the China business to the HK JV and China JV, which was effective February 13, 2019, wholesale sales to the HK JV and China JV, and revenue from company-owned locations in Ireland.

**Manufacturing / Wholesale Revenue**

The following is a summary of the revenue disaggregated by major source in the Manufacturing / Wholesale reportable segment:

	Year ended December 31,		
	2019	2018	2017
	(in thousands)		
Third-party contract manufacturing <sup>(1)</sup>	\$ 15,783	\$ 123,322	\$ 128,914
Intersegment sales <sup>(1)</sup>	35,505	264,211	231,495
Wholesale partner sales	71,911	87,572	89,157
<b>Total Manufacturing / Wholesale revenue</b>	<b>\$ 123,199</b>	<b>\$ 475,105</b>	<b>\$ 449,566</b>

(1) The decrease in third-party contract manufacturing and intersegment sales for the year ended December 31, 2019 compared to the prior year period is due to the transfer of the Nutra manufacturing business to the Manufacturing JV effective March 1, 2019.

**Revenue by Geography**

The following is a summary of the revenue by geography:

	Year ended December 31,		
	2019	2018	2017
	(in thousands)		
<b>Total revenues by geographic areas<sup>(1)</sup>:</b>			
United States	\$ 1,962,650	\$ 2,205,669	\$ 2,332,880
Foreign	105,538	147,854	148,082
<b>Total revenues</b>	<b>\$ 2,068,188</b>	<b>\$ 2,353,523</b>	<b>\$ 2,480,962</b>

(1) Geographic areas are defined based on legal entity jurisdiction.

**Balances from Contracts with Customers**

Contract assets represent amounts related to the Company's contractual right to consideration for completed performance obligations not yet invoiced. As of December 31, 2018, the Company had contract assets of \$25.5 million for specialty manufacturing recorded within prepaid and other current assets on the Consolidated Balance Sheet (with a corresponding reduction to inventory at cost). Due to the transfer of the Nutra manufacturing net assets to the Manufacturing JV on March 1, 2019, the Company had no contract assets on the Consolidated Balance Sheet as of December 31, 2019.



**GNC HOLDINGS, INC. AND SUBSIDIARIES**
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Contract liabilities include payments received in advance of performance under the contract. The Company's PRO Access and loyalty program points are recorded within deferred revenue and other current liabilities on the Consolidated Balance Sheets. Deferred franchise and license fees are recorded within deferred revenue and other current liabilities and other long-term liabilities on the Consolidated Balance Sheets.

The following table presents changes in the Company's contract liabilities:

	<b>Year ended December 31, 2019</b>			
	<b>Balance at beginning of period</b>	<b>Recognition of revenue included in beginning balance</b>	<b>Contract liability, net of revenue, recognized during the period</b>	<b>Balance at end of period</b>
<b>(in thousands)</b>				
Deferred franchise and license fees	\$ 33,464	\$ (10,423)	\$ 5,252	\$ 28,293
PRO Access and loyalty program points (*)	24,836	(24,836)	22,896	22,896
Gift card liability (*)	3,416	(2,049)	1,743	3,110

	<b>Year ended December 31, 2018</b>			
	<b>Balance at beginning of period</b>	<b>Recognition of revenue included in beginning balance</b>	<b>Contract liability, net of revenue, recognized during the period</b>	<b>Balance at end of period</b>
<b>(in thousands)</b>				
Deferred franchise and license fees	\$ 38,011	\$ (7,745)	\$ 3,198	\$ 33,464
PRO Access and loyalty program points (*)	24,464	(24,464)	24,836	24,836
Gift card liability (*)	4,172	(2,562)	1,806	3,416

(\*) Net of estimated breakage

As of December 31, 2019, the Company had deferred franchise and license fees with unsatisfied performance obligations extending throughout 2029 of \$28.3 million, of which \$6.3 million is expected to be recognized over the next 12 months. As of December 31, 2018, the Company had deferred franchise and license fees with unsatisfied performance obligations extending throughout 2028 of \$33.5 million. The Company has elected to use the practical expedient allowed under the rules of adoption to not disclose the duration of the remaining unsatisfied performance obligations for contracts with an original expected length of one year or less.

**NOTE 4. INVENTORY**

The net realizable value of inventory consisted of the following:

	<b>December 31,</b>	
	<b>2019</b>	<b>2018</b>
<b>(in thousands)</b>		
Finished product ready for sale	\$ 387,655	\$ 416,113
Work-in-process, bulk product and raw materials <sup>(1)</sup>	—	46,520
Packaging supplies <sup>(1)</sup>	—	2,939
<b>Inventory</b>	<b>\$ 387,655</b>	<b>\$ 465,572</b>

(1) The decrease in work-in-process, bulk product and raw materials and packaging supplies as of December 31, 2019 compared with December 31, 2018 is due to the transfer of the Nutra manufacturing net assets to the Manufacturing JV effective March 1, 2019.

## GNC HOLDINGS, INC. AND SUBSIDIARIES

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 5. INCOME TAXES

Income (loss) before income taxes, including income from equity method investments, consisted of the following components:

	Year ended December 31,		
	2019	2018	2017
	(in thousands)		
Domestic	\$ 9,781	\$ 38,918	\$ (298,351)
Foreign	(24)	18,557	(11,690)
<b>Income (loss) before income taxes (*)</b>	<b>\$ 9,757</b>	<b>\$ 57,475</b>	<b>\$ (310,041)</b>

(\*) Includes income from equity method investments

Income tax expense (benefit) consisted of the following components:

	Year ended December 31,		
	2019	2018	2017
	(in thousands)		
<b>Current:</b>			
Federal	\$ 17,130	\$ 277	\$ 23,965
State	3,379	4,646	4,458
Foreign	3,764	6,037	3,376
<b>Total current income tax expense</b>	<b>24,273</b>	<b>10,960</b>	<b>31,799</b>
<b>Deferred:</b>			
Federal	3,393	(11,069)	(177,272)
State	18,188	(11,284)	(13,710)
Foreign	(985)	(912)	(596)
<b>Total deferred income tax expense (benefit)</b>	<b>20,596</b>	<b>(23,265)</b>	<b>(191,578)</b>
<b>Total income tax expense (benefit)</b>	<b>\$ 44,869</b>	<b>\$ (12,305)</b>	<b>\$ (159,779)</b>

**GNC HOLDINGS, INC. AND SUBSIDIARIES**
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Income tax expense (benefit) reflected in the accompanying Consolidated Statements of Operations varies from the amounts that would have been provided by applying the United States federal statutory income tax rate of 21% to income (loss) before income taxes as shown below:

	Year ended December 31,		
	2019	2018	2017
	(in thousands)		
U.S. federal statutory income tax	\$ 2,049	\$ 12,070	\$ (108,532)
Increase (reduction) resulting from:			
State income tax, net of federal tax benefit	3,014	(5,600)	(3,224)
International operations	2,085	856	(2,431)
Foreign derived intangible income	(484)	(2,003)	—
Global intangible low taxed income	305	4,005	—
Premiums paid to wholly owned subsidiary company	(221)	(221)	(368)
Nondeductible goodwill	—	—	6,219
Brand impairment	—	—	50,957
Exchange of convertible senior notes	40	—	(9,529)
Loss (gain) on forward contracts for the issuance of the convertible preferred stock	3,525	(18,678)	—
Formation of the joint ventures	8,067	—	—
Change in valuation allowance	27,117	2,547	(3,294)
Stock based compensation	971	1,859	1,651
Federal tax credits and income deductions	(3,642)	(5,305)	(2,448)
Tax impact of uncertain tax positions	4,831	1,028	295
Return to provision adjustment	(3,093)	(1,073)	(3,852)
Impact of 2017 Tax Act	—	(3,583)	(86,786)
Other permanent differences	305	1,793	1,563
<b>Income tax expense (benefit)</b>	<b>\$ 44,869</b>	<b>\$ (12,305)</b>	<b>\$ (159,779)</b>

During the year ended December 31, 2019, we recognized an income tax expense of \$44.9 million. The current year effective tax rate was significantly impacted by an increase to income tax expense of \$27.1 million relating to an increase in valuation allowance against certain deferred tax assets that may not be realizable and an increase to tax expense of \$7.6 million resulting from the transfer of the Nutra manufacturing net assets to the Manufacturing JV. The current year tax expense was also impacted by a \$4.8 million increase in the Company's liability for uncertain tax positions and a \$3.5 million increase related to a loss on forward contracts for the issuance of convertible preferred stock that was not recognizable for tax purposes.

During the year ended December 31, 2018, the Company finalized estimates of income tax impacts of the 2017 Tax Act based upon the regulations and other relevant guidance issued through December 31, 2018. The Company's 2018 income tax provision includes a discrete tax benefit of \$3.6 million relating to the finalization of the remeasurement of its deferred tax assets and liabilities upon filing of the Company's 2017 federal income tax return.

On December 22, 2017, tax reform legislation known as The Tax Cuts and Jobs Act of 2017 ("2017 Tax Act") was enacted. The 2017 Tax Act made significant changes to the Internal Revenue Code. During the year ended December 31, 2017, the Company recorded a non-cash income tax benefit of \$86.8 million, related to the remeasurement of its deferred tax assets and liabilities to reflect the effects of these temporary differences at enacted tax rates expected to be in effect when taxes are actually paid or recovered.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Deferred tax assets and liabilities consisted of the following at December 31:

	<b>Year ended December 31,</b>	
	<b>2019</b>	<b>2018</b>
	<b>(in thousands)</b>	
<b>Deferred tax assets:</b>		
Operating reserves	\$ 4,642	\$ 5,787
Deferred revenue	7,402	9,118
Net operating loss and credit carryforwards	30,395	35,243
Lease liabilities	89,975	6,842
Fixed assets	8,941	12,632
Stock-based compensation	3,599	3,479
Interest limitation	29,205	20,073
Other	2,456	3,938
Valuation allowance	(42,348)	(20,025)
<b>Total deferred tax assets</b>	<b>134,267</b>	<b>77,087</b>
<b>Deferred tax liabilities:</b>		
Prepaid expenses	(4,850)	(3,820)
Right-of-use assets	(68,116)	—
Intangible assets	(91,673)	(100,709)
Convertible senior notes	(1,214)	(3,616)
<b>Total deferred tax liabilities</b>	<b>(165,853)</b>	<b>(108,145)</b>
<b>Net deferred tax liability</b>	<b>\$ (31,586)</b>	<b>\$ (31,058)</b>

As of December 31, 2019, the Company had gross state NOL carryforwards of \$344.4 million expiring between 2026 and 2039 and \$5.0 million of state tax credit carryforwards that will expire between 2023 and 2034. The Company also had \$1.1 million of US foreign tax credit carryforwards expiring in 2028 and 2029. The company had immaterial foreign NOL carryforwards and no US Federal NOL carryforwards as of December 31, 2019. Under the Internal Revenue Code, the amount of and the benefits from NOL and tax credit carryforwards may be limited or permanently impaired in certain circumstances.

The Company regularly reviews deferred tax assets. The review is to ascertain that, based upon all the information available at the time of the preparation of the financial statements, it is more likely than not that the Company expects to utilize these deferred tax assets in the future. If the Company determines that it is more likely than not that these deferred tax assets will not be utilized, a valuation allowance is recorded, reducing the deferred tax asset to the amount expected to be realized. In assessing the need for a valuation allowance, the Company considers all available positive and negative evidence, including the Company's operating results, reversals of deferred tax liabilities, and forecasts of future taxable income on a jurisdiction-by-jurisdiction basis.

During the fourth quarter of the year ended December 31, 2019, as further discussed in Note 1, "Nature of Business," management concluded that there is substantial doubt regarding the Company's ability to continue as a going concern. Management considered this in concluding that certain deferred tax assets were no longer more likely than not realizable. As a result, an increase in valuation allowance of \$27.1 million on the Company's deferred tax assets was recorded as of December 31, 2019 which related principally to deferred tax assets for state NOL carryforwards and other state tax attributes and deferred tax assets related to the Company's interest expense deductions as determined under Section 163(j) of the Internal Revenue Code. This increase was partially offset by a valuation allowance decrease of \$4.8 million.

As of December 31, 2019 and 2018, a valuation allowance was provided for certain NOLs, as the Company currently believes that these NOLs may not be realizable prior to their expiration. As of December 31, 2019, the Company recorded an additional \$18.6 million valuation allowance related to state net operating losses and other state attributes no longer determined to be realizable. In the current year, the Company also recorded a \$7.4 million partial valuation allowance related to the deferred tax asset resulting from the limitation of the Company's interest expense deduction as determined by Section 163(j) of the Internal

GNC HOLDINGS, INC. AND SUBSIDIARIES

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Revenue Code and a \$1.1 million valuation allowance related to federal foreign tax credit carryforwards. The Company reduced its foreign deferred tax assets and related valuation allowance by \$4.8 million respectively, because it determined that \$3.7 million of China NOLs would not be available to the Company as a result of the China joint venture transaction and \$1.1 million of Puerto Rico NOLs were realized at the filing of the 2018 Puerto Rico statutory income tax returns.

As of December 31, 2019 and 2018, the Company has valuation allowances for deferred tax assets in the amount of \$42.3 million and \$20.0 million, respectively. Management will continue to assess the valuation allowance in forthcoming periods. This may result in a different conclusion as to the realizability of the Company's deferred tax assets in the future.

The Company's foreign subsidiaries generate earnings that are not subject to U.S. income taxes so long as they are permanently reinvested in its operations outside of the U.S. Pursuant to ASC Topic No 740-30, undistributed earnings of foreign subsidiaries that are no longer permanently reinvested would become subject to deferred income taxes. The Company does not have any material undistributed earnings of international subsidiaries at December 31, 2019 as these subsidiaries are considered to be branches for United States tax purposes, to have incurred cumulative NOLs, or to have only minimal undistributed earnings.

GNC Holdings, Inc. files a consolidated federal tax return and various consolidated and separate tax returns as prescribed by the tax laws of the state, local and international jurisdictions in which it and its subsidiaries operate. The statutes of limitation for the Company's U.S. federal income tax returns are closed for years through 2013. The Company has various state and local jurisdiction tax years open to possible examination (the earliest open period is generally 2011), and the Company also has certain state and local tax filings currently under audit.

A reconciliation of the beginning and ending amount of unrecognized tax benefits, excluding penalties and interest, is as follows:

	December 31,		
	2019	2018	2017
	(in thousands)		
<b>Balance of unrecognized tax benefits at beginning of period</b>	\$ 6,950	\$ 5,774	\$ 6,456
Additions for tax positions taken during current period	180	882	748
Additions for tax positions taken during prior periods	4,774	715	192
Reductions for tax positions taken during prior periods	(800)	(421)	(675)
Settlements	(385)	—	(947)
<b>Balance of unrecognized tax benefits at end of period</b>	<u>\$ 10,719</u>	<u>\$ 6,950</u>	<u>\$ 5,774</u>

The Company's liability for uncertain tax positions, excluding penalties and interest, increased by a net \$3.8 million during the current year.

As of December 31, 2019, the Company is not aware of any positions for which it is reasonably possible that the total amount of unrecognized tax benefits will significantly increase or decrease within the next 12 months. Accrued interest and penalties were \$2.4 million and \$2.0 million at December 31, 2019 and 2018, respectively. At December 31, 2019, the amount of unrecognized tax benefits that, if recognized, would affect the effective tax rate was \$13.1 million, including the impact of accrued interest and penalties. While it is often difficult to predict the final outcome or the timing of resolution of any particular uncertain tax position, the Company believes that its unrecognized tax benefits reflect the most likely outcome. The Company adjusts these unrecognized tax benefits, as well as the related interest, in light of changing facts and circumstances. Settlement of any particular position could require the use of cash. Favorable resolution would be recognized as a reduction to the effective income tax rate in the period of resolution.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**NOTE 6. GOODWILL AND INTANGIBLE ASSETS**

**Impairment Charges**

The Company recorded the following impairment charges:

	Year ended December 31,		
	2019	2018	2017
	(in thousands)		
Brand name	\$ —	\$ 23,680	\$ 395,600
Goodwill	—	—	24,283
Property and equipment <sup>(1)</sup>	—	9,521	18,555
Lucky Vitamin <sup>(2)</sup>	—	—	19,356
Other store closing costs	—	5,035	—
<b>Total long-lived asset impairment charges</b>	<b>\$ —</b>	<b>\$ 38,236</b>	<b>\$ 457,794</b>

(1) Refer to Note 7, "Property, Plant and Equipment, Net" for more information on the property and equipment charges.

(2) Includes goodwill, intangible assets and property and equipment as explained below.

*Brand Name*

During the fourth quarter of 2019, management performed its annual impairment test of the indefinite-lived brand intangible asset. The brand name impairment test was performed in totality as it represents a single unit of account and the Company concluded that the estimated fair value under the relief from royalty method (income approach) exceeded its carrying value. The methodology utilized for the impairment test of the indefinite-lived brand intangible asset has not changed materially from the prior year. Key assumptions included in the estimation of the fair value include the following:

- Future cash flow assumptions - Future cash flow assumptions include retail sales from the Company's corporate retail store operations, GNC.com retail sales, wholesale partner sales, China JV and HK JV retail sales, and domestic and international franchise retail sales. Sales were based on organic growth and were derived from historical experience and assumptions regarding future growth. The Company's analysis incorporated an assumed period of cash flows of 10 years with a terminal value.
- Royalty rate - The royalty rates utilized consider external market evidence and internal financial metrics including a review of available returns after the consideration of property, plant and equipment, working capital and other intangible assets.
- Discount rate - The discount rate was based on an estimated weighted average cost of capital ("WACC") for each business supported by the GNC brand name. The components of WACC are the cost of equity and the cost of debt, each of which requires judgment by management to estimate. The Company developed its cost of equity estimate based on perceived risks and predictability of future cash flows. The WACC used to estimate the fair values of the Company's reporting units was within a range of 16% to 19%. Any difference between the WACC among reporting units is primarily due to the precision with which management expects to be able to predict the future cash flows of each reporting unit.

During the year ended December 31, 2018, the Company recognized an impairment charge of \$23.7 million, which was allocated to the U.S. and Canada and International segments for \$21.6 million and \$2.1 million, respectively. During the year ended December 31, 2017, the Company recognized a \$395.6 million impairment charge on its \$720.0 million indefinite-lived brand intangible asset, which was allocated to the U.S. and Canada and International segments for \$394.0 million and \$1.6 million, respectively.

*Goodwill*

Management performed its annual impairment test of goodwill during the fourth quarter of 2019. Results of the impairment test indicated that all of the reporting units had fair values which were in excess of their respective carrying values and therefore there was no impairment for the year ended December 31, 2019.

**GNC HOLDINGS, INC. AND SUBSIDIARIES****NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The Company estimated the fair values of its reporting units in the fourth quarter of 2019 using a discounted cash flow method (income approach) weighted 50% and a guideline company method (market approach) weighted 50%. The methodology utilized for the goodwill impairment test has not changed materially from the prior year. The key assumptions used under the income approach include the following:

- **Future cash flow assumptions** - The Company's projections for its reporting units were based on organic growth and were derived from historical experience and assumptions regarding future growth and profitability trends. The Company's analysis incorporated an assumed period of cash flows of 10 years with a terminal value.
- **Discount rate** - The discount rate was based on an estimated weighted average cost of capital ("WACC") for each reporting unit. The components of WACC are the cost of equity and the cost of debt, each of which requires judgment by management to estimate. The Company developed its cost of equity estimate based on perceived risks and predictability of future cash flows. The WACC used to estimate the fair values of the Company's reporting units was within a range of 16% to 19%. Any difference between the WACC among reporting units is primarily due to the precision with which management expects to be able to predict the future cash flows of each reporting unit.

The guideline company method involves analyzing transaction and financial data of publicly-traded companies to develop multiples, which are adjusted to account for differences in growth prospects and risk profiles of the reporting unit and the comparable.

For the year ended December 31, 2018, no impairment was indicated as a result of the annual impairment test during the fourth quarter. For the year ended December 31, 2017, the Company recorded a goodwill impairment charge of \$24.3 million related to the Wholesale reporting unit in the fourth quarter as a result of a triggering event based on a decline in the Company's share price and previous challenges associated with the Company's efforts to refinance its long-term debt.

***Lucky Vitamin***

During the second quarter of 2017, in order for the Company to focus on strategic changes around the One New GNC program, the Company considered strategic alternatives for the Lucky Vitamin e-commerce business, which was considered a triggering event requiring an interim goodwill impairment review of the Lucky Vitamin reporting unit as of June 30, 2017. The Company estimated the fair value of the Lucky Vitamin reporting unit using a discounted cash flow method (income approach) and a guideline company method (market approach), each of which took into account the expectations regarding the potential strategic alternatives for the Lucky Vitamin business being explored in the second quarter of 2017. As a result of the review, the Company concluded that the carrying value of the Lucky Vitamin reporting unit exceeded its fair value, which resulted in a goodwill impairment charge of \$11.5 million being recorded in the second quarter of 2017. There was no remaining goodwill balance on the Lucky Vitamin reporting unit after the impact of this charge.

As a result of the impairment indicator described above, the Company also performed an impairment analysis with respect to its definite-lived intangible assets and other long-lived assets on the Lucky Vitamin reporting unit, consisting of a trade name and property and equipment. The fair value of the trade name was determined using a relief from royalty method (income approach) and the fair value of the property and equipment was determined using an income approach. Based on the results of the analyses, the Company concluded that the carrying value of the Lucky Vitamin trade name and property and equipment exceeded their fair values resulting in an impairment charge of \$4.2 million and \$3.7 million, respectively. All of the aforementioned non-cash charges totaling \$19.4 million were recorded in long-lived asset impairments in the Consolidated Statement of Operations within the U.S. and Canada segment during the year ended December 31, 2017.

The Company completed an asset sale of Lucky Vitamin on September 30, 2017, resulting in a loss of \$1.7 million recorded within other (income) loss, net on the Consolidated Statement of Operations consisting of the net assets sold subtracted from the purchase price of \$6.4 million, which includes fees paid to a third-party. The proceeds were received in October 2017.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**
**Goodwill Roll-Forward**

The following table summarizes the Company's goodwill activity by reportable segment:

	U.S. and Canada		International		Manufacturing / Wholesale		Total	
	(in thousands)							
<b>Goodwill at December 31, 2017</b>	\$	9,251	\$	43,708	\$	88,070	\$	141,029
<b>2018 Activity:</b>								
Translation effect of exchange rates		—		(265)		—		(265)
Total 2018 activity		—		(265)		—		(265)
<b>Balance at December 31, 2018:</b>								
Gross		389,895		43,443		202,841		636,179
Accumulated impairments		(380,644)		—		(114,771)		(495,415)
<b>Goodwill</b>	<b>\$</b>	<b>9,251</b>	<b>\$</b>	<b>43,443</b>	<b>\$</b>	<b>88,070</b>	<b>\$</b>	<b>140,764</b>
<b>2019 Activity:</b>								
Translation effect of exchange rates		—		(113)		—		(113)
Nutra manufacturing net assets exchange		—		—		(61,542)		(61,542)
Total 2019 activity		—		(113)		(61,542)		(61,655)
<b>Balance at December 31, 2019:</b>								
Gross		389,895		43,330		141,299		574,524
Accumulated impairments		(380,644)		—		(114,771)		(495,415)
<b>Goodwill</b>	<b>\$</b>	<b>9,251</b>	<b>\$</b>	<b>43,330</b>	<b>\$</b>	<b>26,528</b>	<b>\$</b>	<b>79,109</b>

**Intangible Assets**

The following table reflects the gross carrying amount and accumulated amortization for each major intangible asset:

	Weighted-Average Life	December 31, 2019			December 31, 2018		
		Gross	Accumulated Amortization/ Impairment	Carrying Amount	Gross	Accumulated Amortization/ Impairment	Carrying Amount
(in thousands)							
Brand name	Indefinite	\$ 720,000	\$ (419,280)	\$ 300,720	\$ 720,000	\$ (419,280)	\$ 300,720
Retail agreements	30.3	31,000	(13,619)	17,381	31,000	(12,566)	18,434
Franchise agreements	25.0	70,000	(35,817)	34,183	70,000	(33,017)	36,983
Manufacturing agreements <sup>(1)</sup>	25.0	40,000	(20,467)	19,533	70,000	(33,017)	36,983
Other intangibles	6.8	639	(529)	110	652	(449)	203
Franchise rights	3.0	7,566	(7,475)	91	7,486	(7,362)	124
<b>Total</b>		<b>\$ 869,205</b>	<b>\$ (497,187)</b>	<b>\$ 372,018</b>	<b>\$ 899,138</b>	<b>\$ (505,691)</b>	<b>\$ 393,447</b>

(1) In the first quarter of 2019, the Company transferred the Nutra manufacturing business net assets to the Manufacturing JV

Amortization expense during the years ended December 31, 2019, 2018 and 2017 was \$5.9 million, \$7.0 million and \$7.4 million, respectively.



**GNC HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The following table represents future amortization expense of definite-lived intangible assets at December 31, 2019:

<u>Years ending December 31,</u>	<u>Amortization expense</u> <u>(in thousands)</u>
2020	\$ 5,579
2021	5,488
2022	5,469
2023	5,469
2024	5,459
Thereafter	43,834
<b>Total future amortization expense</b>	<b>\$ 71,298</b>

**NOTE 7. PROPERTY, PLANT AND EQUIPMENT, NET**

Property, plant and equipment, net, consisted of the following:

	<u>December 31,</u>	
	<u>2019</u>	<u>2018</u>
	<u>(in thousands)</u>	
Land, buildings and improvements	\$ 21,971	\$ 74,062
Machinery and equipment	72,250	159,563
Leasehold improvements	106,954	107,089
Furniture and fixtures	101,738	108,196
Software	54,211	52,970
Construction in progress	855	2,896
<b>Total property, plant and equipment</b>	<b>357,979</b>	<b>504,776</b>
Less: accumulated depreciation	(261,542)	(340,160)
Less: accumulated impairment	(9,521)	(9,521)
<b>Net property, plant and equipment <sup>(1)</sup></b>	<b>\$ 86,916</b>	<b>\$ 155,095</b>

(1) In the first quarter of 2019, the Company transferred the Nutra manufacturing business net assets to the Manufacturing JV and transferred the China net assets to the HK JV and China JV.

The Company recognized depreciation expense on property, plant and equipment of \$29.6 million, \$40.1 million, and \$49.4 million for the years ended December 31, 2019, 2018 and 2017, respectively, which is included in manufacturing overhead expense as part of cost of sales and SG&A expense on the Consolidated Statements of Operations.

**Impairments and Other Store Closing Costs**

No impairment of property, plant and equipment was recognized during the year ended December 31, 2019.

During the third quarter of 2018, the Company performed a detailed review of its store portfolio and identified stores in the U.S. and Canada that will be closed within the next three years at the end of their lease terms. This review also identified other stores in which the Company is considering alternatives such as seeking lower rent or a shorter term. In connection with the review of the store portfolio, the Company recorded \$14.6 million of impairment charges within the U.S. and Canada segment, of which \$9.5 million related to its property, plant and equipment for certain underperforming stores and \$5.1 million related to other store closing costs, presented as long-lived asset impairments in the accompanying Consolidated Statement of Operations.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

During the year ended December 31, 2017, the Company recorded \$18.6 million of impairment charges within the U.S. and Canada segment primarily related to certain of the Company's underperforming stores and the impact of Hurricane Maria on the Company's stores located in Puerto Rico. Refer to Note 6, "Goodwill and Intangible Assets" for fixed asset impairments related to Lucky Vitamin in 2017.

The impairment tests were performed at the individual store level as this is the lowest level which identifiable cash flows are largely independent of other groups of assets and liabilities. Underperforming stores were generally comprised of stores with historical and expected future losses or stores that management intends on closing in the near term. If the undiscounted estimated future cash flows were less than the carrying value of the individual store, an impairment charge was calculated by subtracting the estimated fair value of property and equipment from its carrying value. Fair value was estimated using a discounted cash flow method (income approach) utilizing the undiscounted cash flows estimated in the first step of the test.

**NOTE 8. LONG-TERM DEBT / INTEREST EXPENSE**

Long-term debt consisted of the following:

	December 31,	
	2019	2018
	(in thousands)	
Tranche B-1 Term Loan (net of \$0.0 million discount)	\$ —	\$ 147,289
Tranche B-2 Term Loan (net of \$7.0 million and \$17.5 million discount)	441,500	554,760
FILO Term Loan (net of \$8.2 million and \$10.9 million discount)	266,814	264,086
Unpaid original issuance discount	—	11,445
Notes (net of \$3.9 million and \$11.5 million conversion feature and \$0.5 million and \$1.6 million discount)	154,675	175,504
Debt issuance costs	(424)	(762)
<b>Total debt</b>	<b>\$ 862,565</b>	<b>\$ 1,152,322</b>
Less: current maturities	(180,566)	(158,756)
<b>Long-term debt</b>	<b>\$ 681,999</b>	<b>\$ 993,566</b>

At December 31, 2019, the Company's future annual contractual obligations on long-term debt are detailed below:

Year Ending December 31,	Tranche B-2 Term Loan <sup>(1)</sup>	FILO Term Loan <sup>(2)</sup>	Convertible Notes <sup>(3)</sup>	Total
2020	\$ 25,909	\$ —	\$ 159,097	\$ 185,006
2021	422,553	—	—	422,553
2022	—	275,000	—	275,000
<b>Total</b>	<b>\$ 448,462</b>	<b>\$ 275,000</b>	<b>\$ 159,097</b>	<b>\$ 882,559</b>

(1) Includes the unamortized original issuance discount of \$7.0 million

(2) Includes the unamortized original issuance discount of \$8.2 million

(3) Includes unamortized conversion feature of \$3.9 million and original issuance discount of \$0.5 million.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Senior Credit Facility**

*Issuance*

In March 2011, General Nutrition Centers, Inc. ("Centers"), a wholly owned subsidiary of Holdings, entered into the Senior Credit Facility, consisting of the Term Loan Facility and the Revolving Credit Facility. The Senior Credit Facility permits the Company to prepay a portion or all of the outstanding balance without incurring penalties (except London Interbank Offering Rate ("LIBOR") breakage costs). GNC Corporation, the Company's indirect wholly owned subsidiary, and Centers' existing and future domestic subsidiaries have guaranteed Centers' obligations under the Senior Credit Facility. In addition, the Senior Credit Facility is collateralized by first priority pledges (subject to permitted liens) of substantially all of Centers' assets, including its equity interests and the equity interests of its domestic subsidiaries.

The Company amended the Revolving Credit Facility on March 4, 2016, to extend its maturity from March 2017 to September 2018 and increase total availability from \$130.0 million to \$300.0 million. In December 2017, the Company reduced the amount available under the Revolving Credit Facility from \$300.0 million to \$225.0 million.

*2018 Refinancing*

On February 28, 2018, the Company amended and restated its Senior Credit Facility which at the time consisted of a \$1,131.2 million term loan facility due in March 2019 and a \$225.0 million revolving credit facility that was scheduled to mature in September 2018 (the "Amendment", and the Senior Credit Facility as so amended, the "Term Loan Agreement"). The Amendment extended the maturity date for \$704.3 million of the \$1,131.2 million term loan facility from March 2019 to March 2021 (the "Tranche B-2 Term Loan"). In the event that all outstanding amounts under the convertible senior notes in excess of \$50.0 million have not been repaid, refinanced, converted or effectively discharged prior to May 2020 ("Springing Maturity Date"), the maturity date for the Tranche B-2 Term Loan becomes the Springing Maturity Date, subject to certain adjustments. The Amendment also terminated the \$225.0 million revolving credit facility.

After the effectiveness of the Amendment, the remaining term loan of \$151.9 million as of February 28, 2018 continued to have a maturity date of March 2019 (the "Tranche B-1 Term Loan"). The Tranche B-2 Term Loan requires annual aggregate principal payments of at least \$43 million and bears interest at a rate of, at the Company's option, LIBOR plus a margin of 8.75% per annum subject to change under certain circumstances (with a minimum and maximum margin of 8.25% and 9.25%, respectively, per annum), or prime plus a margin of 7.75% per annum subject to change under certain circumstances (with a minimum and maximum of 7.25% and 8.25%, respectively, per annum). Any mandatory repayments as defined in the credit agreement shall be applied to the remaining annual aggregate principle payments in direct order of maturity. As discussed in further detail below, in November 2018, the Company paid \$100 million on the Tranche B-2 Term Loan and elected to use the payment to satisfy the scheduled amortization payments on the Term Loan Facility through December 2020. The interest rate under the Tranche B-1 Term Loan is at a rate of, at the Company's option, LIBOR plus a margin of 2.5% or prime plus a margin of 1.5%. The Term Loan Agreement is secured by a (i) first lien on certain assets of the Company primarily consisting of capital stock issued by General Nutrition Centers, Inc. ("Centers") and its subsidiaries, intellectual property and equipment ("Term Priority Collateral") and (ii) second lien on certain assets of the Company primarily consisting of inventory and accounts receivable ("ABL Priority Collateral"). The Term Loan Agreement is guaranteed by all material, wholly-owned domestic subsidiaries of the Company (the "U.S. Guarantors") and by General Nutrition Centres Company, an unlimited liability company organized under the laws of Nova Scotia (together with the U.S. Guarantors, the "Guarantors").

On February 28 2018, the Company also entered into a new asset-based credit agreement (the "ABL Credit Agreement"), consisting of:

- a new \$100 million asset-based Revolving Credit Facility (the "Revolving Credit Facility") with a maturity date of August 2022 (which maturity date will become May 2020, subject to certain adjustments, should the Springing Maturity Date be triggered); In connection with the transfer of the Nutra manufacturing and Anderson facility net assets to the manufacturing JV with IVC, the Revolving Credit Facility commitment was reduced from \$100 million to \$81 million effective March 2019; and
- a \$275.0 million asset-based Term Loan Facility advanced on a "first-in, last-out" basis (the "FILO Term Loan") with a maturity date of December 2022 (which maturity date will become May 2020, subject to certain adjustments, should the Springing Maturity Date be triggered).

**GNC HOLDINGS, INC. AND SUBSIDIARIES****NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

There are no scheduled amortization payments associated with the FILO Term Loan, which bears interest at a rate of LIBOR plus a margin of 7.00% per annum subject to decrease under certain circumstances (with a minimum possible interest rate of LIBOR plus a margin of 6.50% per annum). Outstanding borrowings under the Revolving Credit Facility bear interest at a rate of LIBOR plus 1.50% or prime plus 0.50% (both subject to an increase or decrease of 0.25% to 0.50% based on the amount available to be drawn under the Revolving Credit Facility). The Company is also required to pay an annual fee of 0.125% to the applicable Issuing Bank and a fee to revolving lenders equal to a maximum of 2.0% (subject to adjustment based on the amount available to be drawn under the Revolving Credit Facility with a minimum of 1.5%) on outstanding letters of credit and an annual commitment fee of 0.375% on the undrawn portion of the Revolving Credit Facility subject to an increase to 0.5% based on the amount available to draw under the Revolving Credit Facility. The FILO Term Loan and Revolving Credit Facility are secured by a (i) first lien on ABL Priority Collateral and (ii) second lien on Term Priority Collateral. The FILO Term Loan and Revolving Credit Facility are guaranteed by the Guarantors.

In connection with the debt refinancing, the Company recognized a loss of \$16.7 million in the first quarter of 2018, which primarily includes third-party fees relating to the Tranche B-2 Term Loan and the FILO Term Loan, and is presented as an operating outflow on the accompanying Consolidated Statement of Cash Flows. The refinancing of our term debt was accounted for as a debt modification and therefore the fees paid to third parties associated with the term debt restructuring were expensed. In addition, the Company paid \$30.2 million consisting of an original issuance discount ("OID") to the Tranche B-2 Term Loan and the FILO Term Loan lenders. The remaining unpaid OID of \$10.4 million, which was subject to change based on the timing and amount of the outstanding balance, was paid to the Tranche B-2 Term Loan lenders at 2% of the outstanding balance during the first quarter of 2019. The OID together with \$5.1 million in fees incurred relating to the Revolving Credit Facility (included within other long-term assets on the Consolidated Balance Sheet) are amortized through the applicable maturity dates as an increase to interest expense.

Under the Company's Term Loan Agreement and ABL Credit Agreement (collectively, the "Credit Facilities"), the Company is required to make certain mandatory prepayments, including a requirement to prepay first the Tranche B-2 Term Loan (until repaid in full), second the FILO Term Loan (until repaid in full, but only if such prepayment is permitted under the ABL Credit Agreement), and third the Tranche B-1 Term Loan, in each case annually with amounts based on excess cash flow, as defined in the Company's Credit Facilities, based on the results of the Company for the prior fiscal year. The payment will be 75% of excess cash flow for each such fiscal year, subject to a reduction to 50% based on the attainment of a certain Consolidated Net First Lien Leverage Ratio, and will be reduced by certain scheduled debt payment amounts. Based on the Company's results for the year ended December 31, 2018, the Company's required excess cash flow payment was \$49.8 million, which was reduced to \$9.8 million by the scheduled debt payments made in the first quarter of 2019 defined in the Company's Credit Facilities. The Company made the excess cash flow payment in April 2019. Based on the Company's results for the year ended December 31, 2019, the Company will be required to make an excess cash flow payment of \$25.9 million in April 2020.

At December 31, 2019, the Company's contractual interest rates under the Tranche B-2 Term Loan and the FILO Term Loan were 10.6% and 8.8%, respectively, which consist of LIBOR plus the applicable margin rate. At December 31, 2018, the Company's contractual interest rates under the Tranche B-1 Term Loan, Tranche B-2 Term Loan, and the FILO Term Loan were 5.7%, 11.8% and 9.5%, respectively. At December 31, 2019, the Company had \$66.2 million available under the Revolving Credit Facility, after giving effect to \$4.9 million utilized to secure letters of credit and a \$9.9 million reduction to borrowing ability as a result of decrease in net collateral.

The Company's Credit Facilities contain customary covenants, including limitations on the ability of GNC Corporation, Centers, and Centers' subsidiaries to, among other things, incur debt, grant liens on their assets, enter into mergers or liquidations, sell assets, make investments or acquisitions, make optional payments in respect of, or modify, certain other debt instruments, pay dividends or other payments on capital stock, or enter into arrangements that restrict their ability to pay dividends or grant liens. In addition, the Term Loan Agreement requires compliance, as of the end of each fiscal quarter of the Company, with a maximum Consolidated Net First Lien Leverage Ratio initially set at 5.50 to 1.00 through December 31, 2018 and decreasing to 5.00 to 1.00 from March 31, 2019 to December 31, 2019 and 4.25 to 1.00 thereafter. Depending on the amount available to be drawn under the Revolving Credit Facility, the ABL Credit Agreement requires compliance as of the end of each fiscal quarter of the Company with a minimum Fixed Charge Coverage Ratio of 1.00 to 1.00. The Company was in compliance with the terms of its Credit Facilities as of December 31, 2019.

*Investment from Harbin and IVC*

On November 7, 2018, The Company entered into an Amendment to the Securities Purchase Agreement with Harbin Pharmaceutical Group Holdings Co., Ltd. (the "Investor") for the purchase of 299,950 shares of convertible preferred stock.

## GNC HOLDINGS, INC. AND SUBSIDIARIES

### NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Pursuant to the terms of the Securities Purchase Agreement, the Investor assigned its interest in the Securities Purchase Agreement to Harbin Pharmaceutical Group Co., Ltd. ("Harbin"). Harbin's \$300 million investment was funded in three separate tranches. On November 8, 2018, the Company received the initial \$100 million investment for the purchase of 100,000 shares of convertible preferred stock. The Company utilized the \$100 million to pay a portion of the Tranche B-2 Term Loan due in March 2021 pursuant to the Amendment to its Senior Credit Facility and elected to use the payment to satisfy the scheduled amortization payments on the Term Loan Facility through December 2020. On January 2, 2019, the Company received \$50 million investment for the second purchase of 50,000 shares of convertible preferred stock, and on February 13, 2019, the Company received the remaining \$150 million for the final purchase of 149,950 shares of convertible preferred stock.

In March 2019, the Company announced the formation of a strategic partnership with IVC. Under the terms of the agreement, GNC received \$101 million from IVC in the first quarter of 2019 and contributed its Nutra manufacturing and Anderson facility net assets in exchange for an initial 43% ownership in the joint venture.

In connection with the receipt of the investments in 2019 as mentioned above, the Company paid down the remaining balance of the Tranche B-1 Term Loan of \$147.3 million. The remaining proceeds together with cash generated from operating activities were utilized to pay a portion of the Tranche B-2 of \$114.0 million and the original issuance discount due to the Tranche B-2 Term Loan lenders at 2% of the outstanding balance.

#### **Convertible Debt**

##### *Issuance and Terms*

On August 10, 2015, the Company issued \$287.5 million principal amount of 1.5% convertible senior notes due 2020 in a private offering (the "Notes"). The Notes are governed by the terms of an indenture between the Company and BNY Mellon Trust Company, N.A., as the Trustee (the "Indenture"). The Notes mature on August 15, 2020, unless earlier repaid, discharged, refinanced or converted by the holders subject to restrictions through May 15, 2020. The Notes bear interest at a rate of 1.5% per annum, and additionally are subject to special interest in connection with any failure of the Company to perform certain of its obligations under the Indenture.

The Notes are unsecured obligations and do not contain any financial covenants or restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities by the Company or any of its subsidiaries. Certain events are considered "events of default" under the Notes, which may result in the acceleration of the maturity of the Notes, as described in the indenture governing the Notes. The Notes are fully and unconditionally guaranteed by certain operating subsidiaries of the Company ("Subsidiary Guarantors") and are subordinated to the Subsidiary Guarantors obligations from time to time with respect to the Senior Credit Facility and ranks equal in right of payment with respect to the Subsidiary Guarantor's other obligations.

The initial conversion rate applicable to the Notes is 15.1156 shares of common stock per \$1,000 principal amount of Notes, which is equivalent to an initial conversion price of \$66.16 per share. The conversion rate is subject to adjustment upon the occurrence of certain specified events, but will not be adjusted for any accrued and unpaid special interest. In addition, upon the occurrence of a "make-whole fundamental change" as defined in the Indenture, the Company will, in certain circumstances, increase the conversion rate by a number of additional shares for a holder that elects to convert its Notes in connection with such make-whole fundamental change.

Prior to May 15, 2020, the Notes are convertible only under the following circumstances: (1) during any calendar quarter commencing after September 30, 2015, if, for at least 20 trading days (whether or not consecutive) during the 30 consecutive trading day period ending on the last trading day of the immediately preceding calendar quarter, the last reported sale price of the Company's common stock on such trading day is greater than or equal to 130% of the applicable conversion price on such trading day; (2) during the 5 consecutive business day period after any ten consecutive trading day period in which, for each day of that period, the trading price per \$1,000 principal amount of Notes for such trading day was less than 98% of the product of the last reported sale price of the Company's common stock and the applicable conversion rate on such trading day; or (3) upon the occurrence of specified corporate transactions. On and after May 15, 2020, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or a portion of their Notes at any time, regardless of the foregoing circumstances. Upon conversion, the Notes will be settled, at the Company's election, in cash, shares of the Company's common stock, or a combination of cash and shares of the Company's common stock. If the Company has not delivered a notice of its election of settlement method prior to the final conversion period, it will be deemed to have elected combination settlement with a dollar amount per note to be received upon conversion of \$1,000. None of these circumstances was met during the year ended December 31, 2019 and 2018.

GNC HOLDINGS, INC. AND SUBSIDIARIES

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Exchange

On December 20, 2017, the Company exchanged in privately negotiated transactions \$98.9 million in aggregate principal amount of the Notes for an aggregate of 14.6 million newly issued shares of the Company's Class A common stock, which had a value of \$71.7 million at the time of the exchange. The Company accounted for the transaction as a troubled debt restructuring as a result of satisfying the below criteria.

- Previous challenges associated with the Company's refinancing efforts of its long term debt at the time of the convertible debt exchange.
- The holders of the convertible debt completed the exchange for a value lower than the face amount of the notes. As a result, management concluded a concession was granted to the Company.

The convertible debt exchange resulted in a gain of \$15.0 million, which includes the unamortized conversion feature of \$9.6 million, unamortized discount of \$1.4 million and other third party fees of \$1.2 million and together with legal, investment banking and rating agency fees associated with the Company's refinancing efforts, the Company recorded a net gain of \$11.0 million in the fourth quarter of 2017.

Repurchase

During the second quarter of 2019, the Company repurchased \$29.5 million in aggregate principal amount of the Notes for \$24.7 million in cash. The convertible debt repurchase resulted in a gain of \$3.2 million, which included the unamortized conversion feature of \$1.3 million and unamortized discount of \$0.2 million.

Notes by Component

The Notes consist of the following components:

	As of December 31,	
	2019	2018
	(in thousands)	
<b>Liability component</b>		
Principal	\$ 159,097	\$ 188,565
Conversion feature	(3,898)	(11,489)
Discount related to debt issuance costs	(524)	(1,572)
<b>Net carrying amount</b>	<b>\$ 154,675</b>	<b>\$ 175,504</b>
<b>Equity component</b>		
Conversion feature	\$ 49,680	\$ 49,680
Debt issuance costs	(1,421)	(1,421)
Deferred taxes (*)	(16,540)	(16,620)
<b>Net amount recorded in additional paid-in capital</b>	<b>\$ 31,719</b>	<b>\$ 31,639</b>

(\*) The balance at December 31, 2019 includes \$0.1 million related to the tax provision that was allocated to additional paid in capital associated with the convertible debt repurchase.

Interest Rate Swaps

On June 13, 2018, the Company entered into two interest rate swaps with notional amounts of \$275 million and \$225 million to limit the exposure to its variable interest rate debt by effectively converting it to a fixed interest rate. The Company receives payments based on the one-month LIBOR and makes payments based on a fixed rate. The Company receives payments with a floor of 0.00% and 0.75%, respectively, on the \$275 million and \$225 million interest rate swaps, which aligns with the

## GNC HOLDINGS, INC. AND SUBSIDIARIES

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)

related debt instruments, and makes payments on a fixed rate of 2.82% and 2.74%, respectively. The interest rate swap agreements had an effective date of June 29, 2018. The \$225 million interest rate swap expires on February 28, 2021, and the \$275 million interest rate swap expires on June 30, 2021. The notional amount of the \$225 million interest rate swap has scheduled decreases to \$175 million on June 30, 2019, \$125 million on June 30, 2020 and \$75 million on December 31, 2020. The Company designated these instruments as cash flow hedges and deemed effective upon initiation. The interest rate swaps are recognized on the balance sheet at fair value. Changes in fair value are recorded within other comprehensive income (loss) on the Consolidated Balance Sheet and reclassified into the Consolidated Statement of Operations as interest expense in the period in which the underlying transaction affects earnings.

The fair values of the derivative financial instruments included in the Consolidated Balance Sheets consisted of the following:

Balance Sheet Classification	Fair Value at	
	December 31, 2019	December 31, 2018
	(in thousands)	
Other current liabilities	\$ 5,013	\$ —
Other long-term liabilities	1,927	3,210
Total liabilities	\$ 6,940	\$ 3,210

At December 31, 2019, there was a cumulative unrealized loss of \$4.8 million, net of tax, related to these interest rate swaps included in accumulated other comprehensive income (loss). This loss would be immediately recognized in the Consolidated Statement of Operations if these instruments fail to meet certain cash flow hedge requirements. As of December 31, 2019, the amount included in accumulated other comprehensive loss related to the interest rate swaps to be reclassified into earnings during the next 12 months is approximately \$4 million. Refer to Note 11, "Fair Value Measurements of Financial Instruments" for more information on how the interest rate swaps are valued.

At December 31, 2018, there was a cumulative unrealized loss of \$2.2 million, net of tax, related to these interest rate swaps included in accumulated other comprehensive income (loss). This loss would be immediately recognized in the Consolidated Statement of Operations if these instruments fail to meet certain cash flow hedge requirements. As of December 31, 2018, the amount included in accumulated other comprehensive loss related to the interest rate swaps to be reclassified into earnings during the next 12 months is not material.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**
**Interest Expense**

Interest expense consisted of the following:

	For the year ended December 31,		
	2019	2018	2017
	(in thousands)		
<b>Senior Credit Facility:</b>			
Tranche B-1 Term Loan coupon	\$ 928	\$ 13,322	\$ 41,477
Tranche B-2 Term Loan coupon	54,873	64,417	—
FILO Term Loan coupon	27,380	22,143	—
Revolving Credit Facility	409	1,022	—
Terminated revolving credit facility	—	316	4,685
Amortization of discount and debt issuance costs	13,609	15,648	2,413
<b>Total Senior Credit Facility</b>	<b>97,199</b>	<b>116,868</b>	<b>48,575</b>
<b>Notes:</b>			
Coupon	2,576	2,828	4,272
Amortization of conversion feature	6,246	6,576	9,496
Amortization of discount and debt issuance costs	895	974	1,251
<b>Total Notes</b>	<b>9,717</b>	<b>10,378</b>	<b>15,019</b>
Interest income and other	(207)	(166)	627
<b>Interest expense, net</b>	<b>\$ 106,709</b>	<b>\$ 127,080</b>	<b>\$ 64,221</b>

**NOTE 9. EQUITY METHOD INVESTMENTS**

In February 2019, the Company contributed its China business in exchange for 35% ownership of each of the joint ventures with Harbin, the HK JV and China JV. The HK JV includes the operation of the cross-border China e-commerce business, and has an exclusive right to use the Company's trademarks to manufacture and distribute the Company's products in China (excluding Hong Kong, Taiwan and Macau) via e-commerce channels. The China JV is a retail-focused joint venture to operate GNC's brick-and-mortar retail business in China and it will have an exclusive right to use the Company's trademarks to manufacture and distribute the Company's products in China (excluding Hong Kong, Taiwan and Macau) via retail stores and pharmacies. The HK JV closed in February 2019 and the China JV agreement is expected to be completed in the second quarter of 2020, following the satisfaction of certain routine regulatory and legal requirements.

In March 2019, the Company entered into a strategic joint venture with IVC regarding the Company's manufacturing business. The Manufacturing JV is responsible for the manufacturing of the products previously produced by the Company at the Nutra manufacturing facility. The Company received \$99.2 million from IVC and contributed the net assets of the Nutra manufacturing and Anderson facilities in exchange for an initial 43% equity interest in the Manufacturing JV. In addition, the Company made a capital contribution of \$10.7 million to the Manufacturing JV to fund its share of short-term working capital needs. IVC is expected to pay an additional \$75.0 million over a four year period from the effective date of the transaction as IVC's ownership of the joint venture increases to 100%. The subsequent purchase price for each year is \$18.8 million, adjusted up or down based on the Manufacturing JV's future performance. IVC's subsequent purchase price in the first quarter of 2020 is expected to be between approximately \$16 million and \$17 million based on the Manufacturing JV's performance in 2019.

**Gain (loss) from the net asset exchange**

In connection with the formation of the joint ventures effective in the first quarter of 2019, the Company deconsolidated its China business and its Nutra manufacturing business which resulted in a pre-tax gain of \$5.8 million and loss of \$27.1 million, respectively, recorded within loss on net asset exchange for the formation of the joint ventures on the Consolidated Statements of Operations. The \$5.8 million gain from the Harbin transaction was calculated based on the difference between the fair value of the 35% equity interest in the HK JV and China JV, less the carrying value of the contributed China business, including \$2.4 million



**GNC HOLDINGS, INC. AND SUBSIDIARIES**
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

of cash, and third-party closing fees. The \$27.1 million loss from the Manufacturing JV transaction was calculated based on the fair value of the 43% equity interest retained in the Manufacturing JV and the \$101 million in cash received, net of a \$1.8 million working capital purchase price adjustment in the second quarter of 2019, less the carrying value of the contributed Nutra and Anderson facilities and third-party closing fees.

The Company's interests in the joint ventures are accounted for as equity method investments due to the Company's ability to exercise significant influence over management decisions of the joint ventures. Under the equity method, the Company's share of profits and losses from the joint ventures is recorded within income from equity method investments on the Consolidated Statement of Operations. The following table provides a reconciliation of equity method investments on the Company's Consolidated Balance Sheets:

	<b>December 31, 2019</b>	
	<b>(in thousands)</b>	
Manufacturing JV	\$	75,434
Manufacturing JV capital contribution		10,714
HK JV and China JV		10,342
Income from equity method investments		5,296
Distributions received from equity method investments		(3,856)
<b>Total Equity method investments</b>	<b>\$</b>	<b>97,930</b>

In connection with the transaction with IVC, the Company entered into a lease for warehouse space within the Anderson facility. Refer to Note 12, "Leases" for more information. Additionally, the Company purchased approximately \$156 million of product from the Manufacturing JV during the year ended December 31, 2019 and had \$11.7 million accounts payable outstanding as of December 31, 2019. In connection with the HK JV, the Company recognized revenue, primarily from wholesale sales and royalties, of \$13.2 million for the year ended December 31, 2019 and had \$8.9 million accounts receivable outstanding as of December 31, 2019.

**NOTE 10. DEFERRED REVENUE AND OTHER CURRENT LIABILITIES**

Deferred revenue and other current liabilities consisted of the following:

	<b>December 31,</b>			
	<b>2019</b>		<b>2018</b>	
	<b>(in thousands)</b>			
Deferred revenue	\$	34,253	\$	37,629
Accrued compensation and related benefits		35,850		38,866
Accrued occupancy (*)		1,929		9,106
Accrued sales tax		1,914		2,571
Accrued interest		3,776		1,828
Interest rate swap		5,013		—
Other current liabilities		23,057		30,169
<b>Total deferred revenue and other current liabilities</b>	<b>\$</b>	<b>105,792</b>	<b>\$</b>	<b>120,169</b>

(\*) In connection with the the adoption of ASC 842, as further described in Note 2, "Basis of Presentation and Summary of Significant accounting policies", minimum lease payments are included in lease liabilities on the Consolidated Balance Sheet as of December 31, 2019.

**NOTE 11. FAIR VALUE MEASUREMENTS AND FINANCIAL INSTRUMENTS**

ASC 820, "Fair Value Measurements and Disclosures" defines fair value as a market-based measurement that should be determined based on the assumptions that marketplace participants would use in pricing an asset or liability. As a basis for considering such assumptions, the standard establishes a three-tier fair value hierarchy which prioritizes the inputs used in measuring fair value as follows:

**GNC HOLDINGS, INC. AND SUBSIDIARIES**
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Level 1 — observable inputs such as quoted prices in active markets for identical assets and liabilities;

Level 2 — observable inputs such as quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, other inputs that are observable, or can be corroborated by observable market data; and

Level 3 — unobservable inputs for which there are little or no market data, which require the reporting entity to develop its own assumptions.

The carrying amounts of cash and cash equivalents, receivables, accounts payable, accrued liabilities and the Revolving Credit Facility approximate their respective fair values. Based on the interest rates currently available and their underlying risk, the carrying value of franchise notes receivable recorded primarily in Other long-term assets approximates its fair value.

The carrying value and estimated fair value of the forward contracts for the issuance of convertible preferred stock, the Term Loan Facility, net of discount, Notes (net of the equity component classified in stockholders' equity and discount) and the interest rate swaps were as follows:

	December 31, 2019		December 31, 2018	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
(in thousands)				
<b>Assets:</b>				
Forward contracts for the issuance of convertible preferred stock	\$ —	\$ —	\$ 88,942	\$ 88,942
<b>Liabilities:</b>				
Tranche B-1 Term Loan	\$ —	\$ —	\$ 147,289	\$ 145,080
Tranche B-2 Term Loan	441,500	414,321	554,760	511,766
FILo Term Loan	266,814	265,851	264,086	260,125
Notes	154,675	148,488	175,504	131,628
Interest rate swaps	6,940	6,940	3,210	3,210

The forward contracts for the issuance of convertible preferred stock were measured at fair value, as of the valuation date, using a single factor binomial lattice model ("Lattice Model") which incorporates the terms and conditions of the convertible preferred stock and is based on changes in the prices of the underlying common share price over successive periods of time. Key assumptions of the Lattice Model include the current price of the underlying stock and its historical and expected volatility, risk-neutral interest rates and the instruments remaining term. These assumptions require significant management judgment and are considered Level 3 inputs. The forward contract was revalued at each reporting period and changes in fair value are recognized in the Consolidated Statements of Operations. The forward contracts settled upon issuance on January 2, 2019 and February 13, 2019. Refer to Note 14, "Mezzanine Equity" for discussion of the Securities Purchase Agreement.

The fair values of the term loans were determined using the instrument's trading value in markets that are not active, which are considered Level 2 inputs. The fair value of the Notes was determined based on quoted market prices and bond terms and conditions, which are considered Level 2 inputs. The Company's interest rate swaps are carried at fair value, which is based primarily on Level 2 inputs utilizing readily observable market data, such as LIBOR forward rates, for all substantial terms of the interest rate swap contracts and the assessment of nonperformance risk.

As described in Note 6, "Goodwill and Intangible Assets, Net," and Note 7, "Property, Plant and Equipment, Net," the Company recorded long-lived asset impairments in the years ended December 31, 2018 and 2017. This resulted in the following assets being measured at fair value on a non-recurring basis using Level 3 inputs:

- the indefinite-lived brand name intangible asset at December 31, 2018 and 2017;
- goodwill at December 31, 2017 for the Wholesale reporting unit;
- property and equipment at certain of the Company's stores at December 31, 2018 and 2017.

## GNC HOLDINGS, INC. AND SUBSIDIARIES

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 12. LEASES

The Company has operating leases for retail stores, distribution centers, other leased office locations, vehicles and certain equipment with remaining lease terms of one to 15 years, some of which include options to extend the leases for up to 10 years. As of December 31, 2019, the weighted average remaining lease term was 5.1 years and the weighted average discount rate was 10%. On the Company's Consolidated Balance Sheets as of December 31, 2019, the Company had lease liabilities of \$442.5 million, of which \$112 million are classified as current, and right-of-use assets of \$350.6 million.

The components of the Company's lease costs, which are recorded within cost of sales on the Consolidated Statements of Operations, were as follows:

	<b>Year ended December 31, 2019</b>	
	<b>(in thousands)</b>	
Operating lease costs	\$	150,255
Variable lease costs		14,855
<b>Total lease costs</b>		<b>165,110</b>
Sublease income <sup>(1)</sup>		(32,232)
<b>Lease costs, net</b>	<b>\$</b>	<b>132,878</b>

(1) Sublease income, related to sublease with its franchisee, includes only the portion of income directly related to lease components and is recorded within revenue on the Consolidated Statements of Operations. Total sublease income, which includes rental income as well as other occupancy related items was \$42.3 million in the year ended December 31, 2019.

The Company has elected to apply the short-term lease exemption for all asset classes and excluded them from the balance sheet. Lease payments for short-term leases are recognized on a straight-line basis over the lease term. The short-term lease expense recognized during the year ended December 31, 2019 is immaterial.

Supplemental cash flow information related to leases was as follows:

	<b>Year ended December 31, 2019</b>	
	<b>(in thousands)</b>	
<b>Operating cash flow information:</b>		
Cash paid for amounts included in the measurement of operating lease liabilities	\$	182,808
Right-of-use assets obtained in exchange for operating lease liabilities	\$	24,610

**GNC HOLDINGS, INC. AND SUBSIDIARIES**
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Maturities of the lease liabilities (undiscounted lease payments, as defined in Note 2 "Basis of Presentation") as of December 31, 2019 were as follows:

	<b>Operating Leases for Company- Owned and Franchise Stores</b>	<b>Operating Leases for Other <sup>(1)</sup></b>	<b>Total Operating Leases</b>	<b>Sublease Income from Franchisees</b>	<b>Rent on Operating Leases, net of Sublease Revenue</b>
	(in thousands)				
2020	\$ 144,635	\$ 4,797	\$ 149,432	\$ (27,625)	\$ 121,807
2021	114,021	3,549	117,570	(22,242)	95,328
2022	84,786	2,015	86,801	(16,962)	69,839
2023	62,683	1,354	64,037	(12,501)	51,536
2024	46,289	1,204	47,493	(8,657)	38,836
Thereafter	94,657	5,498	100,157	(21,038)	79,119
<b>Total future obligations</b>	<b>\$ 547,071</b>	<b>\$ 18,417</b>	<b>\$ 565,490</b>	<b>\$ (109,025)</b>	<b>\$ 456,465</b>
<b>Less amounts representing interest</b>			<b>(122,975)</b>		
<b>Present value of lease obligations</b>			<b>\$ 442,515</b>		

(1) Includes various leases for warehouses, vehicles, and various equipment at the Company's facilities.

As of December 31, 2019, leases that the Company has entered into but have not yet commenced are immaterial.

In connection with the Manufacturing JV transaction effective March 1, 2019, the Company leased warehouse space within the Anderson facility from the Manufacturing JV for a term of one year. The lease was accounted for as a sale leaseback transaction and classified as an operating lease included in the current lease liabilities on the Consolidated Balance Sheet.

**Disclosures related to periods prior to adoption of ASU 2016-02**

The Company adopted ASU 2016-02 using a modified retrospective adoption method at January 1, 2019 as noted in Note 2. "Basis of Presentation." As required, the following disclosure is provided for periods prior to the adoption. The Company's rent expense, which is recorded within cost of sales on the Consolidated Statements of Operations, was as follows:

	<b>Year ended December 31,</b>	
	<b>2018</b>	<b>2017</b>
	(in thousands)	
<b>Company-owned and franchise stores:</b>		
Rent on operating leases	\$ 184,875	\$ 193,398
Landlord related taxes	27,191	27,872
Common operating expenses	44,120	45,866
Percent and contingent rent	17,177	17,870
<b>Total company-owned and franchise stores</b>	<b>273,363</b>	<b>285,006</b>
Other	20,932	22,446
<b>Total rent expense</b>	<b>\$ 294,295</b>	<b>\$ 307,452</b>

The Company recorded total sublease revenue relating to subleases with its franchisees, which includes rental income and other occupancy related items, within revenue on the Consolidated Statements of Operations, of \$45.5 million and \$49.0 million, respectively, in the year ended December 31, 2018 and 2017.

Minimum future rent obligations for non-cancelable operating leases, excluding optional renewal periods, were as follows for the period ended December 31, 2018 and exclude landlord related taxes, common operating expenses, and percent and contingent rent.

## GNC HOLDINGS, INC. AND SUBSIDIARIES

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)

	Operating Leases for Company- Owned and Franchise Stores	Operating Leases for Other <sup>(1)</sup>	Total Operating Leases	Sublease Income from Franchisees	Rent on Operating Leases, net of Sublease Revenue
	(in thousands)				
2019	\$ 162,910	\$ 6,071	\$ 168,981	\$ (29,867)	\$ 139,114
2020	126,312	5,574	131,886	(23,631)	108,255
2021	95,000	4,185	99,185	(16,782)	82,403
2022	64,735	2,479	67,214	(10,285)	56,929
2023	39,798	1,290	41,088	(4,717)	36,371
Thereafter	56,200	6,703	62,903	(4,238)	58,665
<b>Total future obligations</b>	<u>\$ 544,955</u>	<u>\$ 26,302</u>	<u>\$ 571,257</u>	<u>\$ (89,520)</u>	<u>\$ 481,737</u>

(1) Includes various leases for warehouses, vehicles, and various equipment at the Company's facilities.

**GNC HOLDINGS, INC. AND SUBSIDIARIES****NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE 13. COMMITMENTS AND CONTINGENCIES**

The Company is engaged in various legal actions, claims and proceedings arising in the normal course of business, including claims related to breach of contracts, products liabilities, intellectual property matters and employment-related matters resulting from the Company's business activities.

The Company's contingencies are subject to substantial uncertainties, including for each such contingency the following, among other factors: (i) the procedural status of the case; (ii) whether the case has or may be certified as a class action suit; (iii) the outcome of preliminary motions; (iv) the impact of discovery; (v) whether there are significant factual issues to be determined or resolved; (vi) whether the proceedings involve a large number of parties and/or parties and claims in multiple jurisdictions or jurisdictions in which the relevant laws are complex or unclear; (vii) the extent of potential damages, which are often unspecified or indeterminate; and (viii) the status of settlement discussions, if any, and the settlement posture of the parties. Consequently, except as otherwise noted below with regard to a particular matter, the Company cannot predict with any reasonable certainty the timing or outcome of the legal matters described below, and the Company is unable to estimate a possible loss or range of loss. If the Company ultimately is required to make a payment in connection with an adverse outcome in any of the matters discussed below, it is possible that it could have a material adverse effect on the Company's business, financial condition, results of operations or cash flows.

As a retailer of nutritional supplements and other consumer products that are ingested by consumers or applied to their bodies, the Company has been and is currently subjected to various product liability claims. Although the effects of these claims to date have not been material to the Company, it is possible that current and future product liability claims could have a material adverse effect on its business or financial condition, results of operations or cash flows. The Company currently maintains product liability insurance with a deductible/retention of \$4.0 million per claim with an aggregate cap on retained loss of \$10.0 million per policy year. The Company typically seeks and has obtained contractual indemnification from most parties that supply raw materials for its products or that manufacture or market products it sells. The Company also typically seeks to be added, and has been added, as an additional insured under most of such parties' insurance policies. However, any such indemnification or insurance is limited by its terms and any such indemnification, as a practical matter, is limited to the creditworthiness of the indemnifying party and its insurer, and the absence of significant defenses by the insurers. Consequently, the Company may incur material product liability claims, which could increase its costs and adversely affect its reputation, revenue and operating income.

**Litigation**

***DMAA / Aegeline Claims.*** Prior to December 2013, the Company sold products manufactured by third parties that contained derivatives from geranium known as 1,3-dimethylpentylamine/ dimethylamylamine/ 13-dimethylamylamine, or "DMAA," which were recalled from the Company's stores in November 2013, and/or Aegeline, a compound extracted from bael trees. As of December 31, 2019, the Company was named in 27 personal injury lawsuits involving products containing DMAA and/or Aegeline.

These matters are currently stayed pending final resolution.

The Company is contractually entitled to indemnification by its third-party vendors with regard to these matters, although the Company's ability to obtain full recovery in respect of any such claims against it is dependent upon the creditworthiness of the vendors and/or their insurance coverage and the absence of any significant defenses available to their insurers.

***California Wage and Break Claims.*** On February 29, 2012, former Senior Store Manager, Elizabeth Naranjo, individually and on behalf of all others similarly situated, sued General Nutrition Corporation in the Superior Court of the State of California for the County of Alameda. The complaint contains eight causes of action, alleging, among other matters, meal, rest break and overtime violations for which indeterminate money damages for wages, penalties, interest, and legal fees are sought. In June 2018, the Court granted in part and denied in part the Company's Motion for Decertification. In August 2018, the plaintiff voluntarily dismissed the class action claims alleging overtime violations. In November 2019, GNC filed a renewed Motion for Decertification, which was denied by the Court in January 2020. Trial is currently scheduled for July 2020. As of December 31, 2019, an immaterial liability has been accrued in the accompanying financial statements. The Company intends to vigorously defend against the remaining class action claims asserted in this action.

***Pennsylvania Fluctuating Workweek.*** On September 18, 2013, Tawny Chevalier and Andrew Hiller commenced a class action in the Court of Common Pleas of Allegheny County, Pennsylvania. Plaintiff asserted a claim against the Company for a purported violation of the Pennsylvania Minimum Wage Act ("PMWA"), challenging the Company's utilization of the "fluctuating workweek" method to calculate overtime compensation, on behalf of all employees who worked for the Company in Pennsylvania

**GNC HOLDINGS, INC. AND SUBSIDIARIES****NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

and who were paid according to the fluctuating workweek method. In October 2014, the Court entered an order holding that the use of the fluctuating workweek method violated the PMWA. In September 2016, the Court entered judgment in favor of Plaintiffs and the class in an immaterial amount, which has been recorded as a charge in the accompanying Consolidated Financial Statements. Plaintiffs subsequently filed a petition for an award of attorney's fees, costs and incentive payment. The court awarded an immaterial amount in legal fees. The Company appealed the adverse judgment and the award of attorney's fees. On December 22, 2017, the Pennsylvania Superior Court held that the Company correctly determined the "regular rate" by dividing weekly compensation by all hours worked (rather than 40), but held that the regular rate must be multiplied by 1.5 (rather than 0.5) to determine the amount of overtime owed. Taking accumulated interest into account, the net result of the Superior Court's decision was to reduce the Company's liability by an immaterial amount, which has been reflected in the accompanying Consolidated Financial Statements. The Company filed a petition for appeal to the Pennsylvania Supreme Court on January 22, 2018. The Pennsylvania Supreme Court accepted the Company's petition for appeal and the Company filed its appellant's brief on August 27, 2018. The Pennsylvania Supreme Court ruled in favor of Plaintiffs.

**Jason Olive v. General Nutrition Corp.** In April 2012, Jason Olive filed a complaint in the Superior Court of California, County of Los Angeles, for misappropriation of likeness in which he alleges that the Company continued to use his image in stores after the expiration of the license to do so in violation of common law and California statutes. Mr. Olive is seeking compensatory, punitive and statutory damages and attorneys' fees and costs. The trial in this matter began on July 20, 2016 and concluded on August 8, 2016. The jury awarded plaintiff immaterial amounts for actual damages and emotional distress damages, which are accrued in the accompanying Consolidated Financial Statements. The jury refused to award plaintiff any of the profits he sought to disgorge, or punitive damages. The court entered judgment in the case on October 14, 2016. In addition to the verdict, the Company and Mr. Olive sought attorneys' fees and other costs from the Court. The Court refused to award attorney's fees to either side but awarded plaintiff an immaterial amount for costs. Plaintiff has appealed the judgment, and separately, the order denying attorney's fees. The Company has cross-appealed the judgment and the Court's denial of attorney fees. Argument occurred in October 2018. On November 2, 2018, the Court affirmed the trial court's decision in part and reversed in part, reversing the denial of Mr. Olive's motion for attorneys' fees and remanding the matter to the trial court for further proceedings regarding his attorneys' fees and costs. On November 16, 2018, the Company filed a motion for reconsideration of the Court's decision. On December 27, 2018, the Court reversed, in part, its November 2, 2018 ruling and held that there was no prevailing party for the purposes of the attorneys' fee award. Olive has filed a petition for review with the Supreme Court of the State of California and the Company has opposed that petition. On April 17, 2019, the California Supreme Court denied Olive's petition for review.

**Oregon Attorney General.** On October 22, 2015, the Attorney General for the State of Oregon sued the Company in Multnomah County Circuit Court for alleged violations of Oregon's Unlawful Trade Practices Act, in connection with its sale in Oregon of certain third-party products. The Company is vigorously defending itself against these allegations. Along with its Amended Answer and Affirmative Defenses, the Company filed a counterclaim for declaratory relief, asking the court to make certain rulings in favor of the Company, and adding USPlabs, LLC and SK Laboratories as counterclaim defendants. In March 2018, the Oregon Attorney General filed a motion for summary judgment relating to its first claim for relief, which the Company contested. The Company filed a cross motion for summary judgment on the first claim for relief, which the Oregon Attorney General contested. Following oral argument in August 2018, the Court denied the State's motion for summary judgment and granted in part and denied in part the Company's motion for summary judgment. The parties are in the process of exchanging discovery. Trial is currently scheduled to begin in September 2020.

As any losses that may arise from this matter are not probable or reasonably estimable at this time, no liability has been accrued in the accompanying Consolidated Financial Statements. Moreover, the Company does not anticipate that any such losses are likely to have a material impact on the Company, its business or results of operations. The Company is contractually entitled to indemnification and defense by its third-party vendors. Ultimately, however, the Company's ability to obtain full recovery in respect of any such claims against it is dependent upon the creditworthiness of its vendors and/or their insurance coverage and the absence of any significant defenses available to their insurers.

**E-Commerce Pricing Matters.** In April 2016, Jenna Kaskorkis, et al. filed a complaint against General Nutrition Centers, Inc. followed by similar cases brought forth by Ashley Gennock in May 2016 and Kenneth Harrison in December 2016. Plaintiffs allege that the Company's promotional pricing on its website was misleading and did not fairly represent promotions based on average retail prices over a trended period of time being consistent with prices advertised as promotional. A tentative agreement was reached in the third quarter of 2017 on many of the key terms of a settlement. In December 2019, the Court approved the settlement agreement. The Company currently expects any settlement to be in a form that does not require the recording of a contingent liability.

**Government Regulation**

**GNC HOLDINGS, INC. AND SUBSIDIARIES****NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

In November 2013, the Company received a subpoena from the U.S. Department of Justice ("DOJ") for information related to its investigation of a third party product vendor, USPlabs, LLC. The Company fully cooperated with the investigation of the vendor and the related products, all of which were discontinued in 2013. In December 2016, the Company reached agreement with the DOJ in connection with the Company's cooperation, which agreement acknowledges the Company relied on the representations and written guarantees of USPlabs and the Company's representation that it did not knowingly sell products not in compliance with the Federal Food, Drug and Cosmetic Act (the "FDCA"). Under the agreement, which included an immaterial payment to the federal government, the Company will take a number of actions to broaden industry-wide knowledge of prohibited ingredients and improve compliance by vendors of third party products. These actions are in keeping with the leadership role the Company has taken in setting industry quality and compliance standards, and the Company's commitment over the course of the agreement (60 months) to support a combination of its own and the industry's initiatives. Some of these actions include maintaining and continuously updating a list of restricted ingredients that will be prohibited from inclusion in any products that are sold by the Company. Vendors selling products to the Company for the sale of such products by the Company will be required to warrant that the products sold do not contain any of these restricted ingredients. In addition, the Company will develop and maintain a list of ingredients that the Company believes comply with the applicable provisions of the FDCA.

**Environmental Compliance**

As part of soil and groundwater remediation conducted at the Nutra manufacturing facility pursuant to an investigation conducted in partnership with the South Carolina Department of Health and Environmental Control (the "DHEC"), the Company completed additional investigations with the DHEC's approval, including the installation and operation of a pilot vapor extraction system under a portion of the facility in the second half of 2016, which was an immaterial cost to the Company. After an initial monitoring period, in October of 2017 the DHEC approved a work plan for extended monitoring of such system and the contamination into 2021. While the Company contributed the net assets of the Nutra manufacturing and Anderson facilities to the Manufacturing JV in March of 2019 (refer to Note 9 "Equity Method Investments" for additional information), we retained certain liabilities, including historical environmental liabilities, related to the facilities. As such, the Company and the Manufacturing Joint Venture will continue to consult with the DHEC on the next steps in the work after their review of the results of the extended monitoring is complete. At this stage of the investigation, however, it is not possible to estimate the timing and extent of any additional remedial action that may be required, the ultimate cost of remediation, or the amount of our potential liability. Therefore, no liability has been recorded in the Company's Consolidated Financial Statements.

In addition to the foregoing, the Company is subject to numerous federal, state, local and foreign environmental and health and safety laws and regulations governing its operations, including the handling, transportation and disposal of non-hazardous and hazardous substances and wastes, as well as emissions and discharges from its operations into the environment, including discharges to air, surface water and groundwater. Failure to comply with such laws and regulations could result in costs for remedial actions, penalties or the imposition of other liabilities, including certain historic liabilities retained by the Company pursuant to the terms of the Manufacturing JV. New laws, changes in existing laws or the interpretation thereof, or the development of new facts or changes in their processes could also cause the Company to incur additional capital and operating expenditures to maintain compliance with environmental laws and regulations and environmental permits. The Company is also subject to laws and regulations that impose liability and cleanup responsibility for releases of hazardous substances into the environment without regard to fault or knowledge about the condition or action causing the liability. Under certain of these laws and regulations, such liabilities can be imposed for cleanup of previously owned or operated properties, or for properties to which substances or wastes that were sent in connection with current or former operations at its facilities.

From time to time, the Company has incurred costs and obligations for correcting environmental and health and safety noncompliance matters and for remediation at or relating to certain of the Company's current or former properties or properties at which the Company's waste has been disposed. However, compliance with the provisions of national, state and local environmental laws and regulations has not had a material effect upon the Company's capital expenditures, earnings, financial position, liquidity or competitive position. The Company believes it has complied with, and is currently complying with, its environmental obligations pursuant to environmental and health and safety laws and regulations and that any liabilities for noncompliance will not have a material adverse effect on its business, financial performance or cash flows. However, it is difficult to predict future liabilities and obligations, which could be material.

**Commitments**

In addition to operating leases obtained in the normal course of business, the Company maintains certain purchase commitments with various vendors to ensure its operational needs are fulfilled. As of December 31, 2019, such future purchase commitments were \$31.4 million. Other commitments related to the Company's business operations cover varying periods of time



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NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)

and are not significant. All of these commitments are expected to be fulfilled with no adverse consequences to the Company's operations or financial condition.

**NOTE 14. MEZZANINE EQUITY**

Holdings is authorized to issue up to 60.0 million shares of preferred stock, par value \$0.001 per share. On February 13, 2018, the Company entered into a Securities Purchase Agreement (as amended from time to time, the "Securities Purchase Agreement") by and between the Company and Harbin Pharmaceutical Group Holdings Co., Ltd. (the "Investor"), pursuant to which the Company agreed to issue and sell to the Investor, and the Investor agreed to purchase from the Company, 299,950 shares of a newly created series of convertible preferred stock of the Company, designed the "Series A Convertible Preferred Stock" (the "Convertible Preferred Stock"), for a purchase price of \$1,000 per share, or an aggregate of approximately \$300 million (the "Securities Purchase"). The Convertible Preferred Stock is convertible into 56.1 million shares of the Company's Common Stock at an initial conversion price of \$5.35 per share, subject to customary anti-dilution adjustments. Pursuant to the terms of the Securities Purchase Agreement, Investor assigned its interest in the Securities Purchase Agreement to Harbin Pharmaceutical Group Co., Ltd. ("Harbin").

On November 7, 2018, the Company and the Investor entered into an Amendment to the Securities Purchase Agreement (the "SPA Amendment") for the funding of the Convertible Preferred Stock purchase and entered into definitive documentation (the "JV Framework Agreement") with respect to joint ventures in Hong Kong and China.

Pursuant to the SPA Amendment, the Company and the Investor agreed to complete the securities purchase as follows: (i) 100,000 shares of Convertible Preferred Stock issued on November 8, 2018 for a total purchase price of \$100 million (the "Initial Issuance"), (ii) 50,000 shares of Convertible Preferred Stock issued on January 2, 2019 for a total purchase price of \$50 million (the "Second Issuance") and (iii) 149,950 shares of Convertible Preferred Stock issued on February 13, 2019 for a total purchase price of approximately \$150 million (the "Third Issuance"). Holders of shares of Convertible Preferred Stock are entitled to receive cumulative preferential dividends, payable quarterly in arrears, at an annual rate of 6.5% of the stated value of \$1,000 per share, subject to increase in connection with the payment of dividends in kind. Dividends are payable, at the Company's option, in cash from legally available funds or in kind by issuing additional shares of Convertible Preferred Stock with such stated value equal to the amount of payment being made or by increasing the stated value of the outstanding Convertible Preferred Stock by the amount per share of the dividend or in a combination thereof.

As of December 31, 2019 and 2018, the Company had issued a total of 299,950 shares and 100,000 shares, respectively, of Convertible Preferred Stock. The Convertible Preferred Stock was recorded as Mezzanine Equity, net of issuance cost, on the Consolidated Balance Sheets because the shares are redeemable at the option of the holder if a fundamental change occurs, which includes change in control or delisting. The guaranteed Second Issuance and Third Issuance were considered forward contracts that represented an obligation to both parties until the shares were issued. The forward contracts were recorded at fair value on the Consolidated Balance Sheets as of December 31, 2018, with any changes in fair value recorded in earnings in the Consolidated Statements of Operations. The Company recorded a \$16.8 million loss on forward contracts for the issuance of Convertible Preferred Stock during the year ended December 31, 2019 and a \$88.9 million gain for the year ended December 31, 2018. Upon issuance of the shares associated with the forward contracts, the carrying value of the forward contracts were recorded to Mezzanine Equity. Refer to Note 11, "Fair Value Measurement and Financial Instruments" for more information. The following table presents changes in the Company's Mezzanine Equity:

	<b>Mezzanine Equity</b>	
	<b>(in thousands)</b>	
<b>Balance at December 31, 2017</b>	\$	—
Convertible Preferred Stock, net of issuance cost		98,804
<b>Balance at December 31, 2018</b>	\$	98,804
Convertible Preferred Stock, net of issuance cost		184,746
Change in fair value of the forward contracts		(72,155)
<b>Balance at December 31, 2019</b>	\$	211,395

The Convertible Preferred Stock is not currently redeemable and is only redeemable upon a Fundamental Change at the Stated Value plus any accumulated and unpaid dividends on such shares on the Fundamental Change date. The Company does not believe a fundamental change is considered probable until it occurs. Subsequent adjustment of the amount presented in temporary

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equity is unnecessary if it is not probable that the instrument will become redeemable. As the Convertible Preferred Stock is only redeemable upon a fundamental change, the occurrence of which is not probable, we will not accrete the Convertible Preferred Stock until a fundamental change becomes probable to occur. As such, the Company will recognize changes in the redemption value to the Convertible Preferred Stock as they occur and adjust the carrying value to the redemption value at the end of each reporting period as if the end of the reporting period were also the redemption date for the Convertible Preferred Stock. As of December 31, 2019, the Stated Value of the Convertible Preferred Stock is \$300.0 million (299,950 shares at \$1,000 per share) and there are accumulated and unpaid dividends on such shares of \$19.8 million. As of December 31, 2018, the Stated Value of the Convertible Preferred Stock is \$100.0 million (100,000 shares at \$1,000 per share) and there are accumulated and unpaid dividends on such shares of \$1.0 million.

**NOTE 15. TREASURY STOCK**

In August 2015, the Board approved a \$500.0 million multi-year repurchase program in addition to the \$500.0 million multi-year program approved in August 2014, bringing the aggregate share repurchase program to \$1.0 billion of Holdings' common stock. No shares were repurchased in 2019, 2018 and 2017. As of December 31, 2019, \$197.8 million remains available for purchase under the program.

**NOTE 16. EARNINGS PER SHARE**

The following table represents the Company's basic and dilutive weighted average shares:

	Year ended December 31,		
	2019	2018	2017
	(in thousands)		
<b>Basic weighted average common shares outstanding</b>	83,720	83,364	68,789
Effect of dilutive stock-based compensation awards	—	115	—
Effect of dilutive underlying shares of the convertible preferred stock	—	2,692	—
<b>Diluted weighted averages common shares outstanding</b>	<u>83,720</u>	<u>86,171</u>	<u>68,789</u>

For the year ended December 31, 2019 and 2017, all 3.9 million and 4.0 million outstanding stock-based awards, respectively, were excluded from the computation of diluted EPS because the Company was in a net loss position and as a result, inclusion of the awards would have been anti-dilutive. For the year ended December 31, 2018, the following awards were not included in the computation of diluted EPS because the impact of applying the treasury stock method was anti-dilutive or because certain conditions have not been met with respect to the Company's performance awards.

**Anti-dilutive:**

Time-based options and restricted stock awards	2,944
Performance-based restricted stock units	321

**Contingently issuable:**

Performance-based restricted stock awards with a market condition	281
<b>Total stock-based awards excluded from diluted EPS</b>	<u>3,546</u>

In connection with the issuance of the Convertible Preferred Stock as described in Note 14, "Mezzanine Equity", the Company had 300,000 and 100,000 convertible preferred shares outstanding as of December 31, 2019 and 2018, respectively. The Company applied the if-converted method to calculate dilution on the Convertible Preferred Stock, which resulted in all 54.0 million underlying weighted average convertible shares being anti-dilutive for the year ended December 31, 2019 and 2.7 million underlying weighted average convertible shares being dilutive for the year ended December 31, 2018.

In connection with the exchange of the Company's Notes as described in Note 8, "Long-Term Debt / Interest Expense," the Company issued 14.6 million shares, which are included in basic and diluted earnings per share for the weighted average days

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they were outstanding in 2017. The remaining underlying convertible shares were anti-dilutive in 2017. The Company applied the if-converted method to calculate dilution on the Notes in 2019 and 2018, which has resulted in all 2.4 million and 2.9 million underlying convertible shares, respectively, being anti-dilutive.

The computations for basic and diluted earnings per common share are as follows:

	Year ended December 31,		
	2019	2018	2017
(in thousands, except per share data)			
<b>(Loss) earnings per common share - Basic</b>			
Net (loss) income	\$ (35,112)	\$ 69,780	\$ (150,262)
Cumulative undeclared convertible preferred stock dividend	18,810	957	—
Net (loss) income attributable to common shareholders	(53,922)	68,823	(150,262)
Weighted average common shares outstanding - basic	83,720	83,364	68,789
(Loss) income per common share - basic	\$ (0.64)	\$ 0.83	\$ (2.18)
<b>(Loss) income per common share - Diluted</b>			
Net (loss) income	\$ (35,112)	\$ 69,780	\$ (150,262)
Cumulative undeclared convertible preferred stock dividend	18,810	—	—
Net (loss) income attributable to common shareholders	(53,922)	69,780	(150,262)
Weighted average common shares outstanding - diluted	83,720	86,171	68,789
(Loss) income per common share - diluted	\$ (0.64)	\$ 0.81	\$ (2.18)

**NOTE 17. STOCK-BASED COMPENSATION**
**Stock and Incentive Plans**

The Company has outstanding stock-based compensation awards that were granted by the compensation committee of Holdings' Board of Directors (the "Compensation Committee") under the following three stock-based employee compensation plans:

- the GNC Holdings, Inc. 2018 Stock and Incentive Plan (the "2018 Stock Plan") amended adopted in May 2018, formerly the GNC Holdings, Inc. 2015 Stock and Incentive Plan adopted in May 2015;
- the GNC Holdings, Inc. 2015 Stock and Incentive Plan (the "2015 Stock Plan") amended and adopted in May 2015, formerly the GNC Holdings, Inc. 2011 Stock and Incentive Plan adopted in March 2011; and
- the GNC Acquisition Holdings Inc. 2007 Stock Incentive Plan adopted in March 2007 (as amended, the "2007 Stock Plan").

All plans have provisions that allow for the granting of stock options, restricted stock and other stock-based awards and are available to eligible employees, directors, consultants or advisors as determined by the Compensation Committee. The Company will not grant any additional awards under either the 2007 Stock Plan or 2015 Stock Plan. Up to 20.2 million shares of common stock may be issued under the 2018 Stock Plan (subject to adjustment to reflect certain transactions and events specified in the 2018 Stock Plan for any award grant), of which 6.6 million and 11.1 million shares remain available for issuance as of December 31, 2019 and 2018, respectively, which has been reduced by 4.5 million shares and 2.2 million shares (which includes the allocation factor and performance multiplier), respectively, performance-based restricted stock units committed but not granted. See below "restricted stock awards" for more information.

**Non-Plan Inducement Awards**

On September 11, 2017, in connection with the appointment of the Company's new Chief Executive Officer, the Company made the following non-plan inducement awards:

- "make-whole" restricted stock awards consisting of the following:

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- \$600,000, which are 67,000 fully vested restricted shares with transfer restrictions that lapse on the earliest to occur of a Change in Control of the Company, the third anniversary of grant or death, disability or other separation from service for any reason;
- \$950,000, which are 106,000 restricted shares that vested on December 29, 2017; and
- \$1,200,000, which are 134,000 unvested restricted shares scheduled to vest in three equal installments on each of the first three anniversaries of grant subject to acceleration to cover any applicable income and payroll tax withholding resulting from the recognition of ordinary income pursuant to a Section 83(b) election ("Section 83(b) Tax Liability"); and
- time-vested awards consisting of 212,000 restricted shares and 519,000 stock options in the amount of \$1,900,000 each, which are scheduled to vest in three equal installments on each of the first three anniversaries of grant.

The Company recognized \$1.5 million in stock-based compensation in both 2019 and 2018 for the non-plan inducement awards.

**Stock-Based Compensation Activity**

The following table sets forth a summary of all stock-based compensation awards outstanding under all plans:

	December 31, 2019	December 31, 2018
Time-based stock options	1,897,109	2,173,488
Time-based restricted stock awards	1,040,431	817,696
Performance-based restricted stock units	954,937	277,817
Performance-based restricted stock awards with a market condition	—	199,028
<b>Total share awards outstanding</b>	<b>3,892,477</b>	<b>3,468,029</b>

The Company recognized \$4.6 million, \$6.8 million and \$8.4 million of total non-cash stock-based compensation expense for the years ended December 31, 2019, 2018 and 2017, respectively, net of estimated forfeitures based on the Company's historical experience and future expectations. At December 31, 2019, there was \$9.9 million of total unrecognized compensation cost related to non-vested stock-based compensation, net of expected forfeitures, for all awards previously made that are expected to be recognized over a weighted-average period of 1.4 years. In 2019, 2018 and 2017, there were no stock options exercised.

**Stock Options**

Time-based stock options were valued using the Black-Scholes model with exercise prices at the Company's stock price on the date of grant which typically vest at 25% per year over a four-year period except for the non-plan inducement awards as explained above. No stock options were granted during the year ended December 31, 2019 and 2018. The following table sets forth a summary of stock options under all plans.

	Total Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
<b>Outstanding at December 31, 2018</b>	2,173,488	\$ 10.76		\$ —
Granted	—	\$ —		
Exercised	—	\$ —		\$ —
Forfeited and expired	(276,379)	\$ 13.87		
<b>Outstanding at December 31, 2019</b>	<b>1,897,109</b>	<b>\$ 10.30</b>	<b>7.1</b>	<b>\$ —</b>
<b>Exercisable at December 31, 2019</b>	<b>1,107,266</b>	<b>\$ 10.90</b>	<b>6.9</b>	<b>\$ —</b>

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The assumptions used in the Company's Black Scholes valuation during the year ended December 31, 2017 were as follows:

	<u>Year ended December 31, 2017</u>
Dividend yield	0%
Expected term	6 - 6.3 years
Volatility	38.2% - 40.8%
Risk free rate	1.8% - 2.1%

The option term has been estimated by considering both the vesting period and the contractual term. Volatility was estimated giving consideration to a peer group and the Company's own volatility. The Black Scholes valuation resulted in a weighted average grant date fair value in 2017 of \$3.50.

**Restricted Stock Awards**

Under the 2018 Stock Plan, the Company granted time-based and performance-based restricted stock and restricted stock units as well as, performance restricted shares with a market condition. Time-based awards vest in equal annual installments over a period of three years.

Performance-based restricted stock units vest after a period of three years and the achievement of performance targets; based on the extent to which the targets are achieved, vested shares may range from 0% to 150% of the original share amount. Performance targets are not determined until the beginning of each of the three fiscal years. Therefore, although the shares related to the second and third tranches are committed, they are not granted until performance targets are communicated to the participants. At December 31, 2019 and 2018, the Company had 4.5 million shares and 2.2 million shares, respectively, (which includes the allocation factor and performance multiplier) performance-based restricted stock units committed to be granted over the next two years.

Performance restricted shares with a market condition vest after a period of three years and the achievement of total shareholder return compared with that of a selected group of peer companies. Total shareholder return is defined as share price appreciation plus the value of dividends paid during the three year vesting period. Vested shares may range from 0% to 200% of the original target. Key assumptions used in the Monte Carlo simulation for the performance restricted shares with a market condition granted during the year ended December 31, 2017 includes a volatility of 34.6% for the applicable peer group and a risk-free rate of 1.46%. At December 31, 2019, all remaining outstanding performance restricted shares with a market condition were voluntarily forfeited by optionees.

The following table sets forth a summary of restricted stock awards granted under all plans:

	<b>Time-Based</b>		<b>Performance-Based</b>		<b>Performance Restricted Shares with a Market Condition</b>	
	Shares	Wtd Avg Grant Date Fair Value	Shares	Wtd Avg Grant Date Fair Value	Shares	Wtd Avg Grant Date Fair Value
<b>Outstanding at December 31, 2018</b>	817,696	\$ 7.74	277,817	\$ 4.18	199,028	\$ 8.03
Granted	749,462	\$ 1.62	1,130,055	\$ 2.76	—	\$ —
Vested	(491,530)	\$ 7.10	—	\$ —	—	\$ —
Forfeited	(35,197)	\$ 7.99	(452,935)	\$ 3.79	(199,028)	\$ 8.03
<b>Outstanding at December 31, 2019</b>	<u>1,040,431</u>	<u>\$ 3.63</u>	<u>954,937</u>	<u>\$ 2.68</u>	<u>—</u>	<u>\$ —</u>

The total intrinsic value of time-based restricted stock awards vested was \$1.0 million, \$1.3 million and \$3.0 million for the years ended December 31, 2019, 2018 and 2017, respectively. The total intrinsic value of time-based restricted stock awards outstanding at December 31, 2019 was \$2.8 million. The total intrinsic value of performance-based stock awards outstanding at December 31, 2019 was \$2.6 million. In 2017, the weighted average grant date fair value of time-based and performance restricted shares with a market condition granted was \$10.01 and \$15.42, respectively.

**NOTE 18. RETIREMENT PLANS**

The Company sponsors a 401(k) defined contribution savings plan covering substantially all employees who have attained age 21. Full time employees who have completed 30 days of service and part time employees who have completed 1,000 hours of service are eligible to participate in the plan. The plan provides for employee contributions of 1% to 80% of individual compensation into deferred savings, subject to IRS limitations. The plan provides for Company contributions upon the employee meeting the eligibility requirements. The Company match consists of both a fixed and a discretionary match. The fixed match is 50% on the first 3% of employee contributions and the discretionary match could be up to an additional 50% match on the 3% deferral. A discretionary match can be approved at any time by the Company.

An employee becomes vested in the Company match portion as follows:

<u>Years of Service</u>	<u>Percent Vested</u>
0-1	0%
1-2	33%
2-3	66%
3+	100%

The Company made cash contributions to the 401(k) plan of \$1.5 million, \$1.9 million and \$2.1 million for the years ended December 31, 2019, 2018 and 2017, respectively.

The Company has a Non-qualified Deferred Compensation Plan that provides benefits payable to certain eligible employees upon scheduled in-service distribution, termination, or retirement. This plan allows participants the opportunity to defer pretax amounts ranging from 3% to 80% of their base compensation and up to 100% of bonuses. During 2019, 2018 and 2017, the Company elected to match a percentage of the contributions from employees. For years ended December 31, 2019, 2018 and 2017 this contribution was \$0.2 million, \$0.2 million and \$0.3 million, respectively.

**GNC HOLDINGS, INC. AND SUBSIDIARIES****NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE 19. SEGMENTS**

The Company aggregates its operating segments into three reportable segments, which include U.S. and Canada, International and Manufacturing / Wholesale. Warehousing and distribution costs have been allocated to each reportable segment based on estimated utilization and benefit. The Company's chief operating decision maker (its chief executive officer) evaluates segment operating results based primarily on operating income. Operating income of each reportable segment excludes certain items that are managed at the consolidated level, such as corporate costs. The Manufacturing / Wholesale segment, prior to the formation of the Manufacturing JV, manufactured and sold product to the U.S. and Canada and International segments at cost with a markup, which was eliminated at consolidation. In connection with the asset sales of Lucky Vitamin as described in Note 6, "Goodwill and Intangible Assets," its results were included within Other for applicable prior periods.

The following table presents key financial information for each of the Company's reportable segments. During the year ended December 31, 2019, the Company entered into the China JV and HK JV with Harbin to operate its e-commerce and retail business in China and a strategic joint venture with IVC regarding the Company's manufacturing business which significantly impacted the operating results within the International and Manufacturing / Wholesale segments. During the year ended December 31, 2018, the Company recorded long-lived asset impairments of \$38.2 million which significantly impacted the U.S. and Canada segment by \$36.1 million and the International segment by \$2.1 million. During the year ended December 31, 2017, the Company recorded long-lived asset impairments of \$457.8 million which significantly impacted the U.S. and Canada segment by \$412.5 million, the Manufacturing / Wholesale segment by \$24.3 million, the International segment by \$1.6 million and Lucky Vitamin within Other by \$19.4 million. Refer to Note 6, "Goodwill and Intangible Assets" and Note 7, "Property, Plant and Equipment, Net" for more information.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

	Year ended December 31,		
	2019	2018	2017
	(in thousands)		
<b>Revenue:</b>			
U.S. and Canada	\$ 1,822,327	\$ 1,951,220	\$ 2,018,931
International	158,167	191,409	177,778
<b>Manufacturing / Wholesale</b>			
Intersegment revenues	35,505	264,211	231,495
Third party	87,694	210,894	218,071
Subtotal Manufacturing / Wholesale	123,199	475,105	449,566
Total reportable segment revenues	2,103,693	2,617,734	2,646,275
Other	—	—	66,182
Elimination of intersegment revenues	(35,505)	(264,211)	(231,495)
<b>Total revenue</b>	<b>\$ 2,068,188</b>	<b>\$ 2,353,523</b>	<b>\$ 2,480,962</b>
<b>Operating income (loss):</b>			
U.S. and Canada	\$ 151,037	\$ 94,663	\$ (244,104)
International	55,380	60,367	60,987
Manufacturing / Wholesale	41,153	62,861	49,175
Total reportable segment operating income (loss)	247,570	217,891	(133,942)
Corporate costs	(98,221)	(105,378)	(102,114)
Loss on net asset exchange for the formation of the joint ventures	(21,293)	—	—
Other loss, net	(3,313)	(160)	(20,760)
Unallocated corporate costs, loss on net asset exchange or sale and other loss, net	(122,827)	(105,538)	(122,874)
<b>Total operating income (loss)</b>	<b>124,743</b>	<b>112,353</b>	<b>(256,816)</b>
Interest expense, net	106,709	127,080	64,221
Gain on convertible debt and debt refinancing costs	(3,214)	—	(10,996)
Loss on debt refinancing	—	16,740	—
Loss (gain) on forward contracts for the issuance of convertible preferred stock	16,787	(88,942)	—
<b>Income (loss) before income taxes</b>	<b>\$ 4,461</b>	<b>\$ 57,475</b>	<b>\$ (310,041)</b>



**GNC HOLDINGS, INC. AND SUBSIDIARIES**
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

	Year ended December 31,		
	2019	2018	2017
<b>Depreciation and amortization:</b>	(in thousands)		
U.S. and Canada	\$ 23,779	\$ 27,685	\$ 35,571
International	2,292	2,487	2,455
Manufacturing / Wholesale	3,056	9,790	10,238
Corporate and other	6,295	7,143	8,545
<b>Total depreciation and amortization</b>	<b>\$ 35,422</b>	<b>\$ 47,105</b>	<b>\$ 56,809</b>
<b>Capital expenditures:</b>			
U.S. and Canada	\$ 10,985	\$ 10,705	\$ 20,614
International	191	759	277
Manufacturing / Wholesale	184	3,459	2,862
Corporate and Other	3,791	4,058	8,370
<b>Total capital expenditures</b>	<b>\$ 15,151</b>	<b>\$ 18,981</b>	<b>\$ 32,123</b>
	As of December 31		
	2019	2018	
	(in thousands)		
<b>Total assets:</b>			
U.S. and Canada	\$ 1,142,588	\$ 867,977	
International	201,996	200,128	
Manufacturing / Wholesale	156,043	288,163	
Corporate and other	149,960	171,582	
<b>Total assets <sup>(1)</sup></b>	<b>\$ 1,650,587</b>	<b>\$ 1,527,850</b>	
<b>Property, plant, and equipment, net:</b>			
United States	\$ 83,899	\$ 150,689	
Foreign	3,017	4,406	
<b>Total property, plant and equipment, net</b>	<b>\$ 86,916</b>	<b>\$ 155,095</b>	

(1) Total assets as of December 31, 2019 included \$350.6 million of right-of-use asset in connection with the adoption of ASC 842

**GNC HOLDINGS, INC. AND SUBSIDIARIES**
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**
**NOTE 20. UNAUDITED QUARTERLY FINANCIAL INFORMATION**

The results of operations for the three months ended December 31, 2019 were impacted by a \$27.1 million tax increase in valuation allowance against certain deferred tax assets that may not be realizable. The results of operations for the three months ended June 30, 2019 included \$1.8 million loss on net asset exchange for the formation of joint venture and \$3.2 million gain on convertible debt repurchase. The results of operations for the three months ended March 31, 2019 included \$19.5 million loss on net asset exchange for the formation of joint ventures and \$16.8 million loss on forward contracts for the issuance of convertible preferred stock. For more information on these items, refer to Note 5, "Income Taxes", Note 8, "Long-Term Debt / Interest Expense" and Note 9, "Equity Method Investments."

The results of operations for the three month ended December 31, 2018 were impacted significantly by the gain related to the forward contracts for the issuance of convertible preferred stock of \$88.9 million and long-lived asset impairment charges of \$23.7 million. Additionally, during the fourth quarter of 2018, the Company recorded an out-of-period adjustment to correct previously recorded specialty manufacturing revenue in the amount of \$2.5 million to reduce contract manufacturing sales to third parties recorded in the Manufacturing/Wholesale segment as well as the corresponding contract asset included in Prepaid and other current assets. The impacts to the previously reported revenue and contract asset amounts were immaterial to the previously issued interim financial statements, and the adjustment was not material to the three months ended December 31, 2018. The results of operations for the three months ended September 30, 2018 included long-lived asset impairment charges and other store closing costs of \$14.6 million. The results of operation for the three months ended March 31, 2018 included \$16.7 million loss on debt refinancing. For more information on these items, refer to Note 6, "Goodwill and Intangible Assets", Note 8, "Long-Term Debt / Interest Expense" and Note 14, "Mezzanine Equity."

The following table summarizes the Company's 2019 and 2018 quarterly results:

	Three months ended (unaudited)				Year ended
	March 31,	June 30,	September 30,	December 31,	December 31,
	2019	2019	2019	2019	2019
	(In thousands, except per share amounts)				
Total revenue	\$ 564,764	\$ 533,997	\$ 499,076	\$ 470,351	\$ 2,068,188
Gross profit	203,091	193,744	162,628	154,919	714,382
Operating income (loss)	35,482	48,718	26,654	13,889	124,743
Net (loss) income	(15,262)	16,058	(2,418)	(33,490)	(35,112)
Weighted average shares outstanding:					
Basic	83,510	83,663	83,823	83,878	83,720
Diluted	83,510	140,942	83,823	83,878	83,720
(Loss) earnings per share:					
Basic <sup>(1)</sup>	\$ (0.23)	\$ 0.13	\$ (0.09)	\$ (0.46)	\$ (0.64)
Diluted <sup>(1)</sup>	\$ (0.23)	\$ 0.11	\$ (0.09)	\$ (0.46)	\$ (0.64)

## GNC HOLDINGS, INC. AND SUBSIDIARIES

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)

	Three months ended (unaudited)				Year ended
	March 31, 2018	June 30, 2018	September 30, 2018	December 31, 2018	December 31, 2018
(In thousands, except per share amounts)					
Total revenue	\$ 607,533	\$ 617,944	\$ 580,185	\$ 547,861	\$ 2,353,523
Gross profit	206,874	207,735	184,702	172,434	771,745
Operating income (loss)	46,389	48,884	19,961	(2,881)	112,353
Net income (loss)	6,190	13,341	(8,590)	58,839	69,780
Weighted average shares outstanding:					
Basic	83,232	83,332	83,412	83,476	83,364
Diluted	83,368	83,409	83,412	94,388	86,171
Earnings per share:					
Basic <sup>(1)</sup>	\$ 0.07	\$ 0.16	\$ (0.10)	\$ 0.69	\$ 0.83
Diluted <sup>(1)</sup>	\$ 0.07	\$ 0.16	\$ (0.10)	\$ 0.62	\$ 0.81

(1) Quarterly results for earnings per share may not add to full year results due to rounding or dilution impact.

**GNC HOLDINGS, INC. AND SUBSIDIARIES**

**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**NOTE 21. SUBSEQUENT EVENTS**

**COVID-19**

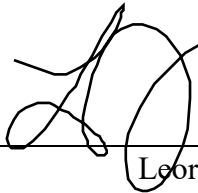
The recent outbreak of the coronavirus, or COVID-19, has caused business disruption in the International segment beginning in January 2020. In late February 2020, the situation escalated as the scope of COVID-19 worsened to outside of the Asia-Pacific region, with Europe and the United States recognizing outbreaks of COVID-19. As of March 23, 2020, the Company has temporarily closed approximately 25% of the U.S. and Canada company-owned and franchise stores as a result of the COVID-19 pandemic. There is significant uncertainty relating to the potential impacts of COVID-19 on the Company's business going forward due to various global macroeconomic, operational and supply chain risks as a result of COVID-19.

The Company could experience other potential impacts as a result of COVID-19, including, but not limited to, charges from potential adjustments to the carrying amount of inventory, goodwill, indefinite-lived intangibles and long-lived asset impairment charges. Actual results may differ materially from the Company's current estimates as the scope of COVID-19 evolves or if the duration of business disruptions is longer than initially anticipated.



TABV

THIS IS **EXHIBIT “V”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', is written over a horizontal line.

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Leora Jackson  
Commissioner for Taking Affidavits

## YTD Dec 2019 Financial Results

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(\$ in 000's)				
Canada (USD)	Actual	Prior Year	\$ Fav (unfav) to PY	% Fav (unfav) to PY
Retail product sales (excl. Amazon)	\$ 70,638	\$ 83,520	\$ (12,882)	-15.4%
Retail product sales - Amazon	701	220	482	N/M
POS gold card sales	2,091	2,697	(606)	-22.5%
Deferred retail gold card revenue	254	316	(62)	-19.6%
Returns	0	(0)	0	-115.3%
Other revenue	5	3	2	61.4%
Deferred revenue	70	71	(1)	-0.9%
<b>Total revenue</b>	<b>73,759</b>	<b>86,827</b>	<b>(13,067)</b>	<b>-15.0%</b>
Retail cost of sales	41,895	50,603	8,708	17.2%
Retail POS margin	31,534	35,833	(4,299)	-12.0%
Retail POS margin w/ VF	34,850	40,271	(5,421)	-13.5%
Vendor funding - sales based (VF)	(3,316)	(4,438)	(1,122)	25.3%
Reval and PPV	(56)	455	511	112.4%
Known loss	453	498	45	9.1%
Shrink & LCM	148	275	127	46.1%
Customer return chargeback	(348)	(466)	(118)	25.2%
Volume Rebates	(34)	(14)	20	-144.1%
Product discounts	(100)	(197)	(98)	49.5%
Other COS	58	55	(3)	-5.3%
<b>Total cost of sales</b>	<b>38,701</b>	<b>46,771</b>	<b>8,070</b>	<b>17.3%</b>
<b>Total product margin</b>	<b>35,059</b>	<b>40,056</b>	<b>(4,997)</b>	<b>-12.5%</b>
Distr and trans - allocation	100	191	91	47.6%
FBA costs	173	55	(118)	N/M
Distr and trans - all other	3,915	4,150	235	5.7%
<b>Total distribution and transportation</b>	<b>4,188</b>	<b>4,396</b>	<b>208</b>	<b>4.7%</b>
Rent	4,297	8,763	4,466	51.0%
Construction allowances	(79)	(246)	(166)	67.8%
Percent rent	282	187	(95)	-51.1%
Utilities	760	882	123	13.9%
CAM	2,325	2,598	273	10.5%
Landlord expenses	(29)	(56)	(27)	48.1%
Real estate dues	338	384	46	12.1%
Business taxes / permits	2,227	2,443	216	8.8%
Repairs & maintenance	414	478	65	13.5%
Supplies / janitorial	231	276	45	16.3%
Depreciation	738	878	141	16.0%
Other occupancy	152	207	55	26.7%
<b>Total occupancy</b>	<b>11,654</b>	<b>16,794</b>	<b>5,140</b>	<b>30.6%</b>
<b>Gross profit</b>	<b>19,217</b>	<b>18,865</b>	<b>351</b>	<b>1.9%</b>
Full time wages	7,639	8,549	910	10.6%
Part time wages	5,777	6,910	1,133	16.4%
Overtime wages	181	230	49	21.4%
Vendor paid PM's	(1,961)	(2,338)	(377)	16.1%
Vendor wages	1,961	2,338	377	16.1%
GNC PM wages	812	640	(172)	-26.8%
Incentive and contests	145	177	32	18.0%
Benefits & taxes	1,788	2,009	221	11.0%
Seminars / dues / subs / training	3	9	6	68.6%
Other wages	438	166	(272)	-163.3%
<b>Salaries &amp; benefits</b>	<b>16,783</b>	<b>18,690</b>	<b>1,907</b>	<b>10.2%</b>
<b>Marketing</b>	<b>1,427</b>	<b>1,530</b>	<b>103</b>	<b>6.7%</b>
Travel expense	263	306	43	14.0%
Credit card discounts	691	799	108	13.5%
Banking fees	168	186	18	9.4%
Auto expense	13	90	76	85.0%
IT expense	4	33	29	88.0%
Website costs (Amazon / Radial)	125	37	(88)	N/M
Telecom costs	617	654	37	5.6%
Consulting and other services	41	98	57	58.1%
Accounting professional exp	-	(0)	(0)	100.0%
Other professional exp	-	-	-	0.0%
Shipping and postage	180	134	(46)	-33.9%
Other expense	1,113	82	(1,031)	N/M
<b>Other SG&amp;A</b>	<b>3,216</b>	<b>2,419</b>	<b>(797)</b>	<b>-32.9%</b>
<b>Total SGA</b>	<b>21,426</b>	<b>22,640</b>	<b>1,214</b>	<b>5.4%</b>
(Gain)/loss on currency	(441)	300	740	N/M
Misc other income	-	-	-	0.0%
<b>Other (income)/expense</b>	<b>(441)</b>	<b>300</b>	<b>740</b>	<b>N/M</b>
Long-Lived Asset Impairment	-	1,327	1,327	100.0%
<b>EBIT</b>	<b>(1,769)</b>	<b>(5,400)</b>	<b>3,632</b>	<b>-67.2%</b>
Gain on conversions	-	-	-	0.0%
Unusual items	-	1,327	1,327	100.0%
<b>EBIT x unusual items</b>	<b>(1,769)</b>	<b>(4,074)</b>	<b>2,305</b>	<b>-56.6%</b>
Note: Cost of sales lines are total percent of revenue; POS margin				
Depreciation	738	878	141	16.0%
Amortization	-	-	-	0.0%
<b>EBITDA x unusual items</b>	<b>(1,031)</b>	<b>(3,196)</b>	<b>2,165</b>	<b>-67.7%</b>

## YTD Dec 2019 Financial Results

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(\$ in 000's)				
Canada (CAD)	Actual	Prior Year	\$ Fav (unfav) to PY	% Fav (unfav) to PY
Retail product sales (excl. Amazon)	\$ 93,759	\$ 108,152	\$ (14,392)	-13.3%
Retail product sales - Amazon	930	289	641	N/M
POS gold card sales	2,775	3,488	(713)	-20.4%
Deferred retail gold card revenue	337	411	(74)	-18.0%
Returns	0	(0)	0	-115.7%
Other revenue	7	4	3	64.8%
Deferred revenue	93	92	1	1.1%
<b>Total revenue</b>	<b>97,902</b>	<b>112,436</b>	<b>(14,534)</b>	<b>-12.9%</b>
Retail cost of sales	55,611	65,519	9,908	15.1%
Retail POS margin	41,854	46,410	(4,556)	-9.8%
Retail POS margin w/ VF	46,258	52,138	(5,880)	-11.3%
Vendor funding - sales based (VF)	(4,404)	(5,729)	(1,325)	23.1%
Reval and PPV	(73)	599	673	112.2%
Known loss	601	639	38	5.9%
Shrink & LCM	197	357	160	44.8%
Customer return chargeback	(462)	(602)	(140)	23.2%
Volume Rebates	(45)	(18)	27	-145.9%
Product discounts	(133)	(255)	(122)	48.0%
Other COS	77	74	(3)	-3.8%
<b>Total cost of sales</b>	<b>51,369</b>	<b>60,585</b>	<b>9,215</b>	<b>15.2%</b>
<b>Total product margin</b>	<b>46,532</b>	<b>51,851</b>	<b>(5,319)</b>	<b>-10.3%</b>
Distr and trans - allocation	133	247	114	46.2%
FBA costs	230	73	(157)	N/M
Distr and trans - all other	5,194	5,380	186	3.4%
<b>Total distribution and transportation</b>	<b>5,557</b>	<b>5,700</b>	<b>143</b>	<b>2.5%</b>
Rent	5,704	11,346	5,642	49.7%
Construction allowances	(105)	(319)	(214)	67.1%
Percent rent	375	243	(131)	-54.0%
Utilities	1,009	1,143	134	11.7%
CAM	3,085	3,365	280	8.3%
Landlord expenses	(39)	(72)	(33)	45.6%
Real estate dues	448	497	49	9.8%
Business taxes / permits	2,956	3,162	207	6.5%
Repairs & maintenance	550	619	70	11.2%
Supplies / janitorial	306	356	50	14.0%
Depreciation	978	1,137	158	13.9%
Other occupancy	202	270	68	25.3%
<b>Total occupancy</b>	<b>15,468</b>	<b>21,747</b>	<b>6,279</b>	<b>28.9%</b>
<b>Gross profit</b>	<b>25,507</b>	<b>24,404</b>	<b>1,103</b>	<b>4.5%</b>
Full time wages	10,139	11,078	939	8.5%
Part time wages	7,667	8,954	1,287	14.4%
Overtime wages	240	298	59	19.7%
Vendor paid PM's	(2,602)	(3,027)	(425)	14.0%
Vendor wages	2,602	3,027	425	14.0%
GNC PM wages	1,078	830	(248)	-29.9%
Incentive and contests	193	229	37	16.0%
Benefits & taxes	2,374	2,605	231	8.9%
Seminars / dues / subs / training	4	12	8	67.7%
Other wages	580	218	(362)	-166.2%
<b>Salaries &amp; benefits</b>	<b>22,275</b>	<b>24,224</b>	<b>1,949</b>	<b>8.0%</b>
<b>Marketing</b>	<b>1,891</b>	<b>1,996</b>	<b>106</b>	<b>5.3%</b>
Travel expense	348	395	47	11.8%
Credit card discounts	918	1,035	118	11.4%
Banking fees	223	241	17	7.3%
Auto expense	18	116	97	84.2%
IT expense	5	43	38	87.7%
Website costs (Amazon / Radial)	165	48	(117)	N/M
Telecom costs	819	847	28	3.3%
Consulting and other services	55	127	73	57.0%
Accounting professional exp	-	-	-	0.0%
Other professional exp	-	-	-	0.0%
Shipping and postage	238	174	(65)	-37.1%
Other expense	1,475	108	(1,367)	N/M
<b>Other SG&amp;A</b>	<b>4,265</b>	<b>3,134</b>	<b>(1,131)</b>	<b>-36.1%</b>
<b>Total SGA</b>	<b>28,430</b>	<b>29,354</b>	<b>924</b>	<b>3.1%</b>
Long-Lived Asset Impairment	-	1,729	1,729	100.0%
<b>EBIT</b>	<b>(2,923)</b>	<b>(6,679)</b>	<b>3,756</b>	<b>-56.2%</b>
Gain on conversions	-	-	-	0.0%
Unusual items	-	1,729	1,729	100.0%
<b>EBIT x unusual items</b>	<b>(2,923)</b>	<b>(4,950)</b>	<b>2,027</b>	<b>-40.9%</b>

Note: Cost of sales lines are total percent of revenue; POS margin

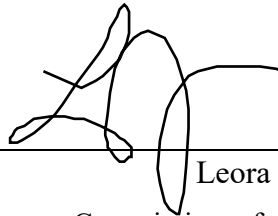
Depreciation	978	1,137	158	13.9%
Amortization	-	-	-	0.0%
<b>EBITDA x unusual items</b>	<b>(1,945)</b>	<b>(3,813)</b>	<b>1,869</b>	<b>-49.0%</b>





**TABW**

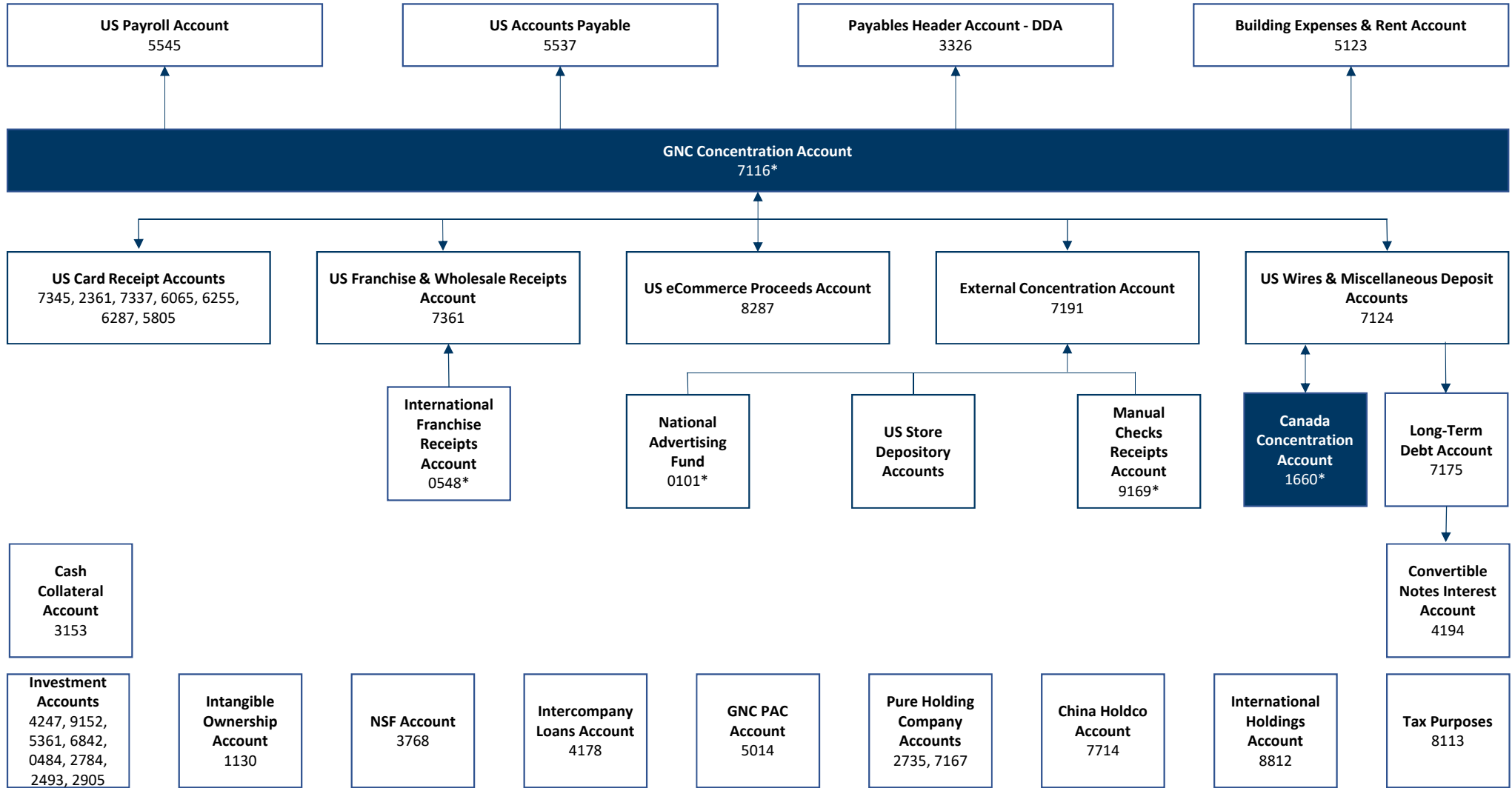
THIS IS **EXHIBIT “W”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', is written over a horizontal line.

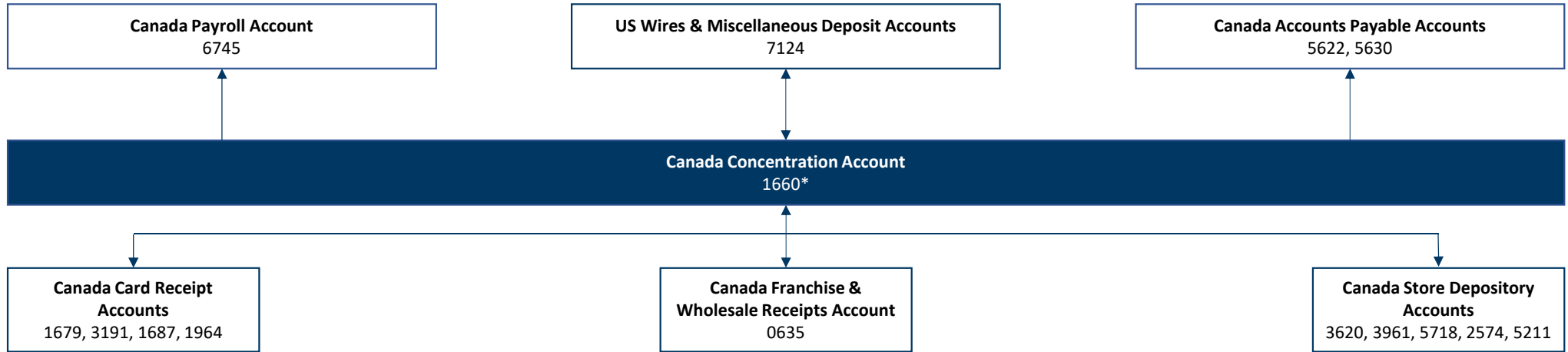
Leora Jackson  
Commissioner for Taking Affidavits

### GNC US Cash Management System

\* Subject to Control Agreements



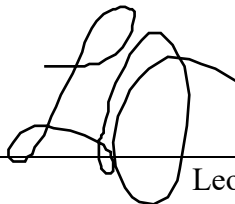
**GNC Canada Cash Management System**  
\* Subject to Control Agreements





TABX

THIS IS **EXHIBIT “X”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', is written over a horizontal line.

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Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**DECLARATION OF PRANAV GOEL IN SUPPORT  
OF MOTION OF DEBTORS FOR ORDERS (I) AUTHORIZING THE DEBTORS TO (A)  
OBTAIN SENIOR SECURED POSTPETITION FINANCING, (B) GRANT LIENS AND  
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (C) USE CASH  
COLLATERAL OF PREPETITION SECURED PARTIES AND (D) GRANT  
ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (II)  
SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b)  
AND 4001(c); AND (III) GRANTING RELATED RELIEF**

I, Pranav Goel, hereby declare as follows under penalty of perjury:

1. I am a Vice President in the Restructuring and Debt Advisory Group at Evercore Group L.L.C. (“*Evercore*”), a financial advisory services and investment banking firm with its principal office located at 55 East 52nd Street, New York, New York 10055. Evercore has expertise in domestic and cross-border restructurings, mergers and acquisitions, raising debt and equity capital, and other financial advisory services. Evercore has served as an experienced financial advisor to debtors and creditors in a variety of industries.

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

2. I submit this declaration (“**Declaration**”) on behalf of the above-captioned debtors in possession (the “**Debtors**”) in support of the *Motion of Debtors for Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties and (d) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (III) Granting Related Relief* (the “**DIP Motion**”).<sup>2</sup>

3. Unless otherwise indicated, all facts set forth in this Declaration are based upon (a) my personal knowledge of the Debtors’ current operations and financial performance; (b) reasonable inquiry; (c) the work of Evercore employees who report to me and act under my direction or are part of the Evercore team working with the Debtors; (d) information learned from review by me, or those who report to me or are part of the Evercore team working with the Debtors, of relevant documents and information concerning the Debtors’ operations, financial affairs, and restructuring initiatives; (e) information I have received from members of the Debtors’ management or advisors; and/or (f) my opinions based upon my experience and knowledge.

4. I am over the age of 18 and authorized to submit this Declaration on behalf of the Debtors. I am not being specifically compensated for this testimony other than through payments received by Evercore, as engaged by the Debtors; none of those payments are specifically payable on account of this testimony. If called upon to testify, I could and would testify as to the facts set forth herein.

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<sup>2</sup> Capitalized terms used but not otherwise defined in this Declaration shall have the meanings used in the DIP Motion and the First Day Declaration.



5. I received an M.B.A. from Columbia Business School at Columbia University in 2014, a Master of Science in Information Networking from Carnegie Mellon University in 2006, and a Bachelor of Engineering in Computer Science from Thapar Institute of Engineering and Technology in 2004. I began working at Evercore in April 2016. I have worked in investment banking for six years and focused for the last four years on restructuring matters. These matters have included financings, amendments, out-of-court restructurings, chapter 11 bankruptcy reorganizations, and mergers and acquisitions. In particular, I have been involved in numerous in- and out-of-court restructurings, including, among others, Lightstream Resources, GulfMark Offshore, Sheridan Production Partners, CHC Helicopter, Essar Algoma, Southeastern Grocers, CTI Foods, Syncreon Logistics, Murray Energy Corporation, and Murray Metallurgical Coal Holdings.

6. The Evercore team dedicated to the Debtors is comprised of nine (9) professionals across Evercore's restructuring and consumer and retail verticals, including Greg Berube (Senior Managing Director), Adam Taetle (Senior Managing Director), and Will Jurist (Managing Director).

7. The resources, capabilities, and experience of Evercore in advising debtors will be of significant assistance to the Debtors during the course of the Chapter 11 Cases. Established in 1996, Evercore is a leading independent investment banking advisory firm, providing both advisory and management services. Evercore's investment banking advisory services include counseling multinational corporations on mergers and acquisitions, divestitures and restructurings, financings, public offerings, private placements, and other strategic transactions, providing capital markets advice, underwriting securities, raising funds for financial sponsors, and offering equity research and agency-only equity securities trading for institutional investors. Evercore's

investment management services include private equity investing, institutional asset management, wealth management, and specialized investment management, including providing independent fiduciary and trustee services. Its restructuring professionals provide investment banking services in financially distressed situations, including advising debtors, creditors, and other constituents in chapter 11 proceedings and out-of-court restructurings. Evercore and its affiliates serve a diverse set of clients around the world from its offices in New York, Boston, Chicago, Los Angeles, Washington D.C., San Francisco, Houston, Minneapolis, Menlo Park, Atlanta, Dallas, Tampa, Wilmington, West Palm Beach, Singapore, Hong Kong, London, Aberdeen, Mexico City, Beijing, Dubai, Frankfurt, Madrid, Tel Aviv, Tokyo, Toronto, and Monterrey. Since the firm's inception, Evercore's corporate advisory and restructuring advisory groups have advised on over \$4.0 trillion of transactions.

#### **Retention Of Evercore**

8. Since late 2018, the Debtors have engaged Evercore to act as their investment banker in connection with the Debtors' balance sheet initiatives. Since its engagement, Evercore has worked closely with the Debtors' management team and other professionals and advisors in exploring various strategic and financial alternatives. In 2019 and through early 2020, Evercore assisted the Debtors in exploring a full refinancing of their funded debt from a broad set of financial institutions based in the United States and in Asia. Since April 2020, Evercore has been assisting in the Debtors' restructuring efforts, including (a) negotiating and evaluating restructuring proposals, (b) discussing potential restructuring solutions (including numerous diligence and negotiating calls) with the Debtors' existing creditor groups and their respective advisors, (c) assisting the Debtors with soliciting, negotiating, and documenting the DIP Facilities and the Restructuring Support Agreement (the "**RSA**"), and (d) preparing for the commencement of these

Chapter 11 Cases. Through such work, Evercore has become well-acquainted with the Debtors' capital structure, liquidity needs, and business operations.

### **The Prepetition Debt**

9. As described in further detail in the First Day Declaration, the Debtor Obligors are party to the Prepetition ABL FILO Credit Agreement, dated as of February 28, 2018. Pursuant to the Prepetition ABL FILO Credit Agreement, the Prepetition ABL FILO Lenders provided (a) an asset-based revolving credit facility (the “*Prepetition ABL Revolving Credit Facility*” or “*Revolver*”) of up to \$81 million, and (b) an asset-based secured term loan incurred on a “first-in, last-out” basis (the “*Prepetition FILO Term Loan Facility*”) in an aggregate principal amount of \$275 million. As of the Petition Date, approximately \$60 million and \$275 million in aggregate principal amount of loans are outstanding under the Prepetition ABL Revolving Credit Facility and Prepetition FILO Term Loan Facility, respectively.

10. In addition, the Debtor Obligors are party to the Prepetition Term Credit Agreement, dated as of February 28, 2018. Pursuant to the Prepetition Term Credit Agreement, the Prepetition Term Lenders provided a secured term loan facility (the “*Prepetition Term Facility*”), with approximately \$411 million outstanding as of the Petition Date.

11. Finally, on August 10, 2015, GNC Holdings issued \$287.5 million principal amount of 1.5% convertible senior notes due 2020 (the “*Notes*”) in a private offering. The Notes will mature on August 15, 2020, unless earlier purchased by GNC Holdings or converted by the holders. As of the Petition Date, approximately \$157 million of Notes were outstanding.

### **The Debtors' Refinancing Efforts**

12. The Debtors were faced with debt maturities of the Notes in August 2020 and Prepetition Term Facility in March 2021, in addition to springing maturity of all of its secured

funded debt on May 16, 2020. In order to address the upcoming debt maturities in the third quarter of 2019, the Debtors, with the assistance of Evercore and other advisors, explored a comprehensive refinancing of their balance sheet with potential investors in the United States (the “*U.S. Refinancing Process*”). As part of the U.S. Refinancing Process, the Debtors conducted a non-deal roadshow in July and August 2019 during which they and their advisors met with approximately 50 potential investors. Discussions with U.S.-based lenders regarding a comprehensive refinancing of the Debtors’ indebtedness were unsuccessful, mainly due to the Debtors’ high leverage and investor concern about lending to retail companies with high leverage.

13. Shortly after the U.S. Refinancing Process, the Debtors, with the assistance of their advisors and Harbin Pharmaceutical Group Co. Ltd. (“*Harbin*”), also began parallel discussions with certain Asia-based lenders regarding a comprehensive refinancing of the Debtors’ balance sheet. While progress was made towards a potential transaction, the COVID-19 pandemic and concerns surrounding the Debtors’ high leverage, among other factors, adversely impacted the Debtors’ business operations and access to the capital markets, which resulted in the termination of further discussions around a refinancing transaction.

14. The Debtors also had discussions with an ad hoc group of Prepetition FILO Term Loan and Prepetition Term Loan lenders (the “*Crossholder Ad Hoc Group*”) regarding potential transactions to extend debt maturities, but these discussions did not result in an actionable transaction.

15. At the same time, the Debtors were beginning to face an operational crisis due to store closures resulting from the COVID-19 pandemic. The Debtors’ liquidity began to decline precipitously and the Debtors were faced with the dual challenge of declining liquidity and springing maturities on May 16, 2020 of approximately \$746 million of debt, consisting of all

amounts outstanding under the Prepetition ABL Revolving Credit Facility, the Prepetition FILO Term Loan Facility and the Prepetition Term Facility. The Debtors received a proposal from a large holder of the Notes to extend maturity of Notes due in August 2020, which would have provided the Debtors relief from the springing maturity, but the proposal provided a solution neither for the Debtors' declining liquidity nor for the Debtors' overleveraged capital structure.

16. The Debtors and their advisors engaged in discussions with (a) the agent to the Prepetition ABL Revolving Credit Facility (the “*Revolver Agent*”), (b) the Crossholder Ad Hoc Group, and (c) an ad hoc group of Prepetition FILO Term Loan lenders (the “*FILO Ad Hoc Group*”), regarding extensions of the springing maturities and a comprehensive capital structure transaction to address both liquidity and leverage. The Debtors were able to enter into amendments to the Prepetition ABL FILO Credit Agreement and Prepetition Term Credit Agreement to extend the springing maturities under those agreements, which provided additional time to negotiate a comprehensive transaction to address the Debtors' capital structure issues, along with a comprehensive financing package to provide immediate liquidity infusion to prevent irreparable harm to the Debtors' business, funding to effectuate the transaction, and long-term liquidity to support the Debtors' operations. These efforts have led to the commencement of these Chapter 11 Cases, with a signed RSA among a substantial majority of the Debtors' secured creditors (the “*Standalone Transaction*”).

### **The Need For DIP Financing**

17. As outlined in the First Day Declaration, the Debtors, like many other retailers, face unprecedented challenges due to the COVID-19 pandemic, which has led to store closures, declining sales, and reduction in the Debtors' available liquidity. As of the Petition Date, a

substantial portion of the Debtors' cash is restricted because it is pledged to support the Debtors' ABL borrowing base.

18. The Debtors, with the assistance of their financial advisor, FTI, analyzed potential liquidity needs for a Chapter 11 process. Evercore reviewed the DIP-sizing analysis prepared by the Debtors and FTI. As further outlined in the Del Genio Declaration, the Debtors determined, in consultation with their advisors, that procuring sufficient financing at the start of these Chapter 11 Cases would be essential to meet operational expenses and to fund these Chapter 11 Cases. The DIP Facilities into which the Debtors seek authority to enter are critical to the Debtors' ability to administer these Chapter 11 Cases, provide the Debtors with liquidity to continue operations in the ordinary course, avoid irreparable harm to their business, pursue a restructuring of their capital structure, and have committed exit financing by having the DIP Facilities roll into exit loan facilities. If the Debtors do not obtain postpetition financing, the Debtors will soon be unable to pay their vendors and employees, rendering it likely that the Debtors would cease operations. Evercore relied on this information in its conversations with potential financing providers.

### **The Debtors' Efforts To Secure DIP Financing**

#### **A. The Marketing Process**

19. The Debtors were faced with a challenging macroeconomic environment due to the COVID-19 pandemic, which led to tightening of credit markets, especially for companies operating within the retail industry. In addition to difficult market conditions, substantially all of the Debtors' assets, other than certain excluded assets as set forth in the Prepetition Secured Credit Documents, are pledged as collateral to the Prepetition ABL FILO Credit Agreement and the Prepetition Term Credit Agreement. Because the Debtors' unpledged assets that could be used to support a financing were limited, Evercore determined that any postpetition financing would

require pledging as collateral assets that are already subject to the Prepetition ABL FILO Credit Agreement and the Prepetition Term Credit Agreement as well as the unpledged assets. However, in discussions with the Debtors, the Crossholder Ad Hoc Group and FILO Ad Hoc Group insisted that they would not consent to any priming of their security interests as part of a third-party DIP financing. Thus, the Debtors faced limited options to raise debtor-in-possession financing: (a) prime the liens held by the Prepetition Secured Parties, thereby initiating a contested priming fight; or (b) locate a third-party lender willing to provide DIP financing either on an unsecured basis or secured by liens junior in priority to or pari passu with the liens securing interests in the Prepetition Collateral.

20. On May 21, 2020, Evercore and the Debtors commenced a marketing process for postpetition financing to achieve the best terms available. As part of this process, Evercore solicited proposals for DIP financing from 18 potential third-party lenders, including large commercial banks and other sophisticated alternative investment institutions. Of the 18 potential lenders that were contacted, only 9 executed a non-disclosure agreement and received access to diligence materials. Ultimately, the Debtors did not receive any actionable DIP financing proposals from third parties. Many of the parties contacted by Evercore reported that they were unwilling to extend financing to the Debtors due to a number of factors, including the Debtors' financial position and highly leveraged capital structure, the challenges inherent in winning a priming fight with the Prepetition Secured Parties, and the current economic climate. None of the third parties contacted was willing to provide unsecured financing or financing secured by liens junior to or pari passu with the Debtors' prepetition debt.

21. Evercore also had discussions with other parties within the Debtors' capital structure to discuss a potential DIP financing. These parties included a large vendor and joint

venture partner, IVC, as well as the Debtors' preferred equity holder, Harbin. While the Debtors engaged with these parties, the Debtors did not receive a financing proposal that could be implemented as of the Petition Date. However, the Debtors, Harbin, and certain secured lenders reached an agreement in principle for the sale of the business. The Debtors are continuing discussions with these parties regarding the sale transaction and potential post-petition financing. The Debtors also have initiated discussions with advisors for a large holder of the Notes.

22. Simultaneous with Evercore's marketing efforts and discussions with the parties noted above, the Debtors and their advisors commenced hard-fought, arm's-length negotiations with the Revolver Agent, the Crossholder Ad Hoc Group, and the FILO Ad Hoc Group with respect to DIP financing. These parties represent more than 70% of the Company's prepetition debt. Ultimately, the Debtors and these parties came to a mutual agreement regarding a postpetition financing package that: (a) provides a \$200 million senior secured superpriority DIP term loan facility (the "***DIP Term Facility***," and together with the DIP ABL FILO Facility, the "***DIP Facilities***"), consisting of \$100 million in new money term loans and a dollar-for-dollar "roll-up" of \$100 million of obligations outstanding under the Prepetition Term Documents; (b) completely refinances the Prepetition ABL Revolving Credit Facility using cash currently pledged to the borrowing base; and (c) makes meaningful modifications to the credit agreement that, importantly, provide up to \$30 million of additional liquidity to the Debtors, and rolls up the Prepetition FILO Term Loan Facility and all accrued and unpaid interest into a DIP ABL FILO Facility.

23. These DIP Facilities provide the Debtors with not only the necessary post-petition financing to ensure smooth operations during these Chapter 11 Cases, but also provide long-term financing for the Debtors by converting into exit debt facilities should the Standalone Transaction



be consummated, thereby potentially avoiding a protracted bankruptcy process and resulting harm to the Debtors' business, and eliminating a key element of uncertainty for the Debtors.

**B. The DIP Term Facility**

24. The Debtors engaged in arm's-length negotiations with the Crossholder Ad Hoc Group with respect to funding these Chapter 11 Cases. As part of the financing package, the parties focused on the ultimate DIP sizing to fund these Chapter 11 Cases and certain costs that might be associated with exiting from bankruptcy, as well as committed exit financing. The Crossholder Ad Hoc Group ultimately agreed to provide a \$200 million DIP Term Facility, which provides \$100 million new money and refinances \$100 million of the Prepetition Term Facility upon entry of the Final Order (the "***Term Roll-Up***"). The DIP Term Facility is backstopped by certain members of the Crossholder Ad Hoc Group and open for participation to all Prepetition Term Facility lenders. The Term Roll-Up is a material component of the structure of the DIP Facilities and was required by the lenders as a condition to their commitment to provide postpetition financing. The Term Roll-Up will become effective only upon entry of the Final Order.

25. The DIP Term Facility is directly connected to the Debtors' RSA, which provides a framework within which the Debtors can restructure their capital structure. Under the restructuring support agreement, the lenders providing the DIP Term Facility have agreed to roll their exposure into long-term debt exit financing for the Debtors should the Standalone Transaction be consummated. The DIP Term Facility also provides sufficient liquidity for the Debtors to run a dual path sale process.

26. The DIP Term Facility includes various fees and postpetition liens, which were expressly required by the lenders as a condition to provide the DIP Facilities and are an integral

component of the financing package. These fees and liens were each subject to arm's-length negotiations. The fees include a backstop premium of 6% paid in cash on interim approval, an upfront fee of 4% paid in cash upon funding, and an exit fee of 3% paid in cash at emergence if the DIP Term Facility converts into an exit term facility.

**C. Repayment of Prepetition ABL Revolving Credit Facility**

27. The Debtors' Prepetition ABL Revolving Credit Facility and Prepetition FILO Term Loan Facility are subject to compliance with a borrowing base. The Debtors' borrowing base has declined to the point where the Debtors are forced to include cash in the borrowing base to support the Revolver and the FILO debt. The cash included in the borrowing base is restricted. As of the Petition Date, a significant portion of the Debtors' cash is included in the borrowing base in support of the outstanding Prepetition ABL Loans. The Debtors have therefore reasonably concluded that it is prudent to pay down the Prepetition ABL Loans using the cash currently included in the borrowing base to avoid unnecessary interest expense and potential fees associated with keeping the Revolver in place. The letters of credit currently issued under the Revolver will be cash collateralized.

**D. The DIP ABL FILO Facility**

28. The Debtors also engaged in arm's-length negotiations with their Prepetition ABL FILO Lenders throughout these negotiations. The Debtors focused their discussions with the Prepetition ABL FILO Lenders on a package that would provide the Prepetition ABL FILO Lenders with reasonable adequate protection, but also provide the Debtors with use of cash collateral and additional liquidity. The Prepetition ABL FILO Lenders expressly conditioned any consensual adequate protection package on continuing to have borrowing base protection.

29. After multiple rounds of negotiations, the Prepetition ABL FILO Lenders agreed to make changes to the Prepetition ABL FILO Credit Agreement that are favorable to the Debtors. The ABL FILO Lenders agreed to waive the step down in advance rates of the borrowing base upon repayment of the Prepetition ABL Revolving Credit Facility, and also agreed to provide up to \$30 million of incremental liquidity through the Chapter 11 Cases by removing certain cash dominion provisions and adding \$17.5 million to the borrowing base, have restrictions on the imposition of certain new reserves, and convert the DIP ABL FILO Facility into exit financing for the Debtors should the Standalone Transaction be consummated. \$12.5 million of liquidity will be made available immediately upon entry of the Interim DIP Order; however, in the event that the roll-up is not approved with the Interim DIP Order, \$17.5 million of the \$30 million will not be made available until the Court approves the roll-up.

30. The Prepetition ABL FILO Lenders expressly required conversion of the prepetition ABL FILO claims into DIP ABL FILO claims. Although the lenders initially asked for fees in connection with this conversion, the Debtors successfully negotiated to remove such fees. Because the Prepetition ABL FILO Lenders, who the Debtors believe are covered by the current borrowing base and did not seek any additional fees for this roll-up, are providing incremental liquidity, and rolling their claims into exit loan financing under the Standalone Transaction, the Debtors agreed to convert prepetition ABL FILO loans into DIP ABL FILO loans. Given its oversecured status, the Prepetition ABL FILO Lenders' unwillingness to modify these terms, and all of the benefits to modifying that facility detailed herein, I believe the conversion of the Prepetition ABL FILO Facility into DIP ABL FILO claims is reasonable from a financial point of view under the circumstances, and is substantially beneficial to the Debtors and their stakeholders.

**The DIP Financing Is The Best Postpetition  
Financing Arrangement Available To The Debtors**

31. The DIP Facilities will provide the Debtors with immediate access to liquidity and to the Cash Collateral. Upon entry of the Interim Order, the Debtors will make an initial draw of \$30 million under the DIP Term Facility and will draw the remaining \$70 million of new money loans upon entry of the Final Order. The Debtors will also, at the time of entry of the Interim Order, gain access to cash that had been restricted under the Debtors' Prepetition ABL FILO Credit Agreement by, (i) simultaneous with entering into the DIP ABL FILO Facility, prepaying in full all loans outstanding under the Prepetition ABL Revolving Credit Facility (totaling \$60 million) and terminating all commitments thereunder, and (ii) making certain amendments to the Debtors' Prepetition ABL FILO Credit Agreement. Alternative sources of financing with terms as favorable as those of the DIP Facilities are not available to the Debtors.

32. The DIP Facilities will provide the Debtors with an opportunity to continue operating their business through these Chapter 11 Cases, reassure customers and vendors, protect operations, and implement their plan to restructure their obligations. The DIP Facilities will also provide sufficient funding for the Debtors to pursue a dual path sale process. In consultation with the Debtors and their other professionals, Evercore concluded that the proposed financing from the DIP Lenders reflected in the DIP Agreements and the Interim DIP Order is fair, reasonable, and appropriate, meets the Debtors' business and financing needs for these Chapter 11 Cases, and is the best option available to finance the chapter 11 process and allow the Debtors to pursue their restructuring goals and maximize the value of their estates.

**Arm's-Length And Good-Faith Negotiations**

33. I believe, based on my involvement in the process, that the terms of the DIP Facilities are the product of extensive, arm's-length, and good-faith negotiations among the

Debtors, Crossholder Ad Hoc Group, and FILO Ad Hoc Group. Over the course of several weeks, the parties exchanged numerous term sheets and mark-ups, and had many negotiating calls among the Debtors' management, lenders of the DIP Facilities, and their respective advisors. Through these negotiations, the economic and other terms of the DIP Facilities improved to the benefit of the Debtors. No consideration is being provided to the DIP Agents, the DIP Lenders, or any other party to the DIP Documents other than as described in the DIP Motion.

**The Terms And Conditions Of The DIP Facilities  
Are Reasonable And Should Be Approved**

34. Based on my experience in and observation of similar chapter 11 cases, the terms and conditions of the DIP Facilities are reasonable given current market conditions, the Debtors' circumstances, and the Debtors' prepetition secured indebtedness. Given the financial and operating condition of the Debtors, the timing, cost, and risk of administering these Chapter 11 Cases, and the Debtors' liability profile, I believe the fees in connection with the DIP Facilities are reasonable, from a financial point of view. The covenants and milestones included in the DIP Facilities likewise are reasonable and the Debtors are not unreasonably likely to breach such terms.

**Cash Collateral**

35. I believe that it is essential to the success of the Debtors' Chapter 11 Cases that the Debtors immediately obtain authority to use Cash Collateral. The Debtors must maintain sufficient access to cash to continue to operate their businesses as a going concern. This will directly benefit the Debtors' estates and permit the Debtors to develop and implement their reorganization. The preservation of estate assets, the Debtors' continuing viability, and their ability to reorganize successfully and maximize value for stakeholders depend heavily upon the expeditious approval of the relief requested in this Motion. Accordingly, I believe that the Debtors' request to use Cash

Collateral in the operation of its businesses and administration of these Chapter 11 Cases should be approved.

*[Remainder of page intentionally left blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: June 24, 2020  
New York, New York

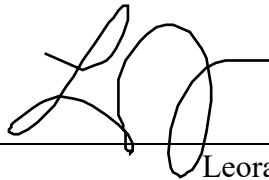
/s/ *Pranav Goel*  
Pranav Goel



TABY



THIS IS **EXHIBIT “Y”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'L. Jackson', written over a horizontal line.

Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

		In re:		Chapter 11
		GNC HOLDINGS, INC., <i>et al.</i> ,		Case No. 20-11662 (___)
		Debtors. <sup>1</sup>		(Joint Administration Requested)

**DECLARATION OF ROBERT A. DEL GENIO IN SUPPORT  
OF MOTION OF DEBTORS FOR ORDERS (I) AUTHORIZING THE DEBTORS TO (A)  
OBTAIN SENIOR SECURED POSTPETITION FINANCING, (B) GRANT LIENS AND  
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (C) USE CASH  
COLLATERAL OF PREPETITION SECURED PARTIES AND (D) GRANT  
ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (II)  
SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b)  
AND 4001(c); AND (III) GRANTING RELATED RELIEF**

I, Robert A. Del Genio, hereby declare as follows under penalty of perjury:

1. I am a Senior Managing Director and Co-Head of the New York Metro Region for Corporate Finance and Restructuring at FTI Consulting, Inc. (“*FTI*”), a financial advisory services firm. FTI maintains offices at, among other places, 3 Times Square, New York, New York 10036.

2. I submit this declaration (“*Declaration*”) on behalf of the above-captioned debtors in possession (the “*Debtors*”) in support of the *Motion of Debtors for Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties and*

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

*(d) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (III) Granting Related Relief (the “DIP Motion”).*<sup>2</sup>

3. Unless otherwise indicated, all facts set forth in this Declaration are based upon (a) my personal knowledge of the Debtors’ current operations and financial performance; (b) information learned from my review of relevant documents and information concerning the Debtors’ operations, financial affairs, and restructuring initiatives; (c) information I have received from members of the Debtors’ management or advisors, including members of FTI; and/or (d) my opinions based upon my experience and knowledge.

4. I am over the age of 18 and authorized to submit this Declaration on behalf of the Debtors. I am not being specifically compensated for this testimony other than through payments received by FTI, as a proposed professional to be retained by the Debtors. If called upon to testify, I could and would testify as to the facts set forth herein.

**A. Qualifications**

5. FTI is a financial advisory services firm that provides, among other things, restructuring, crisis, and turnaround management services. FTI is comprised of a worldwide network of more than 5,700 employees in 27 countries on six continents and has a wealth of experience providing financial advisory services in restructurings and reorganizations. FTI enjoys an excellent reputation for services it has rendered in large and complex chapter 11 cases on behalf of debtors and creditors throughout the United States and is particularly well qualified to advise the Debtors during these Chapter 11 cases. FTI’s personnel have assisted and advised, and

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<sup>2</sup> Capitalized terms used but not otherwise defined in this Declaration shall have the meanings used in the DIP Motion and the First Day Declaration.

provided strategic advice to, debtors, creditors, bondholders, investors, and other entities in numerous chapter 11 cases of similar size and complexity to these Chapter 11 Cases.

6. I hold a Bachelor of Business Administration from the University of Notre Dame and a Master of Science in Management from Kellogg School of Management, Northwestern University. I am a Certified Turnaround Professional and a Certified Public Accountant (Inactive Status). I have over 35 years of experience in restructuring and mergers and acquisitions and have advised companies, lenders, creditors, corporate boards and equity sponsors across a diverse range of industries both domestically and internationally. I have assisted clients both in and outside of chapter 11, designed and evaluated financing packages and presentations to various types of lenders and equity investors, and acted as financial advisor to boards of directors and/or principal shareholders in the purchase or sale of numerous businesses. I have advised companies, lenders, and investors in a variety of industries and acted as the financial advisor to Waypoint Leasing Holdings Ltd., Caraustar Industries, Inc., Catalina Industries, Inc., Reichhold Holdings US, Inc., MicroAge, Inc., CST Industries, Dan River, Inc., Wheeling-Pittsburgh Steel Corp., US Internetworking, Factory Card Outlet, Frontier Communications Corp., Malden Mills, and Metal Forming Technologies during their chapter 11 cases; acted as the Strategic Planning Officer of RHI Entertainment, Inc.; and acted as Chief Restructuring Officer in the chapter 11 cases of The Weinstein Company Holdings LLC, PHI Inc. and CHC Group Ltd. I currently serve on the board of directors of Panavision, Inc., after having served as an interim Chief Executive Officer, and have previously served on the board of Washington Group International, Inc., CHC Group Ltd., Lazare Kaplan International, Inc., and Buffets, Inc.

7. I have been responsible for leading FTI's engagement with the Debtors since March 21, 2020. The Debtors retained FTI to provide advice and assistance in connection with the

evaluation and implementation of the Debtors' impending financial restructuring transaction. FTI has also worked with the Debtors on a number of issues including contingency planning efforts, financial forecasting, business plan development, liquidity management, key employee retention planning, and general bankruptcy filing preparations. Since the start of FTI's retention, I have worked closely with the Debtors' management team and other advisors to evaluate the Debtors' liquidity and cash needs in the case of a chapter 11 filing.

8. Pursuant to the DIP Motion, the Debtors seek entry of the Interim Order and the Final Order approving, among other things, the Debtors' entry into the DIP Facilities and the consensual use of the Cash Collateral.

**B. The Debtors' Prepetition Cash Balance**

9. As of the Petition Date, the Debtors have approximately \$750 million in secured debt obligations and approximately \$157 million outstanding in unsecured convertible notes. As of the Petition Date, the Debtors' total cash balance is approximately \$100 million, but substantially all of that cash is restricted in order to support its ABL borrowing base.

10. Attached hereto as *Exhibit 1* is the Initial DIP Budget ("**Budget**") describing the operating cash flow and working capital needs of the Debtors over the next 13 weeks. As described in the Budget, due to the limitations of the Prepetition ABL FILO Facility, the Debtors are projected to be unable to generate enough operating cash flow in the ordinary course of business to cover their normal course operating expenses, working capital needs, and projected costs of these Chapter 11 Cases; and, therefore, the Debtors will fall below minimum liquidity levels needed to safely operate by the week of June 27th absent postpetition financing, even if they had access to all liquidity, including the Cash Collateral.

**C. The Debtors' Liquidity Needs and Budget**

11. Prior to the commencement of these cases, the Debtors, in consultation with their advisors, carefully considered a number of potential alternatives to address the Debtors' capital structure and liquidity challenges, as described in detail in the First Day Declaration and the Goel Declaration. When these efforts did not provide a viable solution to the Debtors' liquidity challenges or sufficiently reduce the Debtors' leverage, the Debtors focused on preparing for a potential chapter 11 filing, including by commencing a marketing process led by Evercore Group L.L.C. ("*Evercore*"), the Debtors' investment banker, to obtain postpetition financing for the Debtors' business.

12. Recent events in the months leading up to the commencement of these Chapter 11 Cases have underscored the Debtors' need to access the proceeds of the DIP Facilities and the Cash Collateral on an interim basis. Specifically, the Debtors have faced a tightening liquidity crisis due to, among other things, (a) a rapid and significant decline in sales due to the COVID-19 pandemic, (b) trade creditors' demands of more restrictive trade terms from the Debtors, (c) upcoming interest payments totaling approximately \$40 million this year on account of the Debtors' Notes, and (d) a number of underperforming stores. As a result of these and other demands and the constraints imposed by the Prepetition ABL FILO Facility, the Debtors are unable to generate sufficient levels of operating cash flow in the ordinary course of business to cover their working capital needs, capital expenditures, and the projected costs of these Chapter 11 Cases.

13. The Debtors' liquidity has been hampered by restrictions set forth in the documents governing the Debtors' asset-based secured debt obligations. Specifically, as the value of assets supporting the Debtors' borrowing base has decreased, the Debtors have been left with no choice but to restrict the majority of their cash in order to stay within borrowing base requirements, and to avoid triggering an obligation to repay asset-based loans.

14. Since being retained, FTI has assisted the Debtors in evaluating their liquidity position and potential financing needs. FTI worked closely with the Debtors, their management, and their other advisors to evaluate the Debtors' cash requirements for their business. As part of FTI's evaluation of the Debtors' liquidity position, FTI reviewed, analyzed, and assisted in the development of the Debtors' 13-week and long-term cash flow forecasts and the Debtors' current and forecasted borrowing base. These forecasts take into account anticipated cash receipts and disbursements during the projected period and consider a number of factors, including, but not limited to, the effect of the chapter 11 filing on the operations of the business, fees and interest expenses associated with postpetition financing, professional fees, and customer and vendor obligations, as well as the operational performance of the underlying business.

**D. The Debtors Need Access to the DIP Proceeds and Cash Collateral and Will Suffer Immediate and Irreparable Harm if They are Unable to Access Them**

15. The Debtors have a critical need to use the DIP Facilities proceeds and the Cash Collateral to operate their business and preserve their going-concern value. The Debtors' business is cash intensive, with significant daily costs required to satisfy obligations to vendors, employees, and franchisees. As such, and due to their current limited liquidity, the Debtors require immediate access to the DIP Facilities and the use of the Cash Collateral to operate their business, preserve value, and avoid irreparable harm pending the Final Hearing. Specifically, the DIP Facilities and the Cash Collateral are needed for the Debtors to: (i) continue to conduct their businesses and generate revenue during these Chapter 11 Cases; (ii) provide working capital for their businesses; (iii) fund payments to their workforce; (iv) fund other general corporate purposes; (v) fund the payments authorized by the Court pursuant to the "first-day motions" filed contemporaneously with the DIP Motion; (vi) operate the Cash Management System as described in the Cash Management Motion; and (vii) satisfy administrative costs and expenses of the Debtors incurred

in the Chapter 11 Cases. Absent granting the DIP Motion on an interim and final basis, the Debtors and their estates will be immediately and irreparably harmed.

16. The Debtors depend on the cash received from their businesses to fund working capital, general and administrative expenses, and other operational expenses. The Debtors plan to utilize the proceeds from the DIP Facilities and the Cash Collateral to, among other things, satisfy payroll, pay suppliers, meet overhead, and make any other payments that are essential for the continued management, operation, and preservation of the Debtors' business. The ability to satisfy these expenses at the onset of these Chapter 11 Cases and when due is essential to the Debtors' continued operation of their business during the pendency of these Chapter 11 Cases.

17. The Debtors, with the assistance of their advisors and through negotiations with the DIP Lenders, developed the Budget. I believe that the Budget establishes that the Debtors will have adequate liquidity during this period if allowed to access the Cash Collateral and the DIP Facilities. The Budget contains line items for the primary categories of cash flows anticipated to be received or disbursed during the time period for which the Budget is prepared. I believe that the Budget includes all reasonable, necessary, and foreseeable expenses to be incurred in connection with the operation of the Debtors' business for the period set forth in the Budget.

18. Importantly, the DIP Facilities will allow the Debtors to strengthen their cash position immediately as \$30 million (or such lesser amount that is specified in the Interim DIP Order) in "new money" term loans will be made available under the DIP Facilities on the date of the Interim Financing Order, with the remaining term loans under the DIP Facilities totaling \$70 million made available following the date the Final DIP Order is entered by the Bankruptcy Court and the satisfaction of conditions precedent under the DIP Facilities. Additionally, a portion of the DIP Facilities will be governed by a less-constraining borrowing base than that which governs



the Debtors' existing asset-based secured debt obligations, giving the Debtors immediate access to approximately \$12.5 million (out of \$30 million total) in cash upon entry of the Interim DIP Order that had previously been restricted under the more restrictive borrowing base that governed the Debtors' Prepetition ABL FILO Facility. In the event that the roll-up in connection with the DIP ABL FILO Facility is not approved with the Interim DIP Order, \$17.5 million of the \$30 million will not be made available until the Court approves the roll-up. Access to greater liquidity pursuant to the DIP Facilities will send a positive and credible message to the Debtors' workforce and commercial counterparties that the Debtors will have sufficient liquidity to maintain ordinary course operations and meet their financial commitments throughout the course of the Chapter 11 Cases. Having a strong liquidity position will send a further positive message to the Debtors' vendors and other business partners.

19. Without immediate access to the DIP Facilities and use of the Cash Collateral, the Debtors will be unable to continue to operate their business as a going concern and preserve and maximize the value of their assets for the benefit of all stakeholders. Any failure to secure postpetition financing, such as is provided in the DIP Motion, will cause immediate and irreparable harm to the Debtors and their stakeholders, and will diminish the value of the Debtors' estates. Without the approval of the DIP Facilities and use of the Cash Collateral, the Debtors will be unable to continue to operate in the ordinary course or preserve and maximize the value of their assets for the benefit of all parties in interest. Additionally, inability to access the DIP Facilities and the Cash Collateral would severely damage the Debtors' ability to pay employees, insurance, suppliers, lessors, taxes, or other operating expenses. This would cause substantial long-term harm to revenues and business relationships.

20. If the Debtors are unable to obtain access to the DIP Facilities and the Cash Collateral, the Debtors currently project that they will not have sufficient liquidity to operate their business by the week of June 27th. The Debtors' preexisting cash balances and cash generated from operations are simply not sufficient to fund business operations and the administration of these cases within the constraints of their existing ABL borrowing base. A significant cash infusion and revision of the credit agreement governing their borrowing base are critical necessities to the continued operation of the Debtors' businesses, the preservation of going concern value, and the maintenance of the Debtors' valuable business relationships.

21. Moreover, access to currently-unrestricted cash alone would not solve the Debtors' liquidity problems. The Debtors estimate that their total cash balance that is not restricted in order to support their borrowing base, as of the Petition Date, is approximately \$14 million. Without the DIP Facilities, the Debtors would run out of cash by the week of June 27th due to rent, inventory purchases, and other obligations that the Debtors must pay.

**E. The Need for Interim Relief**

22. The Debtors have an urgent need for the attached Order to be granted on an interim basis. The Debtors require immediate access to \$30 million of cash in the form of new money postpetition term loans, in addition to the use of the Cash Collateral to meet their obligations and avoid irreparable harm pending the Final Hearing. Absent funds available under the DIP Facilities, access to the Cash Collateral and the cooperation of key business partners at this critical early stage, the Debtors could, among other things, (a) face a devastating interruption in their businesses; (b) lose the support of important groups on whom the Debtors' businesses and restructuring depend, which, in turn, would hinder their ability to maximize the value of their estates; and (c) be forced to modify their operations in a significant and adverse manner, which could hamper the Debtors' ability to maximize the value of their estates.

23. The preservation of estate assets, the Debtors' continuing viability, and their ability to successfully reorganize and maximize estate value depend heavily upon the expeditious approval of the relief requested in the DIP Motion. Accordingly, based on the foregoing, I respectfully submit that the Court should approve the DIP Motion.

*[Remainder of page intentionally left blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: June 24, 2020  
New York, New York

/s/ Robert A. Del Genio  
Robert A. Del Genio

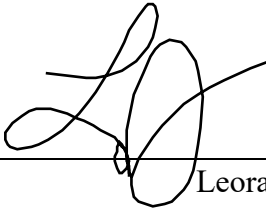
**Exhibit 1**





TABZ

THIS IS **EXHIBIT “Z”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', written over a horizontal line.

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Leora Jackson  
Commissioner for Taking Affidavits



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

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**MOTION OF DEBTORS FOR AN ORDER (A) ENFORCING  
THE PROTECTIONS OF 11 U.S.C. §§ 362, 365, 525, AND 541(c)  
AND (B) APPROVING NOTICE TO CUSTOMERS, SUPPLIERS, AND  
OTHER STAKEHOLDERS OF DEBTORS’ NON-DEBTOR GLOBAL AFFILIATES**

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The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Order*”) (a) enforcing the protections of sections 362, 365, 525, and 541(c) of the Bankruptcy Code (as defined below) to aid in the administration of these chapter 11 cases and to help ensure that the global operations of the Debtors and their non-Debtor affiliates (the “*Non-Debtor Global Affiliates*”) are not disrupted and (b) approval of a notice, substantially in the form attached to the Proposed Order as **Exhibit 1** (the “*Notice*”), to the customers, suppliers and other stakeholders of the Non-Debtor Global Affiliates confirming that

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

such entities are not included in these chapter 11 cases and are not subject to (i) the supervision of this Court, or (ii) the provisions of the Bankruptcy Code (as defined below).

### **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicate for the relief requested herein is section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “*Bankruptcy Code*”).

### **BACKGROUND**

3. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in this Court, commencing these chapter 11 cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies’ Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”)<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

### **BASIS FOR RELIEF**

#### **I. ENFORCING THE PROTECTIONS OF SECTIONS 362, 365, 525, AND 541(C) OF THE BANKRUPTCY CODE**

6. As a result of the commencement of the Debtors’ Chapter 11 Cases, and by operation of law pursuant to section 362 of the Bankruptcy Code, the automatic stay generally enjoins all entities from, among other things: (a) commencing or continuing any judicial, administrative, or other action or proceeding against any of the Debtors that was or could have been initiated before the Petition Date; (b) recovering a claim against any of the Debtors that arose before the Petition Date; (c) taking any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the Debtors’ estates; (d) enforcing a judgment against any of the Debtors or property of their estates that was obtained before the Petition Date; or (e) taking any action to collect, assess, or recover a claim that arose before the Petition Date against any of the Debtors.

7. The injunction contained in section 362 of the Bankruptcy Code is self-executing. It constitutes a fundamental debtor protection that, together with other provisions of the

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court’s website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors’ proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

Bankruptcy Code, provides a debtor with a “breathing spell” that is essential to a successful reorganization. *See, e.g., In re Univ. Med.*, 973 F.2d 1065, 1074 (3d Cir. 1992) (“The stay gives the debtor a breathing spell from his creditors. *It stops all collection efforts, all harassment, and all foreclosure actions.* It permits a debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.”) (quoting H.R. Rep. No. 595, 95th Cong., 1st Sess. 340 (1978), *reprinted in* 1978 U.S.C.C.A.N., 5787, 5963, 6296–97) (internal citation and quotation marks omitted) (emphasis in original); *In re New Century TRS Holdings, Inc.*, 505 B.R. 431, 439 (Bankr. D. Del. 2014) (noting that the purpose of the automatic stay is to protect the debtor and its creditors).

8. The protections of the automatic stay apply to a debtor’s property wherever located and by whomever held. *See* 11 U.S.C. § 541(a); *In re Allen*, 768 F.3d 274, 276, 279 (3d Cir. 2014) (stating that “[b]ankruptcy jurisdiction, at its core, is *in rem*” and holding that actual possession by the debtor is not required for property to be part of the debtor’s estate) (internal citation and quotation marks omitted) (alteration and emphasis in original); *Underwood v. Hilliard (In re Rimsat, Ltd.)*, 98 F.3d 956, 961 (7th Cir. 1996) (noting the bankruptcy court’s jurisdiction over property of the estate permits injunctions against foreign proceedings pursuant to the automatic stay). The automatic stay, therefore, applies to the Debtors’ assets and operations around the world.

9. Section 365(e)(1) of the Bankruptcy Code renders insolvency termination provisions in contracts generally unenforceable against a chapter 11 debtor (with limited exception). Specifically, section 365(e)(1) provides that:

Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or

modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title; or

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

11 U.S.C. § 365(e)(1).

10. Bankruptcy courts have applied section 365(e)(1) liberally, such that provisions modifying or terminating the relationships of the contracting parties due to the filing of a bankruptcy case are “broadly unenforceable.” *In re AMR Corp.*, 730 F.3d 88, 106 (2d Cir. 2013) (citing *In re Lehman Bros. Holdings Inc.*, 422 B.R. 407, 414 (Bankr. S.D.N.Y. 2010)).

11. Similarly, provisions in agreements, transfer instruments, or applicable nonbankruptcy law are unenforceable if such provision “restricts or conditions transfer of such interest by the debtor” or if any such provision:

is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor’s interest in property.

11 U.S.C. § 541(c)(1).

12. Pursuant to section 525(a) of the Bankruptcy Code, “governmental units,” including foreign “governmental units,” are prohibited from, among other things, denying, revoking, suspending, or refusing to renew licenses, permits, charters, franchises, or other similar grants held by a chapter 11 debtor (or persons with whom the debtor is associated, including affiliates) on the basis that the debtor has failed to pay a dischargeable debt, commenced a

chapter 11 case, or was insolvent prior to the commencement of such case. *See* 11 U.S.C. § 525(a). The Bankruptcy Code defines “governmental unit” as the “United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.” 11 U.S.C. § 101(27). Thus, the protections of section 525(a) apply broadly to local, state, and foreign governmental units.

13. Notwithstanding the self-executing and global nature of sections 362, 365, 525, and 541 of the Bankruptcy Code, not all parties affected, or potentially affected, by the commencement of these Chapter 11 Cases are aware of these statutory provisions or their significance and impact. Therefore, it is prudent to obtain an order confirming and reinforcing the relevant provisions of the aforementioned sections of the Bankruptcy Code.

14. The requested relief is particularly appropriate here because the Debtors and their Non-Debtor Global Affiliates operate, purchase materials, and record sales in numerous countries outside of the United States with different legal systems, including without limitation, Argentina, Australia, Bangladesh, Bolivia, Bulgaria, Chile, China, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Hong Kong, India, Indonesia, Ireland, Israel, Japan, Kazakhstan, Latvia, Lithuania, Malaysia, Mexico, Mongolia, Myanmar; Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Romania, Singapore, Saudi Arabia, South Africa, South Korea, Spain, Sri Lanka, Taiwan, Thailand, Turkey, the United Arab Emirates, the United Kingdom, Uruguay and Vietnam. The Debtors engage with numerous foreign customers, suppliers, and other vendors, as well as foreign regulators and other governmental units. Moreover, certain of the Debtors’ key

contracts are governed by the laws of foreign jurisdictions, and certain of the Debtors' assets are located around the world.

15. The Debtors believe that, absent an order from this Court, parties might attempt to take improper actions against the Debtors or property of their estates. The Debtors believe that many of the non-U.S. creditors affected by sections 362, 365, 525, and 541 of the Bankruptcy Code likely are not aware of the significant and necessary protection these sections provide to the Debtors. Accordingly, the Debtors respectfully request that this Court issue an order restating the applicable provisions of sections 362, 365, 525, and 541 of the Bankruptcy Code and approving a notice substantially in the form of the Notice. The Debtors believe that the existence of such an order, which the Debtors will be able to transmit to affected parties, will maximize the protections afforded by sections 362, 365, 525, and 541 of the Bankruptcy Code. Further, the Debtors believe that the "automatic" and self-executing nature of these protections may not be recognized by foreign creditors or tribunals unless embodied in an order of this Court.

16. Section 105(a) of the Bankruptcy Code empowers the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Granting the relief requested in this Motion is fully consistent with the terms of the Bankruptcy Code and will facilitate a smooth and orderly transition of the Debtors' operations into chapter 11 and minimize the disruption of their business affairs during this critical time period when the Debtors are focused on negotiating a successful and consensual chapter 11 plan. If entered, the Debtors will be able to transmit this Court's order approving the Motion to third parties, which will proactively confirm and clarify the applicability and effect of the protections under sections 362, 365, 525, and 541 of the Bankruptcy Code. The Debtors, therefore, request that this Court grant the requested relief.

17. Finally, the relief requested in this Motion is similar to relief granted by numerous courts, including this Court in other Chapter 11 Cases in this district. *See, e.g., In re Bumble Bee Parent, Inc., Case No. 19-12502 (LSS) (Bankr. D. Del. Nov. 26, 2019) [Docket No. 78]* (enforcing the protections of section 362 of the Bankruptcy Code); *In re Hexion Holdings LLC, Case No. 19-10684 (KG) (Bankr. D. Del. Apr. 2, 2019) [Docket No. 100]* (enforcing the protections of sections 362 and 525 of the Bankruptcy Code); *In re Imerys Talc America, Inc., Case No. 19-10289 (LSS) (Bankr. D. Del. Feb. 14, 2019) [Docket No. 60]* (enforcing the protections of sections 362, 365, 525, and 541(c) of the Bankruptcy Code); *In re The Relay Shoe Company, LLC, Case No. 18-11145 (LSS) (Bankr. D. Del. May 15, 2018) [Docket No. 51]* (enforcing the protections of sections 362 and 525 of the Bankruptcy Code); *In re VER Technologies Holdco LLC, Case No. 18-10834 (KG) (Bankr. D. Del. May 4, 2018) [Docket No. 230]* (enforcing the protections of sections 362, 365, and 525 of the Bankruptcy Code). The Debtors submit that the present circumstances warrant similar relief in these Chapter 11 Cases.

## **II. APPROVING NOTICE TO CUSTOMERS, SUPPLIERS, AND OTHER STAKEHOLDERS OF THE NON-DEBTOR GLOBAL AFFILIATES.**

18. Because non-U.S. stakeholders may not be familiar with U.S. chapter 11 reorganizations, it is imperative to communicate to the Debtors' non-U.S. customers and suppliers that the Non-Debtor Global Affiliates are not included in these Chapter 11 Cases and thus, are not subject to this Court's supervision or the chapter 11 process. Accordingly, to sustain customer confidence and to minimize the risk of an interruption in the supply of goods, the Debtors believe that they need a court-approved notice communicating this message. The Debtors operate a complex and highly competitive international business. As an industry leader in the global specialty nutritional products retail industry, word of these Chapter 11 Cases will quickly spread internationally to various third parties that deal with the Debtors and the Non-Debtor Global



Affiliates, likely creating confusion as to which affiliates are, and which affiliates are not, debtors in these Chapter 11 Cases.

19. As a result of this confusion, the Debtors believe that some third parties may be hesitant or, worse yet, refuse to deal with Non-Debtor Global Affiliates under the mistaken assumption that such affiliates are part of these bankruptcy cases. Such a result would impair the operations of the Non-Debtor Global Affiliates, which would ultimately prejudice the Debtors' reorganization efforts, particularly where the Debtors rely on intercompany relationships with their Non-Debtor Global Affiliates as part of their business. The Debtors believe that the Notice will help in educating the Debtors' non-U.S. customers and suppliers, which in turn will assist the Debtors in achieving a successful reorganization.

### **III. APPLICABLE AUTHORITY UNDER SECTION 105(A)**

20. The Court's general equitable powers are codified in section 105(a) of the Bankruptcy Code, which, as set forth above, empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

21. The Debtors respectfully request that the Court issue an order: (a) enforcing the protections of sections 362, 365, 525, and 541(c) of the Bankruptcy Code; and (b) approving the Notice clarifying that the Non-Debtor Global Affiliates are not part of these Chapter 11 Cases and, accordingly, their business operations are not subject to the provisions of the Bankruptcy Code. The order will not only protect the Debtors from unwitting parties, particularly those in foreign jurisdictions who are not familiar with the Bankruptcy Code or its protections, who otherwise might violate these sections, but also eliminate the confusion that likely will ensue concerning the Non-Debtor Global Affiliates.

22. Accordingly, granting the relief requested herein will facilitate a smooth and orderly transition of the Debtors' operations into chapter 11 and minimize the disruption of their business affairs. The Debtors, therefore, request that this Court grant the requested relief.

### **RESERVATION OF RIGHTS**

23. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

### **NOTICE**

24. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange

Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; and (p) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank.]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Order, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Kara Hammond Coyle

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*Proposed Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ____

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**ORDER (A) ENFORCING PROTECTIONS OF  
SECTIONS 362, 365, 525, AND 541(C) OF THE BANKRUPTCY  
CODE AND (B) APPROVING NOTICE TO CUSTOMERS, SUPPLIERS, AND  
OTHER STAKEHOLDERS OF DEBTORS’ NON-DEBTOR GLOBAL AFFILIATES**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an order (this “*Order*”)

(a) enforcing the protections of sections 362, 365, 525, and 541(c) of the Bankruptcy Code; and

(b) approving notice to customers, suppliers, and other stakeholders of the Debtors’ non-debtor global affiliates (the “*Non-Debtor Global Affiliates*”), all as more fully set forth in the Motion; and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Pursuant to and to the extent set forth in section 362 of the Bankruptcy Code, the commencement of these Chapter 11 Cases shall operate as a stay, applicable to all persons (including individuals, partnerships, corporations, and all those acting for or on their behalf) and all foreign and domestic governmental units (and all those acting for or on their behalf) of:
  - a. the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced before the commencement of the Debtors’ Chapter 11 Cases, or an act to recover a claim against the Debtors that arose before the commencement of the Debtors’ Chapter 11 Cases;
  - b. the enforcement, against the Debtors or against property of their estates, of a judgment obtained before the commencement of the Debtors’ Chapter 11 Cases;
  - c. any act to obtain possession of property of the estates or of property from the estates or to exercise control over property of the Debtors’ estates;
  - d. any act to create, perfect, or enforce any lien against property of the Debtors’ estates;

- e. any act to create, perfect, or enforce against property of the Debtors any lien to the extent that such lien secures a claim that arose before the commencement of the Debtors' Chapter 11 Cases;
  - f. any act to collect, assess, or recover a claim against the Debtors that arose before the commencement of the Debtors' Chapter 11 Cases;
  - g. the setoff of any debt owing to the Debtors that arose before the commencement of the Debtors' Chapter 11 Cases, except as allowed under section 553 of the Bankruptcy Code; and
  - h. the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of the Debtors for a taxable period the bankruptcy court may determine.
3. All persons and all foreign and domestic governmental units, and all those acting on their behalf, including sheriffs, marshals, constables, and other or similar law enforcement officers and officials are stayed, restrained, and enjoined from in any way, seizing, attaching, foreclosing upon, levying against, or in any other way interfering with, any and all of the property of any of the Debtors, wherever located.
4. This Order shall not affect the exceptions to the automatic stay contained in section 362(b) of the Bankruptcy Code or the right of any party in interest to seek relief from the automatic stay in accordance with section 362(d) of the Bankruptcy Code or the rights provided pursuant to Section 546(b) of the Bankruptcy Code.
5. Pursuant to and to the extent set forth in section 365(e) of the Bankruptcy Code, and notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the Debtors may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of these Chapter 11 Cases solely because of a provision in such contract or lease that is conditioned on (a) the insolvency or financial condition of any or all Debtors or (b) the commencement of these Chapter 11 Cases.



6. Pursuant to and to the extent set forth in section 525 of the Bankruptcy Code, a foreign or domestic governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, the Debtors or the Debtors' affiliates on account of (a) the commencement of these Chapter 11 Cases; (b) the Debtors' insolvency; or (c) the fact that the Debtors have not paid a debt that is dischargeable in these Chapter 11 Cases.

7. Pursuant to and to the extent set forth in section 541(c) of the Bankruptcy Code, any interest of the Debtors in property becomes property of the estates, notwithstanding any provision in any agreement, transfer instrument, or applicable nonbankruptcy law that: (a) restricts or conditions transfer of such interest by the Debtors, or (b) is conditioned on the insolvency or financial condition of the Debtors or on the commencement of the Debtors' Chapter 11 Cases, and that effects or gives an option to effect a forfeiture, modification, or termination of the Debtor's interest in property.

8. This Order is intended to be declarative of and coterminous with, and shall neither abridge, enlarge nor modify, the rights and obligations of any party under sections 362, 365, 525, 541(c), and 553 of the Bankruptcy Code or any other provision of the Bankruptcy Code.

9. Nothing in the Motion or this Order, or any action taken by the Debtors in implementing this Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of

the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Order. Nothing contained in this Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

10. The Notice, substantially in the form attached hereto as **Exhibit 1**, is approved.

11. The Debtors are authorized to cause the Notice to be translated into as many languages as may be deemed necessary and to distribute such Notice as the Debtors deem appropriate.

12. Neither the provisions contained herein, nor any actions made by the Debtors pursuant to this Order shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

13. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Order shall be effective and enforceable immediately upon entry hereof.

14. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

15. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT 1**

**Notice**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	

**NOTICE TO CUSTOMERS, SUPPLIERS, AND OTHER  
STAKEHOLDERS OF DEBTORS' NON-DEBTOR GLOBAL AFFILIATES**

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**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On [●], GNC Holdings, Inc. and its affiliated debtors and debtors in possession (collectively, the “*Debtors*”) filed voluntary petitions under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy for the District of Delaware. The Debtors’ non-U.S. affiliates, in addition to certain of the Debtors’ U.S. affiliates, have not filed for chapter 11 protection. The Debtors and their non-Debtor affiliates are listed on Exhibit A annexed hereto. As confirmed in the *Order (A) Enforcing the Protections of Sections 362, 365, 525, and 541(c) of the Bankruptcy Code and (B) Approving Notice to Customers, Suppliers, and Other Stakeholders of the Debtors’ Non-Debtor Global Affiliates*, entered by the Bankruptcy Court on [●], the Debtors’ non-U.S. affiliates, and certain of the Debtors’ U.S. affiliates, are not subject to the chapter 11 process.

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ DRAFT

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jeffrey.mispagel@lw.com

*Proposed Counsel for Debtors and Debtors in Possession*

## Exhibit A

### **I. Chapter 11 Debtors**

1. GNC Holdings, Inc.
2. GNC Parent LLC
3. GNC Corporation
4. General Nutrition Centers, Inc.
5. General Nutrition Corporation
6. General Nutrition Investment Company
7. Lucky Oldco Corporation
8. GNC Funding, Inc.
9. GNC International Holdings, Inc.
10. GNC China Holdco, LLC
11. GNC Headquarters LLC
12. Gustine Sixth Avenue Associates, Ltd.
13. GNC Canada Holdings, Inc.
14. General Nutrition Centres Company
15. GNC Government Services, LLC
16. GNC Puerto Rico Holdings, Inc.
17. GNC Puerto Rico, LLC

### **II. Entities That Are Not Chapter 11 Debtors – Domestic Entities**

1. Nutra Insurance Company
2. GNC Intermediate Holdings, LLC
3. GNC Intellectual Property Holdings, LLC
4. GNC Newco Parent, LLC
5. Nutra Manufacturing, LLC
6. GNC Supply Purchaser, LLC

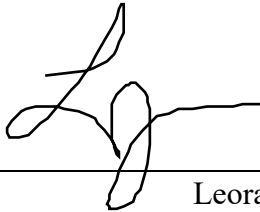
### **III. Entities That Are Not Chapter 11 Debtors – Foreign Entities**

1. GNC Columbia SAS
2. GNC Jersey One Limited
3. GNC Jersey Two Unlimited
4. GNC Live Well Ireland
5. THSD
6. GNC South Africa (Pty) Ltd.
7. GNC Korea Limited
8. GNC Hong Kong Limited
9. GNC (Shanghai) Trading Co., Ltd.
10. GNC China JV Holdco Limited
11. GNC (Shanghai) Food Technology Limited



TAB AA

THIS IS **EXHIBIT “AA”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', positioned above a horizontal line.

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Leora Jackson  
Commissioner for Taking Affidavits



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

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**MOTION OF DEBTORS FOR ORDERS  
(A) AUTHORIZING CONTINUED USE OF EXISTING CASH  
MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING  
BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, (B) AUTHORIZING  
CONTINUATION OF EXISTING DEPOSIT PRACTICES, (C) AUTHORIZING  
CONTINUATION OF INTERCOMPANY TRANSACTIONS, AND (D) GRANTING  
ADMINISTRATIVE CLAIM STATUS TO POSTPETITION INTERCOMPANY CLAIMS**

The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Interim Order*”) and **Exhibit B** (the “*Proposed Final Order*,” and together with the Proposed Interim Order, the “*Proposed Orders*”), respectively: (a) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of the Debtors’ existing bank

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

accounts, checks, and business forms; (b) granting the Debtors a 45-day extension of the time to comply with certain bank account and related guidelines of the Office of the United States Trustee for the District of Delaware to the extent that the requirements are inconsistent with the Debtors' practices under their existing cash management system or other actions described herein; (c) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices; (d) authorizing, but not directing, the Debtors to continue certain ordinary course intercompany transactions; (e) according administrative claim status to postpetition intercompany claims arising from those transactions; and (f) authorizing the Debtors to open and close bank accounts.

### **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "***Local Rules***"), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 345(b), 363(b), 363(c), and 364(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "***Bankruptcy Code***"), rule 6003 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), and Local Rule 2015-2.

## **BACKGROUND**

3. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies’ Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the “*First Day Declaration*”)<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

## **THE DEBTORS’ CASH MANAGEMENT SYSTEM**

### **I. OVERVIEW OF THE CASH MANAGEMENT SYSTEM**

6. In the ordinary course of their businesses, the Debtors maintain a complex cash management system (the “*Cash Management System*”). The Cash Management System is managed by the financial personnel of the Debtors located at their headquarters in Pittsburgh,

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court’s website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors’ proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

Pennsylvania, where they oversee the administration of the various Bank Accounts (as defined below) to effect the collection, disbursement, and movement of cash. The Cash Management System is integral to the Debtors' operations as it enables them to, among other things, (i) accurately forecast and report their cash flow requirements, (ii) monitor and control all of their cash receipts and disbursements, and (iii) track intercompany cash transfers and transactions with other Debtors and their non-Debtor affiliates.

7. The Cash Management System is similar to those used by other companies of similar size and complexity to collect, transfer, and disburse funds in a cost-effective and efficient manner. A diagram depicting the Cash Management System as of the Petition Date is attached hereto as **Attachment 1**.

8. The Cash Management System is comprised of 294 bank accounts (together with any accounts opened after the Petition Date,<sup>4</sup> the ("**Bank Accounts**")<sup>5</sup> held at various financial institutions (the "**Banks**"). The Cash Management System is organized around two concentration accounts, one for the United States business held at JPMorgan Chase Bank, N.A. ("**JPMorgan**") (the "**GNC Concentration Account**"), and one for the Canada business held at Toronto Dominion Bank ("**TD**") (the "**Canada Concentration Account**"), which pool incoming funds from deposit accounts, credit and debit card receipts accounts, and other payments, and disburse those funds into the Debtors' various disbursement and other accounts, on an as-needed basis. The Debtors maintain 27 Bank Accounts with JPMorgan, 11 Bank Accounts with TD, and seven Bank Accounts with PNC Bank N.A. ("**PNC**"), that are used for the Debtors' business operations. The

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<sup>4</sup> For the avoidance of doubt, the Debtors request that any relief granted under the Proposed Orders apply to any additional Bank Accounts later opened by the Debtors and any additional Banks that may maintain them.

<sup>5</sup> Certain of the Bank Accounts, including the GNC Concentration Account and Canada Concentration Account (each as defined herein), are subject to an account control agreements by and among the applicable Debtor and the corresponding Bank.

remaining Bank Accounts are held at numerous Banks as detailed on Attachment 2 attached hereto.

9. The Cash Management System has three main components: (i) collection, (ii) concentration, and (iii) disbursement.

- Collection: The Debtors collect cash from sales at their retail locations and deposit that cash in deposit accounts in the United States (the “*U.S. Store Depository Accounts*”) and Canada (the “*Canada Store Depository Accounts*”, and together with the U.S. Store Depository Accounts, the “*Store Depository Accounts*”). Funds received from credit and debit card purchases are deposited into one of the Bank Accounts designated for credit and debit card purchases, depending on (i) the type of card used and (ii) the location of the store (the “*Card Receipt Accounts*”). In addition, the Debtors maintain accounts that are used to collect credit card and debit card sales from online transactions and other accounts that receive funds via check, wire transfer or certain other methods of payment (collectively, the “*Other Receipt Accounts*”). The Debtors also maintain accounts to collect franchise and wholesale receipts in the United States, Canada and other international locations (collectively, the “*Franchise & Wholesale Receipt Accounts*”).
- Concentration: In the United States, funds from the U.S. Store Depository Accounts are swept, once a week, to an intermediate concentration account (the “*External Concentration Account*” and together with the GNC Concentration Account and the Canada Concentration Account, the “*Concentration Accounts*”) then transferred to the GNC Concentration Account. Other funds received in United States accounts are either transferred directly to the GNC Concentration Account, or to the External Concentration Account and then to the GNC Concentration Account. In Canada, (i) funds from the Canada Store Depository Account at TD and the Canada Card Receipt Accounts are transferred to the Canada Concentration Account, and (ii) funds from the other Canada Store Depository Accounts are swept to the Canada Concentration Account on a weekly basis.
- Disbursement: In the United States, funds are transferred from the GNC Concentration Account to various disbursement accounts (the “*U.S. Disbursement Accounts*”) on an as-needed basis. In Canada, funds are transferred from the Canada Concentration Account to various disbursement accounts (the “*Canada Disbursement Accounts*” and together with the U.S. Disbursement Accounts, the “*Disbursement Accounts*”) on an as-needed basis.

10. In addition to the above, the Cash Management System consists of numerous other types of accounts. A detailed schedule of the Bank Accounts is attached hereto as **Attachment 2**, a summary of which is included in the chart below:

<b>United States Receipts and Disbursements</b>	
<b>Accounts</b>	<b>Account Description</b>
<p><b><u>Concentration Accounts</u></b></p> <p><b>GNC Concentration Account</b> <i>JPMorgan—7116</i></p> <p><b>External Concentration Account</b> <i>JPMorgan—7191</i></p>	<p>Funds from the GNC Concentration Account are used to fund (a) the U.S. Disbursement Accounts, (b) the Cash Dominion Account, (c) certain U.S. Card Receipt Accounts (to cover processing fees, as described below), and (d) the Wires &amp; Miscellaneous Deposits Account. The GNC Concentration Account receives funds from the (a) U.S. Card Receipt Accounts, (b) Domestic Franchise &amp; Wholesale Receipts Account (only after certain funds are swept into the account as described herein), (c) Wires &amp; Miscellaneous Deposits Account, (d) External Concentration Account, and (e) U.S. e-Commerce Proceeds Account. The GNC Concentration Account is subject to an account control agreement.</p> <p>The External Concentration Account receives funds from the (a) U.S. Store Depository Accounts, (b) National Advertising Fund Account, (c) Manual Checks Receipts Account, and (d) miscellaneous e-Commerce sales. The funds received by the External Concentration Account are then transferred to the GNC Concentration Account.</p>
<p><b><u>U.S. Store Depository Accounts</u></b></p>	<p>The Debtors have approximately 241 U.S. Store Depository Accounts that receive funds from cash sales at the Debtors’ store locations. Typically, funds are deposited into the U.S. Store Depository Accounts twice a week. Funds received in the U.S. Store Depository Accounts are swept into the External Concentration Account on a weekly basis.</p>
<p><b><u>U.S. Card Receipt Accounts</u></b></p> <p><i>JPMorgan—7345</i></p> <p><i>JPMorgan—2361</i></p> <p><i>JPMorgan—7337</i></p> <p><i>JPMorgan—6065</i></p> <p><i>JPMorgan—6255</i></p> <p><i>Fifth Third Bank—6287</i></p> <p><i>PNC—5805</i></p>	<p>The U.S. Card Receipts Accounts receive funds from credit and debit card sales in the Debtors’ store locations and online. Funds received in the U.S. Card Receipts Accounts are transferred to the GNC Concentration Account. The U.S. Card Receipts Accounts are “zero balance accounts” that maintain no cash balance at the end of each day.</p> <p>The accounts ending in 6065 and 6225 are also used to pay associated processing fees on account of credit and debit card sales and is funded on an as-needed basis by the GNC Concentration Account.</p>
<p><b><u>U.S. e-Commerce Proceeds Account</u></b></p> <p><i>JPMorgan—8287</i></p>	<p>The U.S. e-Commerce Proceeds Account is used to collect credit card and debit card sales from online transactions. Funds received in the U.S. e-Commerce Proceeds Account are transferred to the GNC Concentration Account. The U.S. e-Commerce Proceeds Account is a “zero balance account” that maintains no cash balance at the end of each day.</p>

<b>United States Receipts and Disbursements</b>	
<b>Accounts</b>	<b>Account Description</b>
<p><b><u>Franchise and Wholesale Receipt Accounts</u></b></p> <p><b>United States Franchise &amp; Wholesale Receipts Account</b> <i>JPMorgan—7361</i></p> <p><b>International Franchise Receipts Account</b> <i>PNC—0548</i></p>	<p>The Domestic Franchise &amp; Wholesale Receipts Account receives funds from the Debtors’ domestic franchising and wholesale sales, and funds from the Debtors’ International Franchise Receipts Account. Funds received in the Domestic Franchise &amp; Wholesale Receipts Account are transferred to the GNC Concentration Account. The Domestic Franchise &amp; Wholesale Receipts account is a “zero balance account” that maintains no cash balance at the end of each day.</p> <p>The International Franchise Receipts Account receives funds from the Debtors’ international franchising sales. The funds are then transferred to the Domestic Franchise &amp; Wholesale Receipts Account. The International Franchise Receipts Account is subject to an account control agreement.</p>
<p><b><u>Other Receipts Accounts</u></b></p> <p><b>Wires &amp; Miscellaneous Deposits Account</b> <i>JPMorgan—7124</i></p> <p><b>Manual Checks Receipts Account</b> <i>PNC—9169</i></p>	<p>The Wires &amp; Miscellaneous Deposits Account receives funds for miscellaneous items purchased by wire transfers or certain other methods of payment and makes miscellaneous payments. Funds received in the Wires &amp; Miscellaneous Deposits Account are transferred to the GNC Concentration Account and is funded by the GNC Concentration Account on an as-needed basis. In addition, the Wires &amp; Miscellaneous Deposits Accounts is used for draws on the Debtors’ credit facility. The Wires &amp; Miscellaneous Deposits Account is a “zero balance account” that maintains no cash balance at the end of each day.</p> <p>The Manual Checks Receipts Account receives funds for miscellaneous payments made by check and sent to the Debtors headquarters. Funds received in the Manual Checks Receipts Account are then transferred to the External Concentration Account. The Manual Checks Receipts account is subject to an account control agreement.</p>
<p><b><u>U.S. Disbursement Accounts</u></b></p> <p><b>U.S. Accounts Payable Account</b> <i>JPMorgan—5537</i></p> <p><b>U.S. Payroll Account</b> <i>JPMorgan—5545</i></p> <p><b>Building Expenses &amp; Rent Account</b> <i>JPMorgan—5123</i></p> <p><b><u>NSF Returns Account</u></b> <i>Florida Capital Bank—3768</i></p>	<p>The U.S. Disbursement Accounts are funded on an as-needed basis from the GNC Concentration Account and are “zero balance accounts” that maintain no cash balance at the end of each day.</p> <p>The U.S. Accounts Payable Account is used to make payments to vendors.</p> <p>The U.S. Payroll Account is used to process employee payroll checks for the Debtors’ employees in U.S. and Puerto Rican stores.</p> <p>The Building Expenses &amp; Rent Account is used to pay building expenses for the Debtors’ store locations and collect rent from subtenants. Any funds received in the account are transferred to the GNC Concentration Account.</p> <p>The NSF Returns Account is used for checks that are returned due to insufficient funds.</p>

<b>Canada Receipts and Disbursements</b>	
<b>Account</b>	<b>Account Description</b>
<p><b><u>Canada Concentration Account</u></b></p> <p><i>TD—1660</i></p>	<p>Funds from the Canada Concentration Account are used to fund the Canada Disbursement Accounts. The Canada Concentration Account receives funds from the (a) Canada Card Receipts Accounts, (b) Canada Wholesale Receipts Account, and (c) the Canada Store Depository Accounts. The Canada Concentration Account is subject to an account control agreement.</p>

<b>Canada Receipts and Disbursements</b>	
<b>Account</b>	<b>Account Description</b>
<p><b><u>Canada Card Receipts Accounts</u></b></p> <p><i>TD—1679</i></p> <p><i>TD—3191</i></p> <p><i>TD—1687</i></p>	<p>The Canada Card Receipts Accounts receive funds from credit card and debit card sales at the Debtors’ store locations in Canada. Funds received by the Canada Card Receipts Accounts are transferred to the Canada Concentration Account. The Canada Card Receipts Accounts are “zero balance accounts” that maintain no cash balance at the end of each day.</p>
<p><b><u>Canada MobilePay Proceeds Account</u></b></p> <p><i>TD—1964</i></p>	<p>The Canada MobilePay Proceeds Account is used to collect sales from alternative payment methods. Funds received in the Canada MobilePay Proceeds Account are transferred to the Canada Concentration Account. The Canada MobilePay Proceeds Account is a “zero balance account” that maintains no cash balance at the end of each day.</p>
<p><b><u>Canada Wholesale Receipts Account</u></b></p> <p><i>TD—0635</i></p>	<p>The Canada Wholesale Receipts Account receives funds from the Debtors’ Canadian franchising and wholesale sales. Funds received by the Canada Wholesale Receipts Account are transferred to the Canada Concentration Account. The Canada Wholesale Receipts Account is a “zero balance account” that maintains no cash balance at the end of each day.</p>
<p><b><u>Canada Store Depository Accounts</u></b></p> <p><i>TD—3620</i></p> <p><i>RBC—3961</i></p> <p><i>CIBC—5718</i></p> <p><i>BMO—2574</i></p> <p><i>Bank of Nova Scotia—5211</i></p>	<p>The Canada Store Depository Accounts receive funds from cash sales from the Debtors’ store locations in Canada. Other than the Canada Store Depository Account ending in 3620, the funds in the Canada Store Depository Accounts are swept on a weekly basis into the Canada Concentration Account.</p> <p>Funds in the Canada Store Depository Account ending in 3620 are transferred to the Canada Concentration Account on a daily basis. This account is a “zero balance account” that maintains no cash balance at the end of each day.</p>
<p><b><u>Canada Disbursement Accounts</u></b></p> <p><b>Canada Payroll Account</b></p> <p><i>TD—6745</i></p> <p><b>Canadian Accounts Payable Accounts</b></p> <p><i>TD—5622</i></p> <p><i>TD—5630</i></p>	<p>The Canada Disbursement Accounts are funded on an as-needed basis from the Canada Concentration Account and are “zero balance accounts” that maintain no cash balance at the end of each day.</p> <p>The Canada Payroll Account is used to process employee payroll for the Debtors’ employees in Canada.</p> <p>The Canada Accounts Payable Accounts are used to make payments to the Debtors’ vendors.</p>



<b>Other Accounts</b>	
<p><b><u>Investment Accounts</u></b></p> <p><i>JPMorgan—4247</i></p> <p><i>JPMorgan—9152<sup>6</sup></i></p> <p><i>PNC—0484</i></p> <p><i>Florida Capital—5361</i></p> <p><i>Huntington National Bank—6842</i></p> <p><i>Merrill Lynch—2905</i></p> <p><i>Wells Fargo—2493</i></p> <p><i>Oppenheimer—2784</i></p>	<p>The Investment Accounts have been used in the past for the purposes of investing excess funds. The Debtors do not have any investment activities related to the Investment Accounts as of the Petition Date.</p>
<p><b><u>Cash Dominion Account</u></b> (Inactive)</p> <p><i>JPMorgan—3326</i></p>	<p>The Cash Dominion Account is currently inactive. It was established in the event cash dominion occurs.</p>
<p><b><u>Intangibles Ownership Account</u></b></p> <p><i>JPMorgan—1130</i></p>	<p>The Intangibles Ownership Account is used for tax purposes.</p>
<p><b><u>Intercompany Loans Account</u></b></p> <p><i>JPMorgan—4178</i></p>	<p>The Intercompany Loans Account is used for tax purposes.</p>
<p><b><u>GNC PAC Account</u></b></p> <p><i>PNC—5014</i></p>	<p>The GNC PAC Account is used to fund the Debtors’ political action committee.</p>
<p><b><u>National Advertising Fund Account</u></b></p> <p><i>PNC—0101</i></p>	<p>The National Advertising Fund Account receives funds from franchisees to support the Debtors’ national advertising. Funds received in the National Advertising Fund Account are then transferred to the External Concentration Account. The National Advertising Fund Account is subject to an account control agreement.</p>
<p><b><u>Debt Accounts</u></b></p> <p><b>Long-Term Debt Account</b></p> <p><i>JPMorgan—7175</i></p> <p><b>Convertible Notes Interest Account</b></p> <p><i>JPMorgan—4194</i></p>	<p>The Long-Term Debt Account is one of the Bank Accounts used to service the Debtors’ debt obligations.</p> <p>The Convertible Notes Interest Account is used to pay interest on the Debtors’ convertible notes.</p>

<sup>6</sup> The account ending 9152, will be used as the Operating Account (as defined in the DIP Term Credit Agreement and the DIP ABL FILO Credit Agreement (each as defined in the *Motion of Debtors for Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(B) and 4001(C); and (III) Granting Related Relief* (the “**DIP Motion**”), filed contemporaneously herewith)).

<u><b>Dividends Account</b></u> <i>JPMorgan—8113</i>	The Dividends Account is used to make monthly dividend payments to non-Debtor affiliate GNC Live Well Ireland.
<u><b>Pure Holding Company Accounts</b></u> <i>JPMorgan—2735<sup>7</sup></i> <i>JPMorgan—7167<sup>8</sup></i>	The Pure Holding Company Accounts are inactive. Historically the Pure Holding Company Accounts were used for miscellaneous activities including moving funds between the Debtors and non-Debtor affiliate entities.
<u><b>Cash Collateral Account</b></u> <i>JPMorgan—3153</i>	The Cash Collateral Account will be used for the cash collateralization of outstanding letters of credit following termination of the Debtors’ asset-based financing facility.
<u><b>China Holdco Account</b></u> (Inactive) <i>JPMorgan—7714</i>	The China Holdco Account is inactive. Historically, the China Holdco Account was used in the creation of the China business entity.
<u><b>International Holdings Account</b></u> (Inactive) <i>JPMorgan—8812</i>	The International Holdings Account is an inactive account of GNC International Holdings, Inc.

## II. INTERCOMPANY TRANSFERS

11. The Debtors conduct various business transactions with each other and their non-Debtor affiliates (the “*Intercompany Transactions*”), including moving cash within the Cash Management System between different Debtors, and from Debtors to their non-Debtor affiliates. As a result, there may be intercompany claims owing among the Debtors or their non-Debtor affiliates at any given time (the “*Intercompany Claims*”), including outstanding prepetition Intercompany Claims. With the help of the Cash Management System and the Debtors’ treasury personnel, the Debtors are able to track and account for each Intercompany Transaction and the resulting Intercompany Claims.

<sup>7</sup> The account ending 2735, will be used as the Professional Fees Escrow (as defined in the DIP Motion).

<sup>8</sup> The account ending 7167, will be used as to hold the Debtors’ Adequate Assurance Deposits (as defined in the Utility Motion) as contemplated by the *Motion of Debtors for Orders (A) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (B) Approving Deposit as Adequate Assurance of Payment, (C) Establishing Procedures for Resolving Requests, and (D) Authorizing Payment of any Prepetition Service Fees by Utility Companies for Additional Assurance of Payment* (the “*Utility Motion*”) filed contemporaneously herewith.

12. In the ordinary course of business, the Debtors engage in various Intercompany Transactions between themselves. For example, certain Debtors purchase inventory on account of other Debtors, which results in Intercompany Claims between such Debtor entities. In addition, the Debtors may send funds from a United States Bank Account to a Canada Bank Account to support their Canadian operations. Additionally, Debtor General Nutrition Centers, Inc. allocates certain corporate overhead expenses and management fees to certain Debtor and non-Debtor affiliates, so that each entity bears its share of such costs. Such costs are allocated based on the revenue of each entity, so that each entity's net income is more accurately represented for tax purposes. Typically, these Intercompany Transaction are not settled in cash but are rather reflected as intercompany payables on the books and records of the applicable entity.

13. There are few Intercompany Transactions between the Debtors and their non-Debtor affiliates, even fewer of which relate to payments of Debtors to non-Debtors. Historically, the Debtors have purchased inventory on behalf of non-Debtor affiliates LWI (as defined below) and THSD, which resulted in LWI and THSD repaying the applicable Debtor entity in cash, and certain Debtors have made payments to non-Debtor affiliate Nutra Insurance Company on account of products liability insurance premiums—however, as of the Petition Date, the Debtors no longer engage in these types of Intercompany Transactions. In addition, certain dividends are made between Debtors and non-Debtors, specifically (a) a periodic dividend payment from non-Debtor GNC Korea Limited to Debtor General Nutrition Corporation and (b) a monthly dividend payment by Debtor GNC Puerto Rico, LLC (“*GNC Puerto Rico*”) to non-Debtor affiliate GNC Live Well Ireland (“*LWI*”)<sup>9</sup> on account of LWI's 30% ownership interest in GNC Puerto Rico.

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<sup>9</sup> LWI is wholly-owned, indirectly, by Debtor GNC International Holdings, Inc.

14. The Intercompany Transactions ensure the efficient and smooth functioning and operations of the Debtors' businesses, as certain of the Debtors are better suited to perform certain functions to the businesses on behalf of the Debtors. If the Debtors were required to cease the Intercompany Transactions, their operations would be disrupted, resulting in possible degradation of value to the detriment of their estates and creditors.

### **III. BANK FEES**

15. The Debtors pay fees to the Banks related to the costs of administering the Bank Accounts (the "*Bank Fees*") on a monthly basis. The Bank Fees total approximately \$125,000 per month. The Debtors estimate that approximately \$62,500 of accrued but unpaid Bank Fees are outstanding as of the Petition Date. By this Motion, the Debtors seek authority to pay outstanding prepetition Bank Fees and to continue to pay the Bank Fees as they become due in the ordinary course.

### **IV. CORPORATE CARDS AND PAYMENT PROCESSORS**

#### **A. Corporate Purchase Cards**

16. As part of the Cash Management System, the Debtors utilize corporate purchasing cards (collectively, the "*Purchase Cards*", and the Debtors' program related to such cards, the "*Purchase Card Program*") issued by Citizens Bank N.A ("*Citizens*"). The Purchase Cards are primarily used for payment to vendors in connection with the shipment of goods.

17. On average, the Debtors pay approximately \$2.5 million per month on account of the Purchase Cards, but the Debtors are in the process of terminating the Purchase Card Program. However, until such time as the Purchase Card Program is terminated, it is important for the Debtors to continue honoring obligations on account of the Purchase Cards because certain of the Debtors' key vendors are paid through the program. Further, Citizens' claims on account of

amounts owed under the Purchase Cards are Cash Management Obligations (as defined in the ABL/FILO Credit Agreement (as defined in the First Day Declaration)), which are secured claims under the ABL/FILO Credit Agreement, and thus paying Citizens now likely only affects the timing of payment.

18. As of the Petition, the Debtors estimate they owe approximately, \$50,000 on account of the Purchase Cards. The Debtors seek authority to pay any prepetition amounts outstanding with respect to the Purchase Cards and to continue the Purchase Card Program subject to any terms and conditions thereof, on a postpetition basis consistent with their past practices.

### **B. Corporate Credit Cards**

19. As part of the Cash Management System, the Debtors also provide certain employees with access to corporate credit cards issued by JPMorgan (the “*Corporate Credit Cards*,” and the Debtors’ program relating to such cards, the “*Corporate Credit Card Program*,” and together with the Purchase Card Program, the “*Corporate Card Programs*”). The Corporate Credit Cards are utilized by the Debtors’ employees to pay for eligible business-related expenses incurred on behalf of the Debtors in the ordinary course of business. The Debtors pay all costs incurred from the use of the Corporate Credit Cards directly to JPMorgan. The Corporate Credit Card Program has a credit limit of \$125,000 for the Corporate Credit Card Program in the United States and \$25,000 for the Corporate Credit Card Program in Canada.<sup>10</sup>

20. On average, the Debtors pay approximately \$144,168 per month on account of the Corporate Credit Cards.<sup>11</sup> It is important for the Debtors to continue honoring obligations on

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<sup>10</sup> The credit limits for the Corporate Credit Card Program have historically been significantly higher. In 2019, the credit limit for the Corporate Credit Card Program in the United States was \$700,000, and the credit limit for the Corporate Credit Card Program in Canada was \$150,000. However, following the COVID-19 pandemic in March 2020, the Corporate Credit Card lines were reduced to reflect current travel and expense levels. Therefore, these credit limits may be increased as needed to permit more typical travel and expense levels.

<sup>11</sup> This amount reflects the monthly average for 2020. In 2019, the average monthly expenditure on account of the

account of the Corporate Credit Cards. Further, JPMorgan's claims on account of amounts owed under the Corporate Credit Cards are Cash Management Obligations (as defined in the ABL/FILO Credit Agreement), which are secured claims under the ABL/FILO Credit Agreement, and thus paying JPMorgan now likely only affects the timing of payment.

21. As of the Petition, the Debtors estimate they owe approximately \$70,000 on account of the Corporate Credit Cards. The Debtors seek authority to pay any prepetition amounts outstanding with respect to the Corporate Credit Cards and to continue the Corporate Credit Card Program, subject to any terms and conditions thereof, on a postpetition basis consistent with their past practices.

### **C. Payment Processing Providers**

22. In addition to cash, the Debtors accept other non-cash methods of payments from customers at points of sale. To process non-cash payments, the Debtors are party to certain agreements with payment processors (the "*Payment Processing Providers*" and the program related to such non-cash payment processing, the "*Payment Processing Program*"). Under the Payment Processing Program, the Debtors generally pay the fees owing to the Payment Processing Providers once a month. As of the Petition Date, the Debtors estimate that they owe approximately \$800,000 to the Payment Processing Providers on account of the Payment Processing Program.

23. The Debtors' continued acceptance of non-cash payments is essential to the operation of the Debtors' business. Most of the Debtors' sales occur by non-cash payments. Thus, requiring all purchases to be made in cash would have a severely negative effect on the Debtors' cash flow and ongoing operations. To avoid disrupting these critical payment processing services, the Debtors are seeking authority to honor and continue the Payment Processing Program in the

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Corporate Credit Cards was \$720,843.

ordinary course and to pay the Payment Processing Providers for all fees and charges owed on account of their payment processing services, through any means permitted under the Payment Processing Program, including recoupment and setoff, whether arising prepetition or postpetition, in a manner consistent with past practices.

## **V. EXISTING BUSINESS FORMS**

24. In the ordinary course, the Debtors use checks, invoices, letterhead, purchase orders, and other forms and correspondence (the “*Business Forms*”). The Debtors’ existing Business Forms are not marked with any designation referencing their status as debtors in possession. To minimize expense and avoid potential operational issues with their employees, customers, vendors, and other parties during this critical time, the Debtors seek authority to continue to use the existing Business Forms, notwithstanding any applicable U.S. Trustee Guidelines (as defined below), but subject to Local Rule 2015-2(a).

25. The Debtors also request that the Banks be authorized and directed to continue to administer the Bank Accounts as they were maintained and administered prepetition, without interruption and in the ordinary course, and to honor all representation from the Debtors as to which checks should be honored or dishonored. The Banks also should be authorized and directed to pay all checks, drafts, wires, and Automated Clearing House payments (“*ACH Payments*”) drawn from the Bank Accounts for payment of any claims authorized by the Debtors arising on or after the Petition Date so long as those accounts contain sufficient funds. To the extent that the Debtors have directed that any prepetition checks be dishonored, they reserve the right to issue replacement checks to pay the amounts related to any dishonored checks, consistent with any orders of this Court.

## **VI. COMPLIANCE WITH THE BANKRUPTCY CODE AND U.S. TRUSTEE GUIDELINES**

### **A. Compliance with U.S. Trustee Guidelines as to Authorized Depositories**

26. The U.S. Trustee has established certain operating guidelines (the “*U.S. Trustee Guidelines*”) for debtors in possession. The U.S. Trustee Guidelines require Chapter 11 debtors to, among other things, deposit all estate funds into an account with an authorized depository that agrees to comply with the requirements of the Office of the U.S. Trustee. Of the 294 Bank Accounts, 104 of them are held at Banks that are designated as authorized depositories under the U.S. Trustee Guidelines, including the Concentration Accounts which are held at JPMorgan and TD, each of which is an authorized depository. In addition, the Card Receipts Accounts, the Disbursement Accounts, the Franchise & Wholesale Receipts Accounts, the Other Receipt Accounts, and certain of the Investment Accounts are held at authorized depositories. The vast majority of the 190 Bank Accounts at Banks that are not authorized depositories are Store Depository Accounts, which as described herein, receive deposits from stores that are regularly swept into one of the Concentration Accounts. Further, the Banks at which these Store Depository Accounts are held are, in most cases, are the only bank located near the respective store, and if the stores are not permitted to use such Banks, it would create additional operational and administrative burdens and expenses that would harm the Debtors’ business and be detrimental to their estates. In addition, with few exceptions, the Banks that are not authorized depositories, are insured by the Federal Deposit Insurance Corporation (“*FDIC*”), the Canadian Deposit Insurance Corporation (“*CDIC*”), or the National Credit Union Administration (“*NCUA*”).

27. Of the remaining Bank Accounts that are held at Banks that are not authorized depositories, four are Investment Accounts and one is the NFS Returns Account. As noted above,



no additional funds will be deposited into the Investment Accounts during the pendency of these Chapter 11 Cases.

28. Nevertheless, where the Debtors hold one or more accounts at a Bank that is not an authorized depository, the Debtors will use their good faith efforts to cause such Bank to execute a Uniform Depository Agreement in a form prescribed by the Office of the U.S. Trustee within forty-five (45) days of the date of entry of an Interim Order or a Final Order granting this Motion.

### **BASIS FOR RELIEF**

#### **I. THE BANKRUPTCY CODE PERMITS THE DEBTORS TO CONTINUE TO USE THE CASH MANAGEMENT SYSTEM AND THE BANK ACCOUNTS.**

29. The Debtors' continued use of the Cash Management System is permitted under the Bankruptcy Code. Specifically, section 363(c)(1) of the Bankruptcy Code authorizes a debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The authority granted by section 363(c)(1) of the Bankruptcy Code extends to a debtor in possession's continued use of its customary cash management system and, thus, supports the relief requested herein. *See, e.g., Charter Co. v. Prudential Ins. Co. Am. (In re Charter Co.)*, 778 F.2d 617, 621 (11th Cir. 1985) (indicating that an order authorizing the debtor to employ a cash management system that was "usual and customary in the past" was "entirely consistent" with Section 363(c)(1)). Moreover, section 364(a) of the Bankruptcy Code authorizes a debtor in possession to obtain unsecured credit and incur unsecured debt in the ordinary course of business without notice and a hearing. *See* 11 U.S.C. § 364(a).

30. Further, section 105(a) of the Bankruptcy Code also authorizes this Court to permit the Debtors to continue to use the Cash Management System, including maintenance of their existing Bank Accounts. Section 105(a) vests in this Court the power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]."

11 U.S.C. § 105(a). One court, in another context, has recognized that a centralized cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part* and *rev’d in part*, 997 F.2d 1039 (3d Cir. 1993).

31. Numerous courts, including in this district, in other large chapter 11 cases have authorized debtors to continue to use their existing cash management systems. *See, e.g., In re Emerge Energy Services LP* Case No. 19-11563 (KBO) (Bankr. D. Del. July 15, 2019); *In re Samuels Jewelers, Inc.*, Case No. 18-11818 (KJC) (Bankr. D. Del. Aug. 8, 2018 and Sept. 13, 2018) (granting interim and final relief); *In re Claire’s Stores, Inc.*, Case No. 18-10584 (MFW) (Bankr. D. Del. Mar. 20, 2018 and Apr. 17, 2018) (granting interim and final relief); *In re Rentech WP U.S. Inc.*, Case No. 17-12958 (CSS) (Bankr. D. Del. Dec. 20, 2017 and Jan. 17, 2018) (granting interim and final relief); *In re Aerogroup Int’l, Inc.*, Case No. 17-11962 (KJC) (Bankr. D. Del. Sept. 18, 2017 and Oct. 16, 2017) (granting interim and final relief); *In re True Religion Apparel, Inc.*, Case No. 17-11460 (LSS) (Bankr. D. Del. July 6, 2017 and July 31, 2017) (granting interim and final relief); *In re TK Holdings Inc.*, Case No. 17-11375 (BLS) (Bankr. D. Del. June 27, 2016, July 26, 2017, Aug. 9, 2017, Aug. 30, 2017, and Sept. 12, 2017) (granting various interim orders and final relief).

32. The Debtors believe that the Cash Management System is an ordinary course, customary, and essential business practice, the continued use of which is essential to the Debtors’ business operations during these Chapter 11 Cases and their goal of maximizing value for the benefit of all parties in interest. To require the Debtors to adopt a new cash management system at this early and critical stage would be expensive, impose needless administrative burdens, and

cause undue disruption. Any disruption in the collection of funds as currently implemented would adversely (and perhaps irreparably) affect the Debtors' ability to maximize estate value for the benefit of the Debtors' creditors and other parties in interest. Thus, maintaining the existing Cash Management System without disruption is both essential to the Debtors' ongoing operations and restructuring and in the best interests of the Debtors, their estates, and all interested parties. Accordingly, the Debtors request that they be allowed to maintain and continue to use the Cash Management System, including maintenance of their existing Bank Accounts.

## **II. THE DEBTORS SHOULD GRANTED AN EXTENSION OF TIME TO COMPLY WITH CERTAIN REQUIREMENTS OF THE U.S. TRUSTEE GUIDELINES.**

33. The Debtors further request, pursuant to sections 105(a) and 363 of the Bankruptcy Code, that this Court grant an extension of time to comply with certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with (a) the Debtors' existing practices under the Cash Management System or (b) any action taken by the Debtors in accordance with any order granting this Motion or any other order entered in these Chapter 11 Cases.

34. The U.S. Trustee Guidelines are designed to demarcate prepetition transactions and operations from postpetition transactions and operations, and to prevent the inadvertent postpetition payment of prepetition claims. In particular, the U.S. Trustee Guidelines would require the Debtors to close the Bank Accounts and open new "debtor in possession" accounts and establish particular accounts for tax payments and cash collateral.

35. The Debtors submit that they are able to work with the Banks to ensure that this goal of separation between the prepetition and postpetition periods is observed and that enforcement of certain of these U.S. Trustee Guidelines would disrupt the Debtors' operations and impose a financial burden on the Debtors' estates. In light of the scope and complexity of the Cash

Management System, including hundreds of Bank Accounts maintained at numerous Banks, it would be onerous for the Debtors to meet the U.S. Trustee Guidelines requiring them to close all existing Bank Accounts and open new debtor in possession accounts. And doing so would also risk material operational problems, as the Debtors' business partners and own personnel transition to a wholly-new system.

36. Further, it would be unnecessary and inefficient to require the Debtors to abide by the U.S. Trustee Guidelines to establish specific debtor in possession accounts for tax payments (including payroll taxes) and to deposit to the accounts sufficient funds to pay any tax liability (when incurred) associated with the Debtors' payroll and other tax obligations. The Debtors can pay their tax obligations most efficiently from their existing accounts in accordance with their existing practices, and the U.S. Trustee will have wide latitude to monitor the flow of funds into and out of the accounts. The creation of new debtor in possession accounts designated solely for tax obligations would be unnecessarily burdensome.

37. Additionally, the U.S. Trustee Guidelines mandate that chapter 11 debtors, must be maintained with financial institutions whose deposits are insured by the FDIC. The vast majority of the Debtors' Banks in the United States are insured by the FDIC and NCUA, and the Debtors' Banks in Canada are insured by the CDIC.

38. In addition, it is unnecessary to require the Debtors to abide by the U.S. Trustee Guidelines requiring specific debtor in possession accounts for cash collateral. As set forth in the *Debtors' Motion of Debtors for Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties, and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and*

4001(c); and (III) *Grant Related Relief*, the Debtors have provided safeguards to ensure that parties with security interests in the Debtors' cash are adequately protected and that those parties have been provided with notice of the proposed use of cash collateral.

**III. THE DEBTORS WILL COMPLY WITH LOCAL RULE 2015-2(A) AND ANY U.S. TRUSTEE GUIDELINES REQUIRING IMMEDIATE REPLACEMENT OF THE BUSINESS FORMS SHOULD BE WAIVED.**

39. The Debtors request that the Court waive their compliance with any U.S. Trustee Guidelines that would require them to replace their Business Forms immediately, subject to the Debtors' compliance with Local Rule 2015-2(a). Local Rule 2015-2(a) provides:

Where the debtor uses pre-printed checks, upon motion of the debtor, the Court may, without notice and hearing, permit the debtor to use its existing checks without the designation "Debtor-in-Possession" and use its existing bank accounts. However, once the debtor's existing checks have been used, the debtor shall, when reordering checks, require the designation "Debtor-in-Possession" and the corresponding bankruptcy number on all such checks.

Del. Bankr. L.R. 2015-2(a).

40. To minimize expenses to their estates, the Debtors seek authorization to continue using all checks substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' status as debtors in possession. In the event the Debtors generate new checks during the pendency of these Chapter 11 Cases other than from their existing stock of checks, those checks will include a legend referring to the Debtors as "Debtor in Possession." The Debtors also seek authority to use all other Business Forms (including, without limitation, letterhead, purchase orders, and invoices) without reference to the Debtors' status as debtors in possession.<sup>12</sup>

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<sup>12</sup> Although the operating guidelines established for debtors in possession by the U.S. Trustee would require the Debtors to obtain and use new checks bearing the "Debtor in Possession" designation, the Debtors do not believe that these guidelines impose any limitation on the Debtors' other correspondence and business forms.

41. Changing the Debtors' existing checks, correspondence, and other Business Forms would be expensive, unnecessary, and burdensome to the Debtors' estates. These changes would disrupt the Debtors' business operations, may create friction with their vendors and customers, and would not confer any benefit upon parties that deal with the Debtors. For these reasons, the Debtors request that they be authorized to use their existing check stock, correspondence, and other Business Forms without being required to place the label "Debtor in Possession" on any of the foregoing

42. For the reasons mentioned herein, the Debtors submit that the limited waivers of related U.S. Trustee Guidelines are appropriate.

**IV. THIS COURT HAS THE AUTHORITY TO PERMIT THE DEBTORS TO CONTINUE THEIR DEPOSIT PRACTICES.**

43. The Debtors should be authorized to continue to deposit and maintain their funds in the Bank Accounts in accordance with existing practices under the Cash Management System, subject to any reasonable changes the Debtors may implement to the Cash Management System, and the deposit requirements of section 345(b) of the Bankruptcy Code, and to the extent that the requirements are inconsistent with these practices, the Debtors request an initial 45-day period to come into compliance with their obligations under section 345(b) of the Bankruptcy Code or otherwise reach agreement with the U.S. Trustee, without prejudice to the Debtors' right to seek an extension of such period. Section 345(a) of the Bankruptcy Code authorizes a debtor in possession to make deposits of estate money in a manner "as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit." 11 U.S.C. § 345(a). If a deposit is not "insured or guaranteed by the United States or by a department, agency, or

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Nevertheless, out of an abundance of caution, the Debtors seek explicit authority to continue using their existing correspondence and business forms without reference to the Debtors' status as debtors in possession.

instrumentality of the United States or backed by the full faith and credit of the United States,” section 345(b) provides that the debtor must require that the entity with which the deposit is made obtain a bond in favor of the United States that is secured by the undertaking of an adequate corporate surety. *See* 11 U.S.C. § 345(b).

44. This Court has discretion to grant the extension of time to come into compliance with the requirements imposed by section 345(b) of the Bankruptcy Code “for cause.” 11 U.S.C. § 345(b). In *In re Service Merchandise Co., Inc.*, the court indicated that the existence of “cause” should be determined based upon the totality of the circumstances taking account of factors such as: (a) the sophistication of the debtor’s business; (b) the size of the debtor’s business; (c) the amount of investments involved; (d) the ratings of the financial institutions at which the debtor’s funds are held; (e) the complexity of the case; (f) the safeguards in place within the debtor’s own business to ensure the safety of funds; (g) the debtor’s ability to reorganize in the face of a failure of one or more of the financial institutions; (h) the benefit to the debtor; (i) the harm, if any, to the estate; and (j) the reasonableness of the debtor’s request for relief in light of the overall circumstances of the case. 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

45. The Debtors submit that the circumstances of these Chapter 11 Cases warrant an extension of time to comply with the requirements of section 345(b) of the Bankruptcy Code to the extent the Cash Management System and their deposit practices do not satisfy them. The Debtors are a large, sophisticated company with a complex Cash Management System that utilizes many of Bank Accounts on a daily basis. The Bank Accounts are maintained with stable financial institutions, the vast majority of which are insured by the FDIC, NCUA or CDIC—and, thus, the Debtors’ funds are safe. Furthermore, in light of the regular deposits to, and sweeps of, the various Bank Accounts and the “as needed” funding structure of the overall system, it would be

especially disruptive, unnecessary, and wasteful to require the posting of a bond to the extent that the balances of the Bank Accounts exceed FDIC, NCUA or CDIC insurance limits at a given time.

46. This Court and other courts have granted similar requests. *See, e.g., In re Paragon Offshore PLC*, No. 16-10383 (CSS) (Bankr. D. Del. April 6, 2016); *In re Verso Corporation*, No. 16-10163 (KG) (Bankr. D. Del. Feb. 23, 2016); *In re Samson Resources Corporation*, No. 15-11934 (CSS) (Bankr. D. Del. Sept. 22, 2015).

47. For the foregoing reasons, the Court should authorize the Debtors to continue to deposit funds in the Bank Accounts and to the extent that the requirements are inconsistent with these practices, the Debtors request an initial 45-day period to come into compliance with their obligations under section 345(b) of the Bankruptcy Code or otherwise reach agreement with the U.S. Trustee, without prejudice to the Debtors' right to seek an extension of such period.

**VII. THE COURT SHOULD AUTHORIZE THE DEBTORS TO CONTINUE THE CORPORATE CARD PROGRAMS AND PAY ANY PREPETITION AMOUNTS RELATED THERETO.**

48. As part of the Cash Management System, the Debtors request authority to continue the Corporate Credit Card Program and, until such time as it is terminated, the Purchase Card Program, in the ordinary course of business, as well as pay any prepetition amounts related thereto. Historically, the Debtors have used the Corporate Card Programs to directly fund necessary business expenses and purchases.

49. Section 363(b) of the Bankruptcy Code permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so. *See In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (noting that section 363(b) of the Bankruptcy Code provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). In addition, under section 1107(a) of



the Bankruptcy Code, a debtor in possession has, among other things, the “implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also In re Equalnet Commc 'ns Corp.*, 258 B.R. 368, 369 (Bankr. S.D. Tex. 2000) (noting that courts authorize debtors to pay, outside of a plan, prepetition claims from “business transactions which are at once individually minute but collectively immense and critical to the survival of the business of the debtor.”).

50. Additionally, under section 105(a) of the Bankruptcy Code, “the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code.” 11 U.S.C. § 105(a); *In re CoServ*, 273 B.R. at 497 (finding that sections 105 and 1107 of the Bankruptcy Code provide the authority for a debtor in possession to pay prepetition claims); *In re Mirant Corp.*, 296 B.R. 427, 429 (Bankr. N.D. Tex. 2003) (noting that non-payment of prepetition claims may seriously damage a debtor’s business).

51. Section 363(c)(1) of the Bankruptcy Code also authorizes the debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The Debtors engage in the Corporate Card Programs on a regular basis, such that payment of the Credit Cards and Purchase Cards are ordinary course transactions within the meaning of section 363(c)(1) of the Bankruptcy Code and do not require court approval. However, the Debtors are seeking this relief out of an abundance of caution.

52. The Corporate Card Programs provide the Debtors with a streamlined system for funding necessary business expenses and vendor payments and contribute to the efficiency of the Debtors’ business operations. If the Corporate Credit Card Program were discontinued, employees may have to carry the costs of incurred expenses, and if the Purchase Card Program were

discontinued (prior to its planned termination), payments to vendors may be delayed or disrupted. In either case, the overall operation of the Debtors' business would suffer. Therefore, the Debtors request that the Court authorize the Debtors to continue the Corporate Card Programs in the ordinary course of business, subject to the terms and conditions thereof, as applicable.

**V. THE BANKRUPTCY CODE PERMITS THE DEBTORS TO CONTINUE TO ENGAGE IN THE INTERCOMPANY TRANSACTIONS.**

53. The Debtors should be authorized to pay or otherwise settle prepetition Intercompany Claims and to engage in Intercompany Transactions postpetition in the ordinary course of business. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor "may use, sell, or lease, other than in the ordinary course of business, property of the estate" after notice and a hearing. 11 U.S.C. § 363(b)(1). Generally, the debtor is only required to "show that a sound business purpose" justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring "good business reason" for use under section 363(b) of the Bankruptcy Code). This standard generally bars other parties from second-guessing the debtor's business judgment if the debtor has shown that a use of property will benefit the debtor's estate. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct."); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.").

54. The Debtors believe that their business judgment to pay or settle prepetition Intercompany Transactions is sound because the Intercompany Transactions reduce the administrative costs they incur, facilitate the satisfaction of the Debtors' obligations, and are

integral to their daily operations. Failing to honor prepetition Intercompany Claims may result in disruptions to certain Debtors' operations and, as a result, deteriorating business relationships and estate value. Thus, the Debtors submit that continuation of the Intercompany Transactions is in the best interests of the Debtors' estates and their creditors.

55. Furthermore, section 363(c) of the Bankruptcy Code provides that a debtor in possession may "enter into transactions" in the ordinary course without notice or a hearing. *See* 11 U.S.C. § 363(c). In evaluating whether a transaction is in the ordinary course, a court must determine whether it is "of the sort commonly undertaken by companies in [the debtor's] industry" and whether it subjects a hypothetical creditor "to economic risk of a nature different from those he accepted when he decided to extend credit." *In re Roth Am., Inc.*, 975 F.2d 949, 952–53 (3d Cir. 1992).

56. The Debtors submit that continuing to engage in Intercompany Transactions is in the ordinary course of their businesses. As noted above, the Debtors have done so historically, and it is typical for corporate groups like the Debtors' to engage in Intercompany Transactions, and cash movements in particular, among the entities that compose them. In the event that consummating Intercompany Transactions is not in the ordinary course, however, the Debtors should be authorized to do so as a sound exercise of their business judgment. The Intercompany Transactions are used precisely because they are administratively beneficial to the Debtors' operations and save the Debtors money. The benefits will accrue appropriately to the Debtors' estates and their creditors, particularly as a result of the administrative claim status the Debtors request be accorded to the Intercompany Claims (as discussed below).

57. Courts frequently have authorized debtors to continue their prepetition intercompany practices after commencement of chapter 11 cases. *See, e.g., In re Paragon Offshore*

*PLC*, No. 16-10383 (CSS) (Bankr. D. Del. April 6, 2016); *In re Verso Corp.*, No. 16-10163 (KG) (Bankr. D. Del. Feb. 23, 2016); *In re Samson Res. Corp.*, No. 15-11934 (CSS) (Bankr. D. Del. Sept. 22, 2015).

58. Further, postpetition Intercompany Claims should be accorded administrative claim status.<sup>13</sup> If postpetition Intercompany Claims are accorded administrative claim status, then each individual Debtor on whose behalf another Debtor has utilized funds or incurred expenses will continue to bear ultimate repayment responsibility, thereby protecting the interests of each individual Debtor's creditors. Accordingly, the Debtors submit that the Court should grant administrative claim status to postpetition Intercompany Claims.

59. In addition, this Court has granted administrative claim status to postpetition Intercompany Claims in other large chapter 11 cases. *See, e.g., In re Paragon Offshore PLC*, No. 16-10383 (CSS) (Bankr. D. Del. April 6, 2016); *In re Verso Corp.*, No. 16-10163 (KG) (Bankr. D. Del. Feb. 23, 2016); *In re Samson Res. Corp.*, No. 15-11934 (CSS) (Bankr. D. Del. Sept. 22, 2015).

60. Accordingly, the Debtors respectfully submit for the reasons above that they should be authorized to continue their prepetition intercompany practices and that the postpetition Intercompany Claims, as applicable, should be granted administrative claim status.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND  
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

61. Certain aspects of the relief requested herein are subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant this relief on an expedited basis if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth

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<sup>13</sup> Nothing herein constitutes a request to validate the nature or amount of any Intercompany Transaction or Intercompany Claim, if any, whether arising prepetition or postpetition.

herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

62. Additionally, with respect to any aspect of the relief sought herein that constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

#### **RESERVATION OF RIGHTS**

63. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be

construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

### **NOTICE**

64. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; (p) the Banks; and (q) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Orders, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP

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*Proposed Counsel for Debtors and Debtors in Possession*

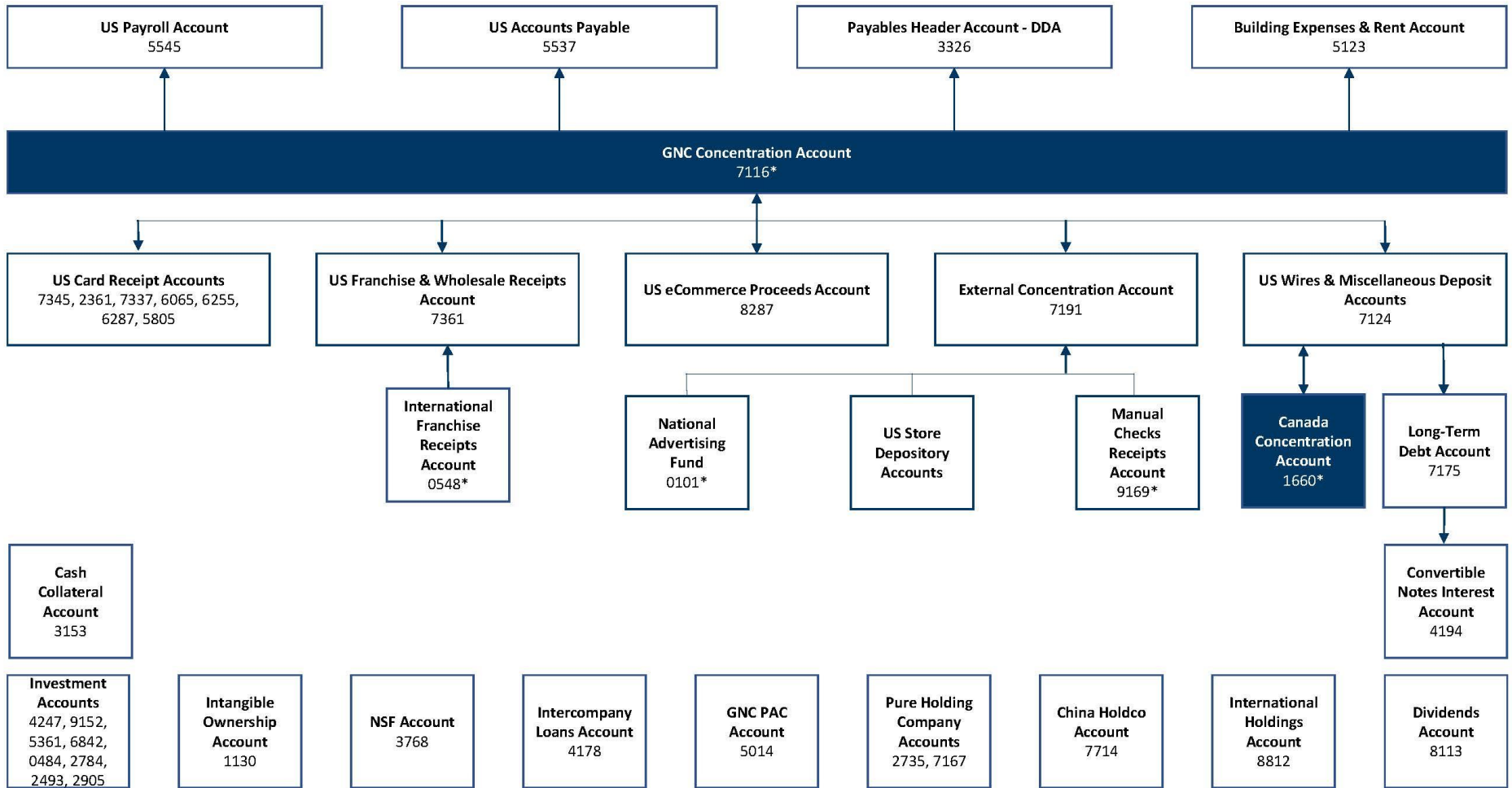
**ATTACHMENT 1**

**Schematic**

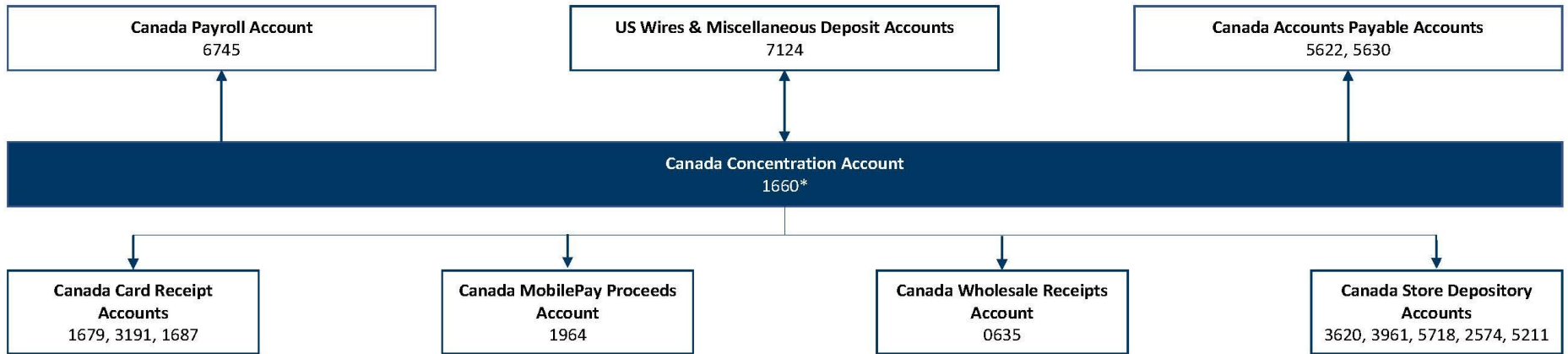


### GNC US Cash Management System

\* Subject to Control Agreements



**GNC Canada Cash Management System**  
\* Subject to Control Agreements



## ATTACHMENT 2

### Bank Accounts

<u>Debtor Account Holder</u>	<u>Bank Name</u>	<u>Account Title/Purpose</u>	<u>Account Number</u>
General Nutrition Centers Inc.	Oppenheimer & Co. Inc.	Investment Account	2784
General Nutrition Centers Inc.	PNC Bank	Investment Account	0484
General Nutrition Centers Inc.	Wells Fargo Bank	Investment Account	2493
General Nutrition Centers Inc.	PNC Bank	GNC PAC Account	5014
General Nutrition Centers, Inc.	JPMorgan Chase Bank	Long Term Debt Account	7175
General Nutrition Centers, Inc.	JPMorgan Chase Bank	Investment Account	9152
General Nutrition Centers, Inc.	Florida Capital Bank	Investment Account	5361
General Nutrition Centers, Inc.	Huntington National Bank	Investment Account	6842
General Nutrition Centers, Inc.	Merrill Lynch	Investment Account	2905
General Nutrition Centres Company	TD Bank	Canada Payroll Account	6745
General Nutrition Centres Company	TD Bank	Canada Concentration Account	1660
General Nutrition Centres Company	TD Bank	Canada Card Receipts Account	3191
General Nutrition Centres Company	TD Bank	Canada Card Receipts Account	1679
General Nutrition Centres Company	TD Bank	Canada Card Receipts Account	1687
General Nutrition Centres Company	TD Bank	Canada MobilePay Proceeds Account	1964
General Nutrition Centres Company	TD Bank	Canada Accounts Payable Account	5622
General Nutrition Centres Company	TD Bank	Canada Accounts Payable Account	5630
General Nutrition Centres Company	TD Bank	Canada Wholesale Receipts Account	0635
General Nutrition Centres Company	Bank of Montreal	Canada Store Depository	2574
General Nutrition Centres Company	Bank of Nova Scotia	Canada Store Depository	5211
General Nutrition Centres Company	CIBC Bank	Canada Store Depository	5718
General Nutrition Centres Company	Royal Bank of Canada	Canada Store Depository	3961
General Nutrition Centres	Toronto Dominion	Canada Store Depository	3620

<u>Debtor Account Holder</u>	<u>Bank Name</u>	<u>Account Title/Purpose</u>	<u>Account Number</u>
Company	Bank (TD Bank, N.A.)		
General Nutrition Corporation	JPMorgan Chase Bank	GNC Concentration Account	7116
General Nutrition Corporation	JPMorgan Chase Bank	Wires & Miscellaneous Deposits Account	7124
General Nutrition Corporation	JPMorgan Chase Bank	US Accounts Payable Account	5537
General Nutrition Corporation	JPMorgan Chase Bank	U.S. Payroll Account	5545
General Nutrition Corporation	JPMorgan Chase Bank	External Concentration Account	7191
General Nutrition Corporation	JPMorgan Chase Bank	US Card Receipt Account	7337
General Nutrition Corporation	JPMorgan Chase Bank	US Card Receipt Account	7345
General Nutrition Corporation	JPMorgan Chase Bank	US Card Receipt Account	6065
General Nutrition Corporation	JPMorgan Chase Bank	US Card Receipt Account	6255
General Nutrition Corporation	JPMorgan Chase Bank	US e-Commerce Proceeds Account	8287
General Nutrition Corporation	JPMorgan Chase Bank	United States Franchise & Wholesale Receipts Account	7361
General Nutrition Corporation	JPMorgan Chase Bank	Cash Dominion Account	3326
General Nutrition Corporation	Fifth Third Bank	US Card Receipt Account	6287
General Nutrition Corporation	Florida Capital Bank	NSF Returns Account	3768
General Nutrition Corporation	PNC Bank	International Franchise Receipts Account	0548
General Nutrition Corporation	PNC Bank	Manual Checks Receipts Account	9169
General Nutrition Corporation	PNC Bank	US Card Receipt Account	5805
General Nutrition Corporation	PNC Bank	National Advertising Fund Account	0101
General Nutrition Corporation	First Financial Bank (IN)	U.S. Store Depository Account	2718
General Nutrition Corporation	Mutual Bank	U.S. Store Depository Account	2478
General Nutrition Corporation	Horizon Bank	U.S. Store Depository Account	2073
General Nutrition Corporation	Simmons Bank	U.S. Store Depository Account	9902
General Nutrition Corporation	First Federal Savings Bank (IN)	U.S. Store Depository Account	6460
General Nutrition Corporation	First National Bank (TX)	U.S. Store Depository Account	4774
General Nutrition Corporation	Synovus Bank	U.S. Store Depository Account	3035
General Nutrition Corporation	Bank Champaign	U.S. Store Depository Account	8563
General Nutrition Corporation	Bank Midwest	U.S. Store Depository Account	7580
General Nutrition Corporation	Midlands State Bank	U.S. Store Depository Account	4358
General Nutrition Corporation	First National Bank of Lake Jackson (TX)	U.S. Store Depository Account	0294
General Nutrition Corporation	Elmira Savings Bank	U.S. Store Depository Account	5352
General Nutrition Corporation	F&M Bank	U.S. Store Depository Account	8794

<u>Debtor Account Holder</u>	<u>Bank Name</u>	<u>Account Title/Purpose</u>	<u>Account Number</u>
General Nutrition Corporation	First Southern Bank	U.S. Store Depository Account	9510
General Nutrition Corporation	Texas Bank & Trust	U.S. Store Depository Account	3164
General Nutrition Corporation	Red River Federal Credit Union	U.S. Store Depository Account	8060
General Nutrition Corporation	Savings Institute Bank & Trust	U.S. Store Depository Account	1925
General Nutrition Corporation	Hometown National Bank	U.S. Store Depository Account	9101
General Nutrition Corporation	First Financial Bank	U.S. Store Depository Account	9096
General Nutrition Corporation	The Bank & Trust (SSB)	U.S. Store Depository Account	6130
General Nutrition Corporation	Chemung Canal Trust Company	U.S. Store Depository Account	0718
General Nutrition Corporation	City National Bank	U.S. Store Depository Account	1722
General Nutrition Corporation	Dubuque Bank & Trust	U.S. Store Depository Account	5288
General Nutrition Corporation	Hyde Park Bank & Trust Company	U.S. Store Depository Account	4956
General Nutrition Corporation	Inter Bank	U.S. Store Depository Account	12854
General Nutrition Corporation	First Columbia Bank & Trust Company	U.S. Store Depository Account	4085
General Nutrition Corporation	First Midwest Bank	U.S. Store Depository Account	6700
General Nutrition Corporation	First United Bank (TX)	U.S. Store Depository Account	1701
General Nutrition Corporation	Sunflower Bank	U.S. Store Depository Account	1723
General Nutrition Corporation	Citizens State Bank (GA)	U.S. Store Depository Account	3950
General Nutrition Corporation	Midlands State Bank	U.S. Store Depository Account	0063
General Nutrition Corporation	Citizens National Bank	U.S. Store Depository Account	2963
General Nutrition Corporation	Security Service Federal Credit Union	U.S. Store Depository Account	2071
General Nutrition Corporation	Citizens Bank (OR)	U.S. Store Depository Account	1660
General Nutrition Corporation	Mechanics Bank	U.S. Store Depository Account	1192
General Nutrition Corporation	Bremer Bank	U.S. Store Depository Account	8296
General Nutrition Corporation	National Exchange Bank & Trust	U.S. Store Depository Account	7600
General Nutrition Corporation	Citizens National Bank (KY)	U.S. Store Depository Account	1041
General Nutrition Corporation	CenterState Bank	U.S. Store Depository Account	6886
General Nutrition Corporation	UnitedOne Credit Union	U.S. Store Depository Account	8938
General Nutrition Corporation	UnitedOne Credit Union	U.S. Store Depository Account	8938
General Nutrition Corporation	Atlantic Union Bank	U.S. Store Depository Account	6985

<u>Debtor Account Holder</u>	<u>Bank Name</u>	<u>Account Title/Purpose</u>	<u>Account Number</u>
General Nutrition Corporation	First Security Bank (MS)	U.S. Store Depository Account	6492
General Nutrition Corporation	First National Bank & Trust Company (WI)	U.S. Store Depository Account	4091
General Nutrition Corporation	The Peoples Bank (GA)	U.S. Store Depository Account	6086
General Nutrition Corporation	CorTrust Bank	U.S. Store Depository Account	6801
General Nutrition Corporation	Crossroads Bank (IL)	U.S. Store Depository Account	6360
General Nutrition Corporation	First National Bank of Ottawa	U.S. Store Depository Account	8698
General Nutrition Corporation	State Bank of the Lakes	U.S. Store Depository Account	6269
General Nutrition Corporation	Westfield Bank	U.S. Store Depository Account	6616
General Nutrition Corporation	Faners National Bank (KY)	U.S. Store Depository Account	5991
General Nutrition Corporation	First National Bank & Trust Co of Ardmore (OK)	U.S. Store Depository Account	6706
General Nutrition Corporation	Bank of Montgomery (LA)	U.S. Store Depository Account	4287
General Nutrition Corporation	Coulee State Bank	U.S. Store Depository Account	3165
General Nutrition Corporation	TrustCo Bank	U.S. Store Depository Account	6289
General Nutrition Corporation	BankNorth	U.S. Store Depository Account	1439
General Nutrition Corporation	Simmons First Bank	U.S. Store Depository Account	6958
General Nutrition Corporation	First Mid-Illinois Bank & Trust	U.S. Store Depository Account	0116
General Nutrition Corporation	Vectra Bank Colorado	U.S. Store Depository Account	2264
General Nutrition Corporation	Coast Central Credit Union	U.S. Store Depository Account	6595
General Nutrition Corporation	F&M Bank (NE)	U.S. Store Depository Account	5530
General Nutrition Corporation	First National Bank of Elk River (MN)	U.S. Store Depository Account	6392
General Nutrition Corporation	First National Bank of Griffin (GA)	U.S. Store Depository Account	3026
General Nutrition Corporation	Middlesex Savings Bank	U.S. Store Depository Account	4253
General Nutrition Corporation	Campbell & Fetter Bank	U.S. Store Depository Account	2887
General Nutrition Corporation	Bank of Maysville	U.S. Store Depository Account	8192
General Nutrition Corporation	The Citizens Banking Company	U.S. Store Depository Account	5267
General Nutrition Corporation	Vantage Bank	U.S. Store Depository Account	3604
General Nutrition Corporation	Fidelity Bank	U.S. Store Depository Account	4589
General Nutrition Corporation	Andrews Federal Credit	U.S. Store Depository Account	8677

<u>Debtor Account Holder</u>	<u>Bank Name</u>	<u>Account Title/Purpose</u>	<u>Account Number</u>
	Union		
General Nutrition Corporation	Robins Financial Credit Union	U.S. Store Depository Account	0701
General Nutrition Corporation	Fort Hood National Bank	U.S. Store Depository Account	6430
General Nutrition Corporation	Pioneer Federal Credit Union	U.S. Store Depository Account	3847
General Nutrition Corporation	Synovus Bank	U.S. Store Depository Account	9338
General Nutrition Corporation	Sabine Bank	U.S. Store Depository Account	9582
General Nutrition Corporation	First National Bank & Trust (FL)	U.S. Store Depository Account	6955
General Nutrition Corporation	5Star Bank	U.S. Store Depository Account	0992
General Nutrition Corporation	FNB Community Bank	U.S. Store Depository Account	7681
General Nutrition Corporation	North Star Commuity Credit Union	U.S. Store Depository Account	5443
General Nutrition Corporation	North Star Commuity Credit Union	U.S. Store Depository Account	5435
General Nutrition Corporation	Washington Federal Bank (NM)	U.S. Store Depository Account	1255
General Nutrition Corporation	The Peoples Bank (MS)	U.S. Store Depository Account	3979
General Nutrition Corporation	Seacoast National Bank	U.S. Store Depository Account	4107
General Nutrition Corporation	RCB Bank	U.S. Store Depository Account	3812
General Nutrition Corporation	Trustmark Bank	U.S. Store Depository Account	0837
General Nutrition Corporation	Republic Bank (IL)	U.S. Store Depository Account	1023
General Nutrition Corporation	First Financial Bank (OH)	U.S. Store Depository Account	0374
General Nutrition Corporation	First National Bank (TN)	U.S. Store Depository Account	1410
General Nutrition Corporation	Commerical Bank (TN)	U.S. Store Depository Account	7703
General Nutrition Corporation	Frazer Bank	U.S. Store Depository Account	8384
General Nutrition Corporation	Synovus Bank	U.S. Store Depository Account	2295
General Nutrition Corporation	Cadence Bank	U.S. Store Depository Account	0338
General Nutrition Corporation	Independent Financial	U.S. Store Depository Account	5478
General Nutrition Corporation	The People's Bank Co (OH)	U.S. Store Depository Account	4069
General Nutrition Corporation	JCB Bank	U.S. Store Depository Account	4240
General Nutrition Corporation	First Midwest Bank	U.S. Store Depository Account	8900
General Nutrition Corporation	Enterprise Bank & Trust	U.S. Store Depository Account	2654
General Nutrition Corporation	Union Bank & Trust Company	U.S. Store Depository Account	9463

<u>Debtor Account Holder</u>	<u>Bank Name</u>	<u>Account Title/Purpose</u>	<u>Account Number</u>
General Nutrition Corporation	Availa Bank	U.S. Store Depository Account	6896
General Nutrition Corporation	Busey Bank	U.S. Store Depository Account	6033
General Nutrition Corporation	WSFS Bank	U.S. Store Depository Account	3975
General Nutrition Corporation	Blackhawk State Bank	U.S. Store Depository Account	7171
General Nutrition Corporation	Citizens Bank of Oviedo (FL)	U.S. Store Depository Account	0486
General Nutrition Corporation	Northeast Georgia Bank	U.S. Store Depository Account	0922
General Nutrition Corporation	Stueben Trust Company	U.S. Store Depository Account	4985
General Nutrition Corporation	Lee Bank & Trust Co	U.S. Store Depository Account	1320
General Nutrition Corporation	Sandy Spring Bank	U.S. Store Depository Account	7401
General Nutrition Corporation	Citizens National Bank (TX)	U.S. Store Depository Account	7032
General Nutrition Corporation	Republic Bank & Trust Company (KY)	U.S. Store Depository Account	2921
General Nutrition Corporation	Jefferson Security Bank	U.S. Store Depository Account	1383
General Nutrition Corporation	Mountain Valley Bank	U.S. Store Depository Account	7209
General Nutrition Corporation	United Bank (VA/WV)	U.S. Store Depository Account	5308
General Nutrition Corporation	Midfirst Bank	U.S. Store Depository Account	2902
General Nutrition Corporation	Washington Trust Bank	U.S. Store Depository Account	9216
General Nutrition Corporation	Central Bank of the Ozarks	U.S. Store Depository Account	3754
General Nutrition Corporation	Highland Bank	U.S. Store Depository Account	0866
General Nutrition Corporation	Newbridge Bank	U.S. Store Depository Account	7024
General Nutrition Corporation	The Bank of Maine	U.S. Store Depository Account	0669
General Nutrition Corporation	American Trust Bank of East Tennessee	U.S. Store Depository Account	1240
General Nutrition Corporation	Ameris Bank	U.S. Store Depository Account	1095
General Nutrition Corporation	Community First National Bank	U.S. Store Depository Account	9752
General Nutrition Corporation	First National Bank of CO	U.S. Store Depository Account	0462
General Nutrition Corporation	Citizens Bank & Trust (FL)	U.S. Store Depository Account	1601
General Nutrition Corporation	Chemical Bank	U.S. Store Depository Account	7541
General Nutrition Corporation	First Financial Bank	U.S. Store Depository Account	0181
General Nutrition Corporation	Mutual of Omaha Bank	U.S. Store Depository Account	2202
General Nutrition Corporation	SunFlower Bank	U.S. Store Depository Account	3946
General Nutrition Corporation	United Bank (DC/VA)	U.S. Store Depository Account	2509



<u>Debtor Account Holder</u>	<u>Bank Name</u>	<u>Account Title/Purpose</u>	<u>Account Number</u>
General Nutrition Corporation	F&M Bank	U.S. Store Depository Account	0028
General Nutrition Corporation	Univest National Bank & Trust Company	U.S. Store Depository Account	0961
General Nutrition Corporation	German American	U.S. Store Depository Account	9001
General Nutrition Corporation	1st National Bank (OH)	U.S. Store Depository Account	1249
General Nutrition Corporation	Mercer County State Bank	U.S. Store Depository Account	0881
General Nutrition Corporation	Equity Bank	U.S. Store Depository Account	4140
General Nutrition Corporation	Peoples Bank of Gambier (OH)	U.S. Store Depository Account	0695
General Nutrition Corporation	Pekin Community Bank	U.S. Store Depository Account	1238
General Nutrition Corporation	Checchemical Bank	U.S. Store Depository Account	4183
General Nutrition Corporation	North Shore Bank	U.S. Store Depository Account	8287
General Nutrition Corporation	Farmers Bank & Savings Company	U.S. Store Depository Account	8435
General Nutrition Corporation	First Jackson Bank	U.S. Store Depository Account	2486
General Nutrition Corporation	First Southern National Bank	U.S. Store Depository Account	8430
General Nutrition Corporation	FirstUnited Bank (OK)	U.S. Store Depository Account	4497
General Nutrition Corporation	Savannah Bank (NY)	U.S. Store Depository Account	0112
General Nutrition Corporation	Carter Bank & Trust	U.S. Store Depository Account	5901
General Nutrition Corporation	OceanFirst Bank	U.S. Store Depository Account	2689
General Nutrition Corporation	Badger Bank	U.S. Store Depository Account	1529
General Nutrition Corporation	Riddell Naitonal Bank	U.S. Store Depository Account	0253
General Nutrition Corporation	Peoples Security Bank	U.S. Store Depository Account	6256
General Nutrition Corporation	Freedom Financial Bank	U.S. Store Depository Account	4828
General Nutrition Corporation	TBK Bank	U.S. Store Depository Account	6572
General Nutrition Corporation	Centennial Bank	U.S. Store Depository Account	6867
General Nutrition Corporation	First State Community Bank (MO)	U.S. Store Depository Account	9763
General Nutrition Corporation	First Bank (NC)	U.S. Store Depository Account	4718
General Nutrition Corporation	Ameican Savings Bank	U.S. Store Depository Account	6377
General Nutrition Corporation	Armed Forces Bank	U.S. Store Depository Account	0407
General Nutrition Corporation	Arvest Bank	U.S. Store Depository Account	2801
General Nutrition Corporation	Associated Bank	U.S. Store Depository Account	0739
General Nutrition Corporation	BancorpSouth	U.S. Store Depository Account	6316
General Nutrition Corporation	Bank of America	U.S. Store Depository Account	8322
General Nutrition Corporation	BB&T Bank (Now Truist Bank)	U.S. Store Depository Account	9628

<u>Debtor Account Holder</u>	<u>Bank Name</u>	<u>Account Title/Purpose</u>	<u>Account Number</u>
General Nutrition Corporation	BBVA Compass Bank	U.S. Store Depository Account	7412
General Nutrition Corporation	BMO Harris Bank,N.A.	U.S. Store Depository Account	7017
General Nutrition Corporation	Capital City Bank	U.S. Store Depository Account	6701
General Nutrition Corporation	Capital One Bank	U.S. Store Depository Account	4819
General Nutrition Corporation	Citizens Bank, N.A.	U.S. Store Depository Account	2961
General Nutrition Corporation	Comerica Bank	U.S. Store Depository Account	1334
General Nutrition Corporation	Fifth Third Bank	U.S. Store Depository Account	1199
General Nutrition Corporation	First American Bank	U.S. Store Depository Account	0001
General Nutrition Corporation	First Bank (CO)	U.S. Store Depository Account	4233
General Nutrition Corporation	First Citizens Bank	U.S. Store Depository Account	8167
General Nutrition Corporation	First Horizon Bank	U.S. Store Depository Account	0946
General Nutrition Corporation	First National Bank of Alaska	U.S. Store Depository Account	0733
General Nutrition Corporation	Huntington National Bank	U.S. Store Depository Account	8873
General Nutrition Corporation	IBC Bank	U.S. Store Depository Account	5201
General Nutrition Corporation	JPMorgan Chase Bank, N.A.	U.S. Store Depository Account	1683
General Nutrition Corporation	KeyBank,N.A.	U.S. Store Depository Account	0395
General Nutrition Corporation	M&T Bank	U.S. Store Depository Account	3243
General Nutrition Corporation	PNC Bank, N.A.	U.S. Store Depository Account	4718
General Nutrition Corporation	Regions Bank	U.S. Store Depository Account	3017
General Nutrition Corporation	Santander Bank (New England Acct.)	U.S. Store Depository Account	1273
General Nutrition Corporation	Santander Bank (PA Acct.)	U.S. Store Depository Account	3398
General Nutrition Corporation	SunTrust Bank (Now Truist Bank)	U.S. Store Depository Account	4891
General Nutrition Corporation	TCF National Bank	U.S. Store Depository Account	6462
General Nutrition Corporation	TD Bank, N.A.	U.S. Store Depository Account	8839
General Nutrition Corporation	Union Bank	U.S. Store Depository Account	9856
General Nutrition Corporation	US Bank, N.A.	U.S. Store Depository Account	0602
General Nutrition Corporation	Wells Fargo Bank	U.S. Store Depository Account	1630
General Nutrition Corporation	Wells Fargo Bank	U.S. Store Depository Account	3442
General Nutrition Corporation	Alpine Bank	U.S. Store Depository Account	1406
General Nutrition Corporation	Ameris Bank	U.S. Store Depository Account	1224
General Nutrition Corporation	Bank of Hawaii	U.S. Store Depository Account	5040
General Nutrition Corporation	Bank of The West	U.S. Store Depository Account	0295
General Nutrition Corporation	BankcFirst	U.S. Store Depository Account	9434

<u>Debtor Account Holder</u>	<u>Bank Name</u>	<u>Account Title/Purpose</u>	<u>Account Number</u>
General Nutrition Corporation	BankFinancial	U.S. Store Depository Account	2535
General Nutrition Corporation	Blue Ridge Bank & Trust	U.S. Store Depository Account	0054
General Nutrition Corporation	Broadway Bank	U.S. Store Depository Account	0630
General Nutrition Corporation	Byline Bank	U.S. Store Depository Account	1844
General Nutrition Corporation	Central Bank of the Midwest	U.S. Store Depository Account	3639
General Nutrition Corporation	Central Pacific Bank	U.S. Store Depository Account	1565
General Nutrition Corporation	Commerce Bank (KS)	U.S. Store Depository Account	6968
General Nutrition Corporation	Community Bank (KS)	U.S. Store Depository Account	05929
General Nutrition Corporation	Community Bank (NY)	U.S. Store Depository Account	1057
General Nutrition Corporation	CoreFirst Bank & Trust	U.S. Store Depository Account	2308
General Nutrition Corporation	Dollar Bank	U.S. Store Depository Account	4677
General Nutrition Corporation	Farmers State Bank	U.S. Store Depository Account	4671
General Nutrition Corporation	First Bank (MO)	U.S. Store Depository Account	1296
General Nutrition Corporation	First Bank (MS)	U.S. Store Depository Account	4494
General Nutrition Corporation	First Commonwealth Bank	U.S. Store Depository Account	3473
General Nutrition Corporation	First Hawaiian Bank	U.S. Store Depository Account	6997
General Nutrition Corporation	First Interstate Bank	U.S. Store Depository Account	9118
General Nutrition Corporation	First Merchants Bank	U.S. Store Depository Account	06402
General Nutrition Corporation	First National Bank, N.A. (PA)	U.S. Store Depository Account	2380
General Nutrition Corporation	First Security Bank (AR)	U.S. Store Depository Account	4442
General Nutrition Corporation	Five Star Bank	U.S. Store Depository Account	2928
General Nutrition Corporation	Flagstar Bank	U.S. Store Depository Account	2734
General Nutrition Corporation	Fort Sill National Bank (FSNB)	U.S. Store Depository Account	4011
General Nutrition Corporation	Frontwave Credit Union	U.S. Store Depository Account	8531
General Nutrition Corporation	FultonBank	U.S. Store Depository Account	83510
General Nutrition Corporation	Iberia Bank	U.S. Store Depository Account	0486
General Nutrition Corporation	Lake City Bank	U.S. Store Depository Account	5604
General Nutrition Corporation	NBT Bank, N.A.	U.S. Store Depository Account	7313
General Nutrition Corporation	Northwest Bank	U.S. Store Depository Account	1521
General Nutrition Corporation	Ohio Savings Bank	U.S. Store Depository Account	1689
General Nutrition Corporation	Old National Bank	U.S. Store Depository Account	0003
General Nutrition Corporation	Pacific Premier Bank	U.S. Store Depository Account	4429
General Nutrition Corporation	People's United Bank	U.S. Store Depository Account	0352

<u>Debtor Account Holder</u>	<u>Bank Name</u>	<u>Account Title/Purpose</u>	<u>Account Number</u>
General Nutrition Corporation	Resanant Bank	U.S. Store Depository Account	0157
General Nutrition Corporation	S&T Bank	U.S. Store Depository Account	2729
General Nutrition Corporation	South State Bank	U.S. Store Depository Account	48628
General Nutrition Corporation	Star Financial Bank	U.S. Store Depository Account	0506
General Nutrition Corporation	Synovus Bank	U.S. Store Depository Account	1859
General Nutrition Corporation	The Heritage Bank	U.S. Store Depository Account	4306
General Nutrition Corporation	Tri City Bank	U.S. Store Depository Account	0774
General Nutrition Corporation	Tri Counties Bank	U.S. Store Depository Account	6289
General Nutrition Corporation	UMB Bank, N.A.	U.S. Store Depository Account	0044
General Nutrition Corporation	Valley National Bank	U.S. Store Depository Account	5309
General Nutrition Corporation	Webster Bank	U.S. Store Depository Account	5900
General Nutrition Corporation	WesBanco Bank	U.S. Store Depository Account	1110
General Nutrition Corporation	Woodforest National Bank	U.S. Store Depository Account	9145
General Nutrition Investment Co.	JPMorgan Chase Bank	Intangible Ownership Account	1130
GNC China Holdco LLC	JPMorgan Chase Bank	China Holdco Account	7714
GNC Corporation	JPMorgan Chase Bank	Pure Holding Company Account	7167
GNC Funding Inc	JPMorgan Chase Bank	Intercompany Loans Account	4178
GNC Holdings, Inc.	JPMorgan Chase Bank	Convertible Notes Interest Account	4194
GNC Holdings, Inc.	JPMorgan Chase Bank	Investment Account	4247
GNC International Holdings Inc.	JPMorgan Chase Bank	International Holdings Account	8812
GNC Parent, LLC	JPMorgan Chase Bank	Pure Holding Company Accounts	2735
GNC Puerto Rico, Inc.	JPMorgan Chase Bank	US Card Receipts Account	2361
GNC Puerto Rico, Inc.	JPMorgan Chase Bank	Dividends Account	8113
GNC Puerto Rico, LLC	Bankco Popular (PR)	U.S. Store Depository Account	8996
GNC Puerto Rico, LLC	First Bank (PR)	U.S. Store Depository Account	5506
Gustine Sixth Avenue Associates Ltd	JPMorgan Chase Bank	Building Expense & Rent Account	5123
General Nutrition Centers Inc.	JPMorgan Chase Bank	Cash Collateral Account	3153

**EXHIBIT A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
	)	Case No. 20-11662 (___)
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. __

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**INTERIM ORDER (A) AUTHORIZING CONTINUED USE OF EXISTING CASH  
MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING  
BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, (B) AUTHORIZING  
CONTINUATION OF EXISTING DEPOSIT PRACTICES, (C) AUTHORIZING  
CONTINUATION OF INTERCOMPANY TRANSACTIONS, AND (D) GRANTING  
ADMINISTRATIVE CLAIM STATUS TO POSTPETITION INTERCOMPANY CLAIMS**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an order (this “*Interim Order*”), (a) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of existing bank accounts, checks, and business forms; (b) granting the Debtors an extension of time to comply with certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with the Debtors’ practices under their Cash Management System or other actions described in the Motion or herein; (c) authorizing, but not directing, the Debtors to continue to maintain and use

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

their existing deposit practices; (d) authorizing, but not directing, the Debtors to continue certain ordinary course intercompany transactions; and (e) according administrative claim status to postpetition intercompany claims arising from certain of these transactions; and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED, on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue to use their current existing Cash Management System and shall maintain through the use thereof detailed records reflecting all transfers of funds, all under the terms and conditions provided for by, and in accordance with, their existing cash management agreements, except as modified by this Interim Order. In connection with the ongoing utilization of the Cash Management System, the Debtors

shall maintain accurate and detailed records with respect to all transfers, including with respect to postpetition Intercompany Claims and Intercompany Transactions, so that all transactions can be readily ascertained, traced, properly recorded, and distinguished between prepetition and postpetition transactions.

3. The Debtors are authorized, but not directed, to continue to engage in Intercompany Transactions on a postpetition basis and to make payments to, or set off amounts owed from, the applicable Debtor or non-Debtor affiliate on account of postpetition Intercompany Claims, in a manner consistent with their practices in effect as of the Petition Date in the ordinary course of business or as necessary to execute the Cash Management System; *provided* that transfers from Debtors to Non-Debtor affiliates shall not exceed \$30,000 on an interim basis.

4. The Debtors are authorized to (a) continue to use the Bank Accounts at the Banks in existence as of the Petition Date in the same manner and with the same account numbers, styles, and document forms as are currently employed and subject to the existing cash management agreements with the Banks; (b) deposit funds in and withdraw funds from the Bank Accounts in the ordinary course by all usual means, including checks, wire transfers, drafts, ACH Payments, and electronic funds transfers or other items presented, issued, or drawn on the Bank Accounts; (c) pay ordinary course Bank Fees in connection with the Bank Accounts, including any Bank Fees arising prior to the Petition Date; (d) perform their obligations under the documents and agreements governing the Bank Accounts; and (e) for all purposes, treat the Bank Accounts as accounts of the Debtors in their capacities as debtors in possession.

5. Those certain existing cash management agreements between the Debtors and the Banks shall continue to govern the postpetition cash management relationship between the Debtors and the respective Bank, and all of the provisions of such agreements, including the termination,



chargeback, and fee provisions, offset rights and all other rights and remedies afforded under such agreements, shall remain in full force and effect, and the Debtors and the Banks may, without further order of this Court, agree to and implement changes to the Cash Management System and procedures related thereto in the ordinary course of business, and any other legal rights afforded to the Banks under applicable law shall be preserved.

6. The Debtors are authorized, but not directed, to continue to operate under the Payment Processing Program. The Debtors are authorized to pay or reimburse the Payment Processing Providers for all applicable fees and other applicable charges, whether arising prepetition or postpetition, and the Payment Processing Providers are authorized to receive or obtain payment for such fees and charges as provided under, and in the manner set forth in, the applicable payment processing agreements. Any postpetition claim which a Payment Processing Processor may have shall be entitled to, in addition to any other lien, collateral or payment priority rights in support thereof, administrative expense priority status pursuant to Section 503(b) of the Bankruptcy Code.

7. The Banks and the Debtors' financial institutions shall be, and hereby are, authorized (a) when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue postpetition, and electronic funds transfers drawn on the Debtors' Bank Accounts relating to payments permitted by an order of this Court, whether the checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments and (b) to debit the Debtors' Bank Accounts in the ordinary course of business for all undisputed prepetition Bank Fees outstanding as of the date hereof, if any, owed to the Banks.

8. In the course of providing cash management services to the Debtors, each of the Banks and the Payment Processing Providers are authorized, without further order of the Court, to deduct the applicable fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors (including, without limitation, the Payment Processing Program), whether arising prepetition or postpetition, from the appropriate accounts of the Debtors, and further, to charge back to, and take and apply reserves from, the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, merchant services transactions or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

9. In each instance in which the Debtors hold Bank Accounts at Banks that are party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen days after entry of this Interim Order, the Debtors shall (a) contact the Banks, (b) provide the Banks with each of the Debtors' employer identification numbers, and (c) identify their Bank Accounts held as being held by a debtor-in-possession in a bankruptcy case and provide the main case number. In each instance in which the Debtors hold Bank Accounts at Banks that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good faith efforts to cause the Banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within forty-five days of the date of this Interim Order, to the extent such Bank is a domestic bank, without prejudice to the Debtors' rights to seek a further extension. The U.S. Trustee's rights to seek further relief from this Court in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

10. Pursuant to Local Rule 2015-2(a), the Debtors are authorized to continue to use their existing checks, correspondence, and other Business Forms without alteration or change and without the designation “Debtor-in-Possession” or a bankruptcy case number imprinted upon them. Notwithstanding the foregoing, once the Debtors’ existing checks have been used, the Debtors shall, when reordering checks, require the designation “Debtor-in-Possession” and the main bankruptcy case number on all checks; provided that, with respect to checks that the Debtors or their agents print themselves, the Debtors shall begin printing the “Debtor-in-Possession” legend and the main bankruptcy case number on such items within ten days of the date of entry of this Interim Order.

11. The Debtors are authorized to continue to utilize all third-party providers necessary for the administration of their Cash Management System. In addition, the Debtors are authorized, but not directed, to pay all prepetition or postpetition amounts due to such third-party providers.

12. Effective as of the Petition Date, and subject to the terms of this Interim Order, all Banks at which the Bank Accounts are maintained are authorized to continue to administer, service, and maintain the Bank Accounts, and the Banks and Payment Processing Providers are authorized to continue to administer, service, and maintain the Payment Processing Program, in each case as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course (including making deductions and setoffs for any applicable fees or charges related to such services) and consistent with and subject to the applicable cash management agreements or payment processing agreements, to honor any and all checks, drafts, wires, electronic funds transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date; provided, however, that unless otherwise ordered by the Court and directed by the Debtors, no checks, drafts, electronic

funds transfers (excluding any electronic funds transfer that the Banks are obligated to settle), or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising prior to the Petition Date shall be honored. In no event shall the Banks be required to honor overdrafts or to pay any check, wire, electronic funds transfers, or other debit against the Bank Accounts that is drawn against uncollected funds or, subject to the below, that was issued prior to the Petition Date. Notwithstanding the foregoing, the Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request, funds transfer, or other transaction (including foreign currency exchanges, transactions or trades) as being approved by order of the Court, and have no duty to inquire as to whether such payments are authorized by an order of this Court, and shall not have any liability to any party for relying on such representations.

13. If any Bank honors a prepetition check or item drawn on any account that is the subject of this Interim Order (a) at the direction of the Debtors to honor such prepetition check or item, (b) in the good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as a result of a good faith error, such Bank shall not be deemed to be nor shall be liable to the Debtors or their estates on account of such prepetition check or item being honored postpetition or otherwise deemed to be in violation of this Interim Order.

14. The Debtors are authorized to implement such non-material, reasonable changes, consistent with this Interim Order and subject to any existing cash management agreements, to the Cash Management System as the Debtors may deem necessary or appropriate.

15. The Debtors may close any of the Bank Accounts (subject to the terms of their existing cash management agreement) or open any additional bank accounts following the Petition Date wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, the Debtors shall open such new account(s) only at banks that have executed a

Uniform Depository Agreement with the U.S. Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement. These new accounts are deemed to be Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Interim Order. The Banks are authorized (but not required, except as set forth in the cash management agreements between the Bank and the Debtors) to honor the Debtors' requests to open or close (as the case may be) such Bank Account(s). In the event that the Debtors open or close any Bank Account(s), such opening or closing shall be timely indicated on the Debtors' monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee and counsel to any statutory committee appointed in the Chapter 11 Cases within five business days after the opening or closing of any such account.

16. The Debtors are authorized to deposit funds in accordance with existing practices under the Cash Management System as in effect as of the Petition Date, subject to any reasonable non-material changes, consistent with this Interim Order, to the Cash Management System that the Debtors may implement, and, to the extent such practices are inconsistent with the requirements of section 345(b) of the Bankruptcy Code, the Debtors are hereby granted an extension of time for a period of forty-five (or such additional time as the U.S. Trustee may agree to) from the Petition Date (the "*Extension Period*") within which to either come into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed with the U.S. Trustee. Such extension is without prejudice to the Debtors' right to request from this Court a further extension of the Extension Period or a final waiver of the requirements under section 345(b).

17. The Debtors are authorized but not directed to (a) continue the Corporate Card Programs, subject to any terms and conditions under the applicable servicing agreements, on a postpetition basis consistent with their past practices; and (b) pay all obligations related to the

Corporate Card Programs, whether arising prepetition or postpetition, *provided* that the payment of the prepetition obligations under the Corporate Card Programs shall not exceed \$120,000 on an interim basis.

18. The Debtors shall not be required to comply with the requirement of the U.S. Trustee Guidelines to establish separate accounts for cash collateral and/or tax payments.

19. All Intercompany Claims arising after the Petition Date owed by a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under sections 503(b) and 507(a) of the Bankruptcy Code.

20. Nothing contained in the Motion or this Interim Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist or was not perfected as of the Petition Date, or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

21. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

22. Notwithstanding anything contained in the Motion or this Interim Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a “*DIP Order*”), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency

between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

23. A hearing to consider entry of an order granting the Motion on a final basis (the “*Final Hearing*”) shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_\_\_ .m. (prevailing Eastern time). Any objections or responses to the entry of such an order must be filed on or before 4:00 p.m. (prevailing Eastern time) on \_\_\_\_\_, 2020, and served on (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (email: caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com), and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel (jeffrey.mispagel@lw.com); and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); (c) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (d) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com,

jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (e) counsel to the administrative agent under the DIP ABL FILO Facility, Simpson Thacher & Bartlett LLP, 425 Lexington Ave. New York, New York 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (email: squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); and (f) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: trigg.erin@dorsey.com and kohn.samuel@dorsey.com). In the event that no objections to entry of the Proposed Final Order on the Motion are timely received, this Court may enter such Proposed Final Order without need for the Final Hearing.

24. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

25. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

26. The terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

27. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Interim Order.

28. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

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United States Bankruptcy Judge



**EXHIBIT B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	
	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket Nos. __ & __

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**FINAL ORDER (A) AUTHORIZING CONTINUED USE OF EXISTING CASH  
MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING  
BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, (B) AUTHORIZING  
CONTINUATION OF EXISTING DEPOSIT PRACTICES, (C) AUTHORIZING  
CONTINUATION OF INTERCOMPANY TRANSACTIONS, AND (D) GRANTING  
ADMINISTRATIVE CLAIM STATUS TO POSTPETITION INTERCOMPANY CLAIMS**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an order (this “*Final Order*”), (a) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of existing bank accounts, checks, and business forms; (b) granting the Debtors an extension of time to comply with certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with the Debtors’ practices under their Cash Management System or other actions described in the Motion or herein; (c) authorizing, but not directing, the Debtors to continue to maintain and use

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

their existing deposit practices; (d) authorizing, but not directing, the Debtors to continue certain ordinary course intercompany transactions; and (e) according administrative claim status to postpetition intercompany claims arising from certain of these transactions; and this Court having reviewed the Motion, the First Day Declaration and the Interim Order entered on [ ], 2020; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED, on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue to use their current existing Cash Management System and shall maintain through the use thereof detailed records reflecting all transfers of funds, all under the terms and conditions provided for by, and in accordance with, the existing cash management agreements, except as modified by this Final

Order. In connection with the ongoing utilization of the Cash Management System, the Debtors shall maintain accurate and detailed records with respect to all transfers, including with respect to postpetition Intercompany Claims and Intercompany Transactions, so that all transactions can be readily ascertained, traced, properly recorded, and distinguished between prepetition and postpetition transactions.

3. The Debtors are authorized, but not directed, to continue to engage in Intercompany Transactions on a postpetition basis and to make payments to, or set off amounts owed from, the applicable Debtor or non-Debtor affiliate on account of postpetition Intercompany Claims, in a manner consistent with their practices in effect as of the Petition Date in the ordinary course of business or as necessary to execute the Cash Management System.

4. The Debtors are authorized to (a) continue to use the Bank Accounts at the Banks in existence as of the Petition Date in the same manner and with the same account numbers, styles, and document forms as are currently employed and subject to the existing cash management agreements with the Banks; (b) deposit funds in and withdraw funds from the Bank Accounts in the ordinary course by all usual means, including checks, wire transfers, drafts, ACH Payments, and electronic funds transfers or other items presented, issued, or drawn on the Bank Accounts; (c) pay ordinary course Bank Fees in connection with the Bank Accounts, including any Bank Fees arising prior to the Petition Date; (d) perform their obligations under the documents and agreements governing the Bank Accounts; and (e) for all purposes, treat the Bank Accounts as accounts of the Debtors in their capacities as debtors in possession.

5. Those certain existing cash management agreements between the Debtors and the Banks shall continue to govern the postpetition cash management relationship between the Debtors and the respective Bank, and all of the provisions of such agreements, including the termination,

chargeback, and fee provisions, offset rights and all other rights and remedies afforded under such agreements, shall remain in full force and effect, and the Debtors and the Banks may, without further order of this Court, agree to and implement changes to the Cash Management System and procedures related thereto in the ordinary course of business, and any other legal rights afforded to the Banks under applicable law shall be preserved.

6. The Debtors are authorized, but not directed, to continue to operate under the Payment Processing Program. The Debtors are authorized to pay or reimburse the Payment Processing Providers for all applicable fees and other applicable charges, whether arising prepetition or postpetition, and the Payment Processing Providers are authorized to receive or obtain payment for such fees and charges as provided under, and in the manner set forth in, the applicable payment processing agreements. Any postpetition claim which a Payment Processing Processor may have shall be entitled to, in addition to any other lien, collateral or payment priority rights in support thereof, administrative expense priority status pursuant to Section 503(b) of the Bankruptcy Code.

7. The Banks and the Debtors' financial institutions shall be, and hereby are, authorized (a) when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue postpetition, and electronic funds transfers drawn on the Debtors' Bank Accounts relating to payments permitted by an order of this Court, whether the checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments and (b) to debit the Debtors' Bank Accounts in the ordinary course of business for all undisputed prepetition Bank Fees outstanding as of the date hereof, if any, owed to the Banks.

8. In the course of providing cash management services to the Debtors, each of the Banks and the Payment Processing Providers are authorized, without further order of the Court, to deduct the applicable fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors (including, without limitation, the Payment Processing Programs), whether arising prepetition or postpetition, from the appropriate accounts of the Debtors, and further, to charge back to, and take and apply reserves from, the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, merchant services transactions or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

9. In each instance in which the Debtors hold Bank Accounts at Banks that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good faith efforts to cause the Banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within forty-five days of the date of the Interim Order, to the extent such Bank is a domestic bank, without prejudice to the Debtors' rights to seek a further extension. The U.S. Trustee's rights to seek further relief from this Court in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

10. Pursuant to Local Rule 2015-2(a), the Debtors are authorized to continue to use their existing checks, correspondence, and other Business Forms without alteration or change and without the designation "Debtor-in-Possession" or a bankruptcy case number imprinted upon them. Notwithstanding the foregoing, once the Debtors' existing checks have been used, the

Debtors shall, when reordering checks, require the designation “Debtor-in-Possession” and the main bankruptcy case number on all checks; provided that, with respect to checks that the Debtors or their agents print themselves, the Debtors, shall print the “Debtor-in-Possession” legend and the main bankruptcy case number on such items.

11. The Debtors are authorized to continue to utilize all third-party providers necessary for the administration of their Cash Management System. In addition, the Debtors are authorized, but not directed, to pay all prepetition or postpetition amounts due to such third-party providers.

12. Effective as of the Petition Date, and subject to the terms of this Final Order, all Banks at which the Bank Accounts are maintained are authorized to continue to administer, service, and maintain the Bank Accounts, and the Banks and Payment Processing Providers are authorized to continue to administer, service, and maintain the Payment Processing Program, in each case as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course (including making deductions and setoffs for any applicable fees or charges related to such services, including the Bank Fees) and consistent with and subject to the applicable cash management agreements or payment processing agreements, to honor any and all checks, drafts, wires, electronic funds transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date; provided, however, that unless otherwise ordered by the Court and directed by the Debtors, no checks, drafts, electronic funds transfers (excluding any electronic funds transfer that the Banks are obligated to settle), or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising prior to the Petition Date shall be honored. In no event shall the Banks be required to honor overdrafts or to pay any check, wire, electronic funds transfers, or other debit against the Bank Accounts that is drawn against uncollected funds or, subject to the

below, that was issued prior to the Petition Date. Notwithstanding the foregoing, the Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request, funds transfer, or other transaction (including foreign currency exchanges, transactions or trades) as being approved by order of the Court, and have no duty to inquire as to whether such payments are authorized by an order of this Court, and shall not have any liability to any party for relying on such representations.

13. If any Bank honors a prepetition check or item drawn on any account that is the subject of this Final Order (a) at the direction of the Debtors to honor such prepetition check or item, (b) in the good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as a result of a good faith error, such Bank shall not be deemed to be nor shall be liable to the Debtors or their estates on account of such prepetition check or item being honored postpetition or otherwise deemed to be in violation of this Final Order.

14. The Debtors are authorized to implement such non-material, reasonable changes, consistent with this Final Order and subject to any existing cash management agreements, to the Cash Management System as the Debtors may deem necessary or appropriate.

15. The Debtors may close any of the Bank Accounts (subject to the terms of their existing cash management agreement) or open any additional bank accounts following the Petition Date wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, the Debtors shall open such new account(s) only at banks that have executed a Uniform Depository Agreement with the U.S. Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement. These new accounts are deemed to be Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Final Order. The Banks are authorized (but not required, except as set forth in the cash management



agreements between the Bank and the Debtors) to honor the Debtors' requests to open or close (as the case may be) such Bank Account(s). In the event that the Debtors open or close any Bank Account(s), such opening or closing shall be timely indicated on the Debtors' monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee and counsel to any statutory committee appointed in the Chapter 11 Cases within five business days after the opening or closing of any such account.

16. The Debtors are authorized to deposit funds in accordance with existing practices under the Cash Management System as in effect as of the Petition Date, subject to any reasonable non-material changes, consistent with this Final Order, to the Cash Management System that the Debtors may implement, and, to the extent such practices are inconsistent with the requirements of section 345(b) of the Bankruptcy Code, the Debtors are hereby granted an extension of time for a period of forty-five days (or such additional time as the U.S. Trustee may agree to) from the Petition Date (the "*Extension Period*") within which to either come into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed with the U.S. Trustee. Such extension is without prejudice to the Debtors' right to request from this Court a further extension of the Extension Period or a final waiver of the requirements under section 345(b).

17. The Debtors are authorized but not directed to (a) continue the Corporate Card Programs, subject to any terms and conditions under the applicable servicing agreements, on a postpetition basis consistent with their past practices; and (b) pay all obligations related to the Corporate Card Programs, whether arising prepetition or postpetition; *provided* that the payment of the prepetition obligations under the Corporate Card Programs shall not exceed \$200,000 in an aggregate final amount, inclusive of amounts paid pursuant to the Interim Order, or such higher

amount as may be set forth in any budget governing postpetition financing or the use of cash collateral.

18. The Debtors shall not be required to comply with the requirement of the U.S. Trustee Guidelines to establish separate accounts for cash collateral and/or tax payments.

19. All Intercompany Claims arising after the Petition Date owed by a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under sections 503(b) and 507(a) of the Bankruptcy Code.

20. Nothing contained in the Motion, the Interim Order or this Final Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist or was not perfected as of the Petition Date, or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

21. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

22. Notwithstanding anything contained in the Motion or this Final Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a "***DIP Order***"), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms

of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

23. The terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

24. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Final Order.

25. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

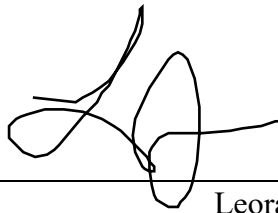
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United States Bankruptcy Judge



TAB BB

THIS IS **EXHIBIT “BB”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, consisting of several loops and a horizontal line extending to the right, positioned above a solid horizontal line.

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Leora Jackson

Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
	)	Case No. 20-11662 (____)
Debtors. <sup>1</sup>	)	
	)	(Joint Administration Requested)
	)	
	)	

**MOTION OF DEBTORS FOR  
ENTRY OF AN ORDER (I) AUTHORIZING  
THE DEBTORS TO (A) FILE A CONSOLIDATED  
CREDITOR MATRIX, (B) FILE A CONSOLIDATED TOP 30  
CREDITORS LIST, (C) MODIFY REQUIREMENTS TO FILE  
A LIST OF, AND PROVIDE NOTICE TO, ALL EQUITY HOLDERS, AND  
(D) REDACT CERTAIN PERSONAL IDENTIFICATION INFORMATION,  
AND (II) APPROVING NOTICE PROCEDURES FOR CERTAIN CUSTOMERS**

The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, (the “*Proposed Order*”) (i) authorizing the Debtors to (a) file a consolidated list of creditors (the “*Consolidated Creditor Matrix*”) in lieu of a separate mailing matrix for each Debtor, (b) file a consolidated list of the Debtors’ thirty (30) largest unsecured creditors, excluding insiders (the “*Consolidated Top Thirty (30) Creditors List*”) in lieu of

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

submitting separate lists of the thirty (30) largest unsecured creditors of each Debtor, (c) modify requirements to file a list of, and provide notice to, all equity holders, and (d) redact portions of their Consolidated Creditor Matrix and list of equity interest holders containing the email addresses and home addresses of the Debtors' individual creditors and equity interest holders, and (ii) approving notice procedures with respect to certain of the Debtors' customers.

### **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "***Local Rules***"), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 107, 363(b) and 521 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "***Bankruptcy Code***"), rules 1007, 2002(m), 6004, 9007 and 9018 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), and Local Rules 1001-1, 1007-1, 1007-2, 2002-1 and 9013-1(m).

### **BACKGROUND**

3. On June 23, 2020 (the "***Petition Date***"), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the "***Chapter 11 Cases***") under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in

possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies' Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day Declaration**")<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

#### **THE DEBTORS' PRO ACCESS MEMBERS**

6. The Debtors maintain a paid-membership program called "PRO Access," under which customers pay an annual fee, and in return receive (i) certain benefits not available to other rewards members, and (ii) two shipments per year of sample merchandise and other materials tailored to each member.<sup>4</sup> The PRO Access program has approximately 840,762 current members.

7. As set forth in the Customer Programs Motion, the Debtors are seeking authority to continue to honor their customer programs in the ordinary course of business and pay prepetition

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court's website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors' proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/GNC>.

<sup>4</sup> A more detailed summary of the Pro Access program is set forth in the *Motion of Debtors for Interim and Final Orders Authorizing the Debtors to (I) Maintain and Administer Prepetition Customer Programs and (II) Pay Prepetition Obligations Related Thereto* (the "**Customer Programs Motion**"), filed contemporaneously herewith.



obligations related thereto, including for PRO Access members. Accordingly, subject to approval of the Customer Programs Motion, the Debtors intend to continue the PRO Access program in the ordinary course of business and continue to provide PRO Access members with the benefits under that program.

8. Currently, the Debtors' list of creditors and interested parties, as listed in the Creditor Matrix, filed contemporaneously herewith, contains approximately 79,174 parties. If the Debtors are required to include the PRO Access members, the Creditor Matrix would multiply to over 11 times its original size.

9. Completion of a single mailing via first class U.S. mail on all parties currently listed on the Creditor Matrix (not including PRO Access members) will cost the estate approximately \$43,545.70 in postage alone, plus the additional costs associated with photocopying the notice and paying for the services of Prime Clerk LLC, the Debtors' noticing agent (the "*Noticing Agent*"). If the Debtors are required to serve notices to PRO Access members in addition to parties on the Creditor Matrix, the cost of postage alone will grow to approximately \$505,964.80 for the completion of a single mailing. In addition, the Debtors most common method of communication with the PRO Access members is via email.

10. The Debtors respectfully submit that, in light of the extremely high cost of completing mailings on over 840,000 additional parties, and the fact that the Debtors intend to continue honoring all obligations owed to PRO Access members (subject to Court approval), the Debtors should not be required to include PRO Access members in the Creditor Matrix. To be clear, the Debtors are not requesting to waive service to the PRO Access members. Rather, consistent with the Debtors' ordinary course method of communication with such members, the Debtors propose to provide (i) notice by email to the PRO Access members, where available,

(ii) notice to the home address of the PRO Access members where email is not available, and  
(iii) publication in a nationally circulated newspaper to achieve as wide a distribution as possible where neither email nor home address is available.

### **BASIS FOR RELIEF REQUESTED**

#### **I. CONSOLIDATED CREDITOR MATRIX**

11. Section 521(a)(1)(A) of the Bankruptcy Code requires a debtor to file a list of creditors. 11 U.S.C. § 521(a)(1)(A). Additionally, Bankruptcy Rule 1007(a)(1) requires a debtor to file “a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H.” Fed. R. Bank. P. 1007(a)(1). Likewise, Local Rule 1007-2(a) requires a debtor to file, together with its voluntary petition, a list containing the name and complete address of each creditor. Local Rule 2002-1(f)(v) further requires each debtor, or its duly retained notice and claims clerk, in jointly administered cases to maintain a separate creditor matrix. *See* Del. Bankr. L.R. 2002-1(f)(v).

12. Local Rule 1001-1(c), however, authorizes the Court to modify the application of the Local Rules “in the interest of justice.” Del. Bankr. L.R. 1001-1(c). Additionally, section 105(a) of the Bankruptcy Code allows the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

13. The Debtors submit that permitting them to maintain a Consolidated Creditor Matrix, in lieu of filing a separate creditor matrix for each Debtor, is warranted in these Chapter 11 Cases. Requiring the Debtors to segregate and convert their computerized records to a Debtor-specific creditor matrix format would be an unnecessarily burdensome task and result in duplicate mailings. Furthermore, the Debtors will file an application requesting authorization to retain and employ a noticing and claims agent. If such application is granted, the noticing and claims agent will assist with, among other tasks, the mailing of notices to parties. The Debtors believe that a

Consolidated Creditor Matrix will be sufficient to allow their claims and noticing agent to provide notice to all creditors as well as applicable parties in interest during these Chapter 11 Cases, as required by Local Rule 1007-2.

## **II. CONSOLIDATED TOP THIRTY (30) CREDITORS LIST**

14. Pursuant to Bankruptcy Rule 1007(d), a debtor must file, together with its voluntary petition, a list setting forth the names, addresses, and claim amounts of the creditors, excluding insiders, who hold the twenty (20) largest unsecured claims in the debtor's case. *See* Fed. R. Bankr. P. 1007(d).

15. To provide the Office of the United States Trustee for the District of Delaware (the "*U.S. Trustee*") with a clearer picture of the Debtors' creditor constituency, however, the Debtors seek to provide the Consolidated Top Thirty (30) Creditors List as opposed to a list of the twenty (20) largest unsecured creditors for each Debtor. One of the primary purposes of filing a list of a debtor's largest unsecured creditors is to facilitate the U.S. Trustee's evaluation of the types and amounts of unsecured claims asserted against a debtor so that the U.S. Trustee can make an informed decision when identifying potential candidates to serve on an official committee of unsecured creditors. Because many of the Debtors' significant unsecured creditors are already captured on the Consolidated Top Thirty (30) Creditors List, the Consolidated Top Thirty (30) Creditors List will provide the U.S. Trustee with a sufficiently clear picture of the Debtors' unsecured creditor constituency. In addition, the Consolidated Top Thirty (30) Creditors List will help alleviate administrative burdens, costs, and the possibility of duplicative service.

## **III. REQUEST TO MODIFY REQUIREMENTS TO FILE A LIST OF, AND PROVIDE NOTICE TO, ALL EQUITY HOLDERS**

16. Bankruptcy Rule 1007(a)(3) provides that, "unless the court orders otherwise, the debtor shall file within 14 days after entry of the order for relief a list of the debtor's equity security

holders,” including last known addresses of each holder. Fed. R. Bank. P. 1007(a)(3). Bankruptcy Rule 2002(d) further provides that, “unless otherwise ordered by the court,” notice of the order for relief shall be given to all equity security holders. Fed. R. Bankr. P. 2002(d); *see also* 11 U.S.C. § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”).

17. The Debtors submit that modification of the requirement to file the list of equity holders and provide notice of the order for relief or commencement of the Chapter 11 Cases to all of the equity holders is appropriate. The Debtors propose to file a list of those equity holders directly registered with the transfer agent for the Debtors’ common equity (with instructions to serve down to beneficial holders, as applicable). As an initial matter, GNC Holdings, Inc. is a publicly held company with approximately 84.61 million common shares outstanding as of the Petition Date. Preparing a list of the equity holders for GNC Holdings, Inc. with last known addresses would have little value. Further, to the extent that the Debtors were even able to ascertain such information, the list would ultimately serve little or no beneficial purpose. In particular, the equity markets will have immediate notice of these Chapter 11 Cases through public news outlets and GNC Holdings, Inc.’s filing of a Form 8-K statement with the Securities and Exchange Commission (the “*SEC*”). The Debtors further submit that if it becomes necessary for such equity interest holders to file proofs of interest, the Debtors will provide them with particularized notice of the deadline and an opportunity to assert such interests. Thus, equity interest holders will not be prejudiced, and a modification of the requirement that GNC Holdings, Inc. file a list of equity interest holders is appropriate.

18. In addition, the Debtors request that they be permitted to modify the requirement to provide notice of the order for relief or commencement of the Chapter 11 Cases to all equity

interest holders. Instead, the Debtors propose to provide notice by: (i) serving equity holders directly registered with the transfer agent for the Debtors' common equity (with instructions to serve down to beneficial holders, as applicable); (ii) publishing the notice of commencement on the Debtors' case website located at <https://cases.primeclerk.com/GNC>; and (iii) filing a Form 8-K with the SEC within four business days following the Petition Date, notifying their investors and other parties of the commencement of the Chapter 11 Cases, as well as any other filings with the SEC, as necessary, and other public announcements. The Debtors submit that these efforts provide adequate notice to the equity interest holders.

19. The Court has granted similar relief in recent complex chapter 11 cases. *See, e.g., In re Pernix Sleep, Inc.*, No. 19-10323 (CSS) (Bankr. D. Del. Apr. 11, 2019); *In re Ciber, Inc.*, No. 17-10772 (BLS) (Bankr. D. Del. Apr. 28, 2017); *In re Hercules Offshore, Inc.*, No. 16-11685 (KJC) (Bankr. D. Del. June 7, 2016); *In re Swift Energy Co.*, No. 15-12670 (MFW) (Bankr. D. Del. Jan. 5, 2016); *In re Radioshack Corp.*, No. 15-10197 (BLS) (Bankr. D. Del. Feb. 9, 2015).

#### **IV. REQUEST TO REDACT CERTAIN PERSONAL IDENTIFICATION INFORMATION CONTAINED IN CONSOLIDATED CREDITOR MATRIX AND LIST OF EQUITY INTEREST HOLDERS**

20. Although the public has a common law "right of access to judicial proceedings and records," *Goldstein v. Forbes (In re Cendant Corp.)*, 260 F.3d 183, 192 (3d Cir. 2001), the Bankruptcy Code permits courts, in appropriate circumstances, to protect individuals from an undue risk of identity theft or other unlawful injury by limiting the public's access, placing papers under seal or otherwise entering orders to prohibit the dissemination of sensitive information. *See* 11 U.S.C. § 107(c); *see also Cendant*, 260 F.3d at 194 (noting the public's right of access "is not absolute") (citation and internal quotation marks omitted); *Leucadia, Inc. v. Applied Extrusion Tech., Inc.*, 998 F.2d 157, 165 (3d Cir. 1993) ("Although the right of access is firmly entrenched,

so also is the correlative principle that the right is not absolute.”) (citation and internal quotation marks omitted).

21. Specifically, section 107 of the Bankruptcy Code enables the Court to issue orders that protect parties from the potential harm that could result from disclosing confidential information. Section 107(b) of the Bankruptcy Code provides, in pertinent part, as follows:

On the request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . .

11 U.S.C. § 107(b)(1); *see* Fed. R. Bankr. P. 9018 (same).

22. Additionally, section 107(c) of the Bankruptcy Code provides:

The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual’s property:

(A) Any means of identification (as defined in section 1028(d) of title 18 [of the United States Code]) contained in a paper filed, or to be filed, in a case under this title.

(B) Other information contained in a paper described in subparagraph (A).

11 U.S.C. § 107(c)(1).

23. The Debtors respectfully submit that it is appropriate to authorize the Debtors to redact from any paper filed or to be filed with the Court in these Chapter 11 Cases the email addresses and home addresses of the Debtors’ individual creditors (including employees) and equity interest holders because such information could be used, among other things, to perpetrate identity theft or locate survivors of domestic violence or stalking who have otherwise taken steps to conceal their whereabouts. This risk is not merely speculative. In at least one recent chapter 11 case, the abusive former partner of a debtor’s employee exploited the publicly accessible creditor

and employee information filed in the chapter 11 case to track the employee to her new address, which had not been publicly available until then, forcing the employee to change addresses again for her safety. The Debtors propose to provide an unredacted version of the Creditor Matrix and any other redacted, applicable filings to the Court, the U.S. Trustee, counsel to an official committee of unsecured creditors appointed in these Chapter 11 Cases (if any) and other parties in interest upon reasonable request.

24. Courts in this jurisdiction and others have granted this relief in comparable Chapter 11 Cases. *See, e.g., In re Art Van Furniture, LLC*, No. 20-10553 (CSS) (Bankr. D. Del. Mar. 10, 2020) (authorizing the debtors to redact personally identifiable information, including home address information, of the debtors' individual creditors and interest holders on the creditor matrix and similar documents filed with the court); *In re Melinta Therapeutics, Inc.*, No. 19-12748 (LSS) (Bankr. D. Del. Feb. 7, 2020) (authorizing the debtors to file under seal the portions of the creditor matrix, the schedules and statements, and any related affidavits of service containing the home addresses of the debtors' current employees); *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Feb. 4, 2020) (authorizing the debtors to redact personal identification information, including home address information, of all individuals on documents filed with the court); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Dec. 19, 2019) (same).<sup>5</sup>

25. Recently, in addition to granting the requested relief, courts in this district have also stressed the importance of authorizing debtors to redact individual creditors' personally identifiable information, including home addresses in particular. In *Art Van Furniture*, in

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<sup>5</sup> *See also In re Pipeline-Westlake Hospital, LLC d/b/a Westlake Hospital*, Case No. 19 11757 (KBO) (Bankr. D. Del. Aug. 6, 2019) [Docket No. 10]; *In re Hexion Holdings LLC*, Case No. 19-10684 (KG) (Bankr. D. Del. June 24, 2019) [Docket No. 900]; *In re Promise Healthcare Grp., LLC*, Case No. 18-12491 (CSS) (Bankr. D. Del. Dec. 4, 2018) [Docket No. 221]; *In re Keystone Tube Co., LLC*, Case No. 17-11330 (LSS) (Bankr. D. Del. Jun. 20, 2017) [Docket No. 59]; *In re Dex Media, Inc.*, Case No. 16-11200 (KG) (Bankr. D. Del. May 18, 2016) [Docket No. 51].

overruling the objection of the U.S. Trustee to the same redaction relief proposed here, Chief Judge Sontchi noted that the proposed redaction is not a “burden of proof” issue so “much as a common sense issue.” Hr’g Tr. at 25:6–7, *In re Art Van Furniture, LLC*, No. 20-10553 (CSS) (Bankr. D. Del. Mar. 10, 2020).<sup>6</sup> Judge Sontchi found that “at this point and given the risks associated with having any kind of private information out on the internet, [redaction] has really become routine [and] I think obvious relief.” *Id.* at 25:13–16. Similarly, in *Clover Technologies*, Judge Owens overruled the U.S. Trustee’s objection, noting that “[t]o me it is common sense. I don’t need evidence that there is, at best, a risk of identity theft and worse a risk of personal injury from listing someone’s name and address on the internet by way of the court’s electronic case filing system and, of course, the claims agent’s website. . . . The court can completely avoid contributing to the risk by redacting the addresses. And while there is, of course, an important right of access we routinely redact sensitive and confidential information for corporate entities and redact individual’s home addresses.” Hr’g Tr. at 24:21-25, 25:9-10, *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 22, 2020). And, in *Forever 21*, in overruling the U.S. Trustee’s objection, Judge Gross found that “[w]e live in a new age in which the theft of personal identification is a real risk, as is injury to persons who, for personal reasons, seek to have their addresses withheld.” Hr’g Tr. at 60:22–25, *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Dec. 19, 2019).

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<sup>6</sup> Similarly, Judge Sontchi previously overruled the U.S. Trustee’s objection to the redaction of individuals’ information and found that “it’s just plain common sense in 2019—soon to be 2020—to put as little information out as possible about people’s personal lives to present [sic] scams . . . [Identity theft] is a real-life issue, and, of course, the issue of domestic violence is extremely important.” Hr’g Tr. at 48:20–22, 49:3–5, *In re Anna Holdings*, No. 19-12551 (CSS) (Bankr. D. Del. Dec. 3, 2019).

Notably, Judge Sontchi acknowledged that “the world is very different from [the 1980s] when you and I started practice with the problems of identity theft” and that his perspective had evolved in that he was not previously aware of “the dangers with this kind of information becoming public.” *See* Hr’g Tr. at 45:25-46:2, 47:22–24. The Debtors reserve the right to supplement the record with respect to such risks insofar as they are not self-evident in this instance.



26. For these reasons, the Debtors respectfully submit that cause exists to authorize the Debtors to seal, pursuant to 11 U.S.C. § 107(c)(1), personally identifiable information—including email addresses and home addresses—in respect of the Debtors’ individual creditors (including employees) who are listed on the Creditor Matrix, and interest holders who are listed on the equity interest holder list or any other document filed with the Court. Absent such relief, the Debtors would unnecessarily render individuals more susceptible to identity theft and could jeopardize the safety of individuals who, unbeknownst to the Debtors, are survivors of domestic violence or stalking by publishing their home addresses without any advance notice or opportunity to opt out or take protective measures.

**V. REQUEST TO ALTER NOTICE REQUIRED PURSUANT TO BANKRUPTCY RULE 2002(A) WITH RESPECT TO PRO ACCESS MEMBERS**

27. The resources of a debtor in possession’s estate are always limited, and a Bankruptcy Court must use discretion in deciding how those limited assets should be allocated among various creditor constituencies, including how much to spend on providing notice to creditors. *See In re US Airways, Inc.*, 2005 Bankr. LEXIS 2696, 19-20 (Bankr. E.D. Va. Nov. 21, 2005) (*citing Vancouver Women’s Health Collective Soc. v. A.H. Robins Co. (In re A.H. Robins)*, 820 F.2d 1359, 1364 (4th Cir. 1987)).

In Bankruptcy, the court has an obligation not only to the potential claimants, but also to existing claimants and the petitioner’s stockholders. The Court must balance the needs of notification of potential claimants with the interests of existing creditors and claimants. A bankrupt estate’s resources are always limited and the bankruptcy court must use discretion in balancing these interests when deciding how much to spend on notification.

*Id.* Accordingly, “[n]otice by publication may thus be entirely appropriate when the potential claimants are numerous, unknown, or have small claims (whether nominally or, . . . realistically).”

*Fogel v. Zell*, 221 F.3d 955, 963 (7th Cir. 2000).

28. A debtor need only do what is reasonable under the circumstances to provide notice to ascertainable creditors. *See White v. New Century TRS Holdings, (In re New Century TRS Holdings, Inc.)*, 450 B.R. 504, 513 (Bankr. D. Del. 2011). “What is reasonable must be determined by considering the totality of the circumstances in each case in light of certain factors, including . . . whether the cost of giving actual notice would consume a disproportionate share of the debtor’s resources . . . .” *Id.* at note 12.

29. The Advisory Committee Note to Bankruptcy Rule 2002 suggests general situations in which notice by publication may be advisable: (1) the debtor has disappeared; (2) the debtor’s records have been destroyed together with the names and addresses of creditors; or (3) the number of nominal creditors is large and the assets are insufficient to defray the costs of mailing notices. *See Fed. R. Bankr. P. 2002, advisory committee’s notes (1983).*

30. Mailing notices in the Debtors’ cases to a matrix of creditors that includes PRO Access members would present a continuing burden to the estates and will result in excessive administrative expenses and consume a disproportionate share of the Debtors’ resources. A single, “global” mailing of a first-class letter to the PRO Access members will cost the estate over \$450,000 in postage alone. This cost is unreasonable and disproportionately high when compared to the approximately \$5.1 million value of shipments owed to PRO Access members, in addition to the fact that the Debtors’ ordinary course practice is to communicate to such members via email.

31. On information and belief, this approach of excluding a large subscriber base from the creditor matrix has been previously utilized in bankruptcies involving large media companies. *See e.g., In re Affiliated Media, Inc.*, Case No. 10-10202 (KJC) (Bankr. D. Del. Jan. 22, 2010) (stating in *Declaration of Ronald A. Mayo, Vice President and Chief Financial Officer of Affiliated Media, Inc., in Support of First Day Relief Filed by Affiliated Media, Inc.* [Docket No. 3], filed

Jan. 22, 2010, that the Company had a daily and Sunday paid circulation of approximately 2.3 million and 2.4 million, respectively, but only listing 651 creditors in the *List of Creditors Filed by Affiliated Media, Inc.* [Docket No. 2], filed Jan. 22, 2010); *In re CommerceConnect Media Holdings, Inc.*, Case No. 09-12765 (BLS) (Bankr. D. Del. Aug. 3, 2009) (stating in *Motion to Continue Customer Programs Filed by CommerceConnect Media Holdings, Inc.* [Docket No. 5], filed Aug. 3, 2009, that the Company had sold approximately 1,372,000 subscriptions that were paid for but not yet delivered to customers and received approximately 63,300 prepayment deposits for trade shows from approximately 62,000 customers, but only listing 7,495 creditors in the *List of Creditors Matrix Filed by CommerceConnect Media Holdings, Inc.* [Docket No. 17], filed Aug. 3, 2009); *In re Chicago Newspaper Liquidation Corp.*, Case No. 09-11092 (CSS) (Bankr. D. Del. Mar. 31, 2009) (stating in *the Declaration of James D. McDonough in Support of First Day Motions Filed by Sun-Times Media Group, Inc.* [Docket No. 4], filed Mar. 31, 2009, that the company had an average audit circulation of 536,202 copies on weekdays, 398,996 copies on Saturdays, and 491,217 copies on Sundays, but only listing approximately 25,000 entries in the *List of Creditors Filed by Sun-Times Media Group, Inc.* [Docket No. 16], filed Mar. 31, 2009); *In re Tribune Company*, Case No. 08-13141 (KJC) (Bankr. D. Del. Dec. 8, 2008) (stating in the *Affidavit of Chandler Bigelow, III, Senior Vice President and Chief Financial Officer of Tribune Company in Support of First Day Motions* [Docket No. 3], filed Dec. 8, 2008, that the company had a paid circulation of 2.2 million copies daily and 3.3 million copies on Sundays, but only listing approximately 71,600 entries in the *List of Creditors Filed by Tribune Company* [Docket No. 17], filed Dec. 8, 2008).

32. Pursuant to Section 105(a) of the Bankruptcy Code, the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy

Code. 11 U.S.C. § 105(a). Bankruptcy Rule 2002(m) provides that “[t]he court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent . . .” Fed. R. Bankr. P. 2002(m). Bankruptcy Rule 9007 states that “[w]hen notice is to be given under these rules, the court shall designate, if not otherwise specified herein, . . . the entities to whom, and the form and manner in which the notice shall be given.” Fed. R. Bankr. P. 9007. Together, Bankruptcy Rules 2002(m), 9007, and Section 105(a) of the Bankruptcy Code provide this Court with the authority to limit the parties to whom notice is given. *See also In re Duncraggen Realty Corp.*, 2007 Bankr. LEXIS 3003 (Bankr. S.D.N.Y. Aug. 29, 2007) (recognizing the Court’s authority to regulate notices pursuant to Bankruptcy Rule 9007).

33. Limiting service of paper copies to major creditor constituencies and those parties most interested in the cases will reduce the Debtors’ administrative costs, conserve resources, and maximize value of the estate available to satisfy creditors.

34. The Debtors respectfully submit that, in light of the extremely high cost of completing mailings on over 840,000 additional parties, and the fact that the Debtors intend to continue honoring all obligations owed to PRO Access members (subject to Court approval), the Debtors should not be required to include PRO Access members in the Creditor Matrix. The Debtors respectfully submit that (i) notice by email to the PRO Access members, where available, (ii) notice to the home address of the PRO Access where email is not available, and (iii) publication in a nationally circulated newspaper to achieve as wide a distribution as possible where neither email nor home address is available, constitutes good and sufficient notice to PRO Access members for the purposes of Bankruptcy Rule 2002.

**NOTICE**

35. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; and (p) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Order, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Kara Hammond Coyle

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*Proposed Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ___

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**ORDER (I) AUTHORIZING THE DEBTORS  
TO (A) FILE A CONSOLIDATED LIST OF CREDITORS,  
(B) FILE A CONSOLIDATED LIST OF THE DEBTORS' THIRTY (30)  
LARGEST UNSECURED CREDITORS, (C) MODIFY REQUIREMENTS TO  
FILE A LIST OF, AND PROVIDE NOTICE TO, ALL EQUITY HOLDERS, AND  
(D) REDACT CERTAIN PERSONAL IDENTIFICATION INFORMATION,  
AND (II) APPROVING NOTICE PROCEDURES FOR CERTAIN CUSTOMERS**

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Upon the motion (the "*Motion*")<sup>2</sup> of the Debtors for an order (i) authorizing the Debtors to (a) file a Consolidated Creditor Matrix, (b) file a Consolidated Top Thirty (30) Creditors List, (c) modify requirements to file a list of, and provide notice to, all equity holders, and (d) redact portions of their Consolidated Creditor Matrix and list of equity interest holders containing the email addresses and home addresses of the Debtors' individual creditors and equity interest holders, and (ii) approving notice procedures with respect to PRO Access members; and this Court having reviewed the Motion and the First Day Declaration; and this Court having

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor's United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors' mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized to submit a Consolidated Creditor Matrix.

The requirements of section 521(a)(1)(A) of the Bankruptcy Code, Bankruptcy Rule 1007(a)(1), and Local Rules 1007-2(a) and 2002-1(f)(v) that separate mailing matrices and lists of creditors be submitted for each Debtor are permanently waived.

3. The Debtors are authorized to file a Consolidated Top 30 List in lieu of each Debtor filing a list of its twenty (20) largest unsecured creditors.

4. The Debtors are authorized to file a list of equity holders directly registered with the transfer agent for the Debtors' common equity (with instructions to serve down to beneficial holders, as applicable) in satisfaction of Bankruptcy Rule 1007(a)(3).

5. The Debtors are authorized to redact personally identifiable information, including the email addresses and home addresses of the Debtors' individual creditors from the Consolidated Creditor Matrix; *provided, however*, that unredacted copies of the Consolidated Creditor Matrix and other redacted filings shall be provided to the United States Trustee, counsel to any official committee appointed in these Chapter 11 Cases, and such other persons as the Debtors deem appropriate or as the Court may later order.

6. Nothing in this Order shall waive or otherwise limit the service of any document upon or the provision of any notice to any individual whose personally identifiable information is sealed or redacted pursuant to this Order. Service of all documents and notices upon individuals whose personally identifiable information is sealed or redacted pursuant to this Order shall be confirmed in the corresponding certificate of service. The Debtors shall provide the personally identifiable information to any party in interest that files a motion that indicates the reason such information is needed and that, after notice and a hearing, is granted by the Court.

7. Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 2002 and 9007, (i) service by email to PRO Access members whose email address is known, (ii) service to the home address where the PRO Access members' email address is not known; and (iii) publication in *USA Today* (national edition) of any notices required by Bankruptcy Rule 2002 where the PRO Access members' email and home address are not known, shall constitute good and sufficient notice to PRO Access members.

8. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

9. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

10. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

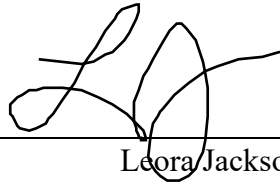
Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge



TAB CC

THIS IS **EXHIBIT “CC”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', is positioned above a horizontal line.

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Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

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**MOTION OF DEBTORS FOR ORDERS AUTHORIZING  
PAYMENT OF CERTAIN PREPETITION CRITICAL VENDOR CLAIMS**

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The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Interim Order*”) and **Exhibit B** (the “*Proposed Final Order*,” and together with the Proposed Interim Order, the “*Proposed Orders*”), respectively, authorizing the payment of certain prepetition Critical Vendor Claims (as defined below), subject to the holders thereof providing the Debtors with Customary Trade Terms (as defined below), in an amount not to exceed \$25.0 million on an interim basis and \$40.0 million on an aggregate final basis, inclusive of amounts paid pursuant to the Interim Order, of which

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

approximately \$12.5 million is for goods received in the 20 days prior to the Petition Date (as defined below) and thus entitled to administrative expense priority.

### **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), 503(b)(9), 1107(a) and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

### **BACKGROUND**

3. On June 23, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “**Chapter 11 Cases**”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies' Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day Declaration**")<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

#### **THE CRITICAL VENDORS AND THE CRITICAL VENDOR CLAIMS**

6. The Debtors' core business is delivering the very best in health, wellness, and performance products to their loyal customer base. While their business is vertically integrated, from formulating and manufacturing products to selling them in their retail stores and online, the Debtors rely on a network of critical vendors for a number of goods and services. These critical vendors include: (a) suppliers of (i) products that the Debtors sell as their own branded products to customers (the "**Branded Products Suppliers**"), (ii) products that the Debtors sell directly to customers (the "**Third-Party Products Suppliers**"), and (iii) packaging and labeling that the Debtors use to package and label shipments directly to customers (the "**Packaging Suppliers**" and together with the Branded Products Suppliers and Third-Party Products Suppliers, the

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court's website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors' proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.



“*Suppliers*”);<sup>4</sup> (b) providers of information technology services (the “*Information Technology Service Providers*”); and (c) providers of advertising and other critical services (the “*Advertising and Other Service Providers*”). The goods and services these vendors provide and the Debtors’ relationships with them are described further below.

7. In keeping with their fiduciary duties and in the exercise of their sound business judgment, the Debtors, their management team, and their advisors invested considerable efforts evaluating their vendors (the “*Vendors*”) and their projected prepetition claims during the weeks leading up to the Petition Date. More specifically, the Debtors considered the following criteria to identify the pool of Vendors whose claims would need to be paid to smooth the Debtors’ transition into chapter 11, maximize value, and keep their reorganization efforts advancing:

- whether a Vendor is a sole- or limited-source or high-volume supplier for goods or services critical to the Debtors’ business operations;
- whether alternative vendors are available that can provide requisite volumes of similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning to an alternative;
- the degree to which replacement costs (including pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a Vendor’s prepetition claim;
- whether an agreement exists by which the Debtors could compel a Vendor to continue performing on prepetition terms;
- whether certain specifications or contract requirements prevent, directly or indirectly, the Debtors from obtaining goods or services from alternative sources;
- whether failure to pay all or part of a particular Vendor’s claim could cause the vendor to refuse to ship inventory or to provide critical services postpetition;

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<sup>4</sup> Certain of the Suppliers are both Branded Products Suppliers and Third-Party Products Suppliers.

- whether the Debtors’ inability to pay all or part of a Vendor’s prepetition claim could trigger financial distress for the Vendor; and
- whether failure to pay a Vendor could result in contraction of trade terms as a matter of applicable nonbankruptcy law or regulation.

8. Based on this evaluation, the Debtors believe that they may need to pay certain critical Vendors up to \$25.0 million in the first 21 days of the Chapter 11 Cases and up to \$40.0 million in total on account of prepetition claims (collectively, the “*Critical Vendor Claims*,” and the Vendors holding such claims, the “*Critical Vendors*”)<sup>5</sup> to avoid significant disruption to their operations and degradation to the value of their estates. While the Debtors will attempt to negotiate with the Critical Vendors to avoid having to make these payments, authorizing them to do so (as necessary and subject to the terms set forth in the Proposed Orders and described herein) is fully justified in these circumstances. In particular, each of the Critical Vendors provides important goods or services for the Debtors, which are described further below, and satisfies one or more of the criteria the Debtors considered.

## **I. SUPPLIERS**

9. The Debtors’ business is dependent on delivering the very best in health, wellness, and performance products to their loyal customer base, and without the Critical Vendors of specialized goods, the Debtors could not effectively compete in the marketplace. If the Debtors fail to stock such core products, the effects would extend far beyond simply not selling those particular products. If consumers become aware that the Debtors do not stock a well-known, high quality product, they will simply not visit the Debtors’ stores or website, where such customers

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<sup>5</sup> The Critical Vendor Claims do not include any claims which the Debtors have requested authority to pay under the *Motion of Debtors for Orders (A) Authorizing Payment of Prepetition Lien Claims and Import Claims and (B) Confirming Administrative Expense Priority of Outstanding Orders*, filed contemporaneously herewith (the “*Lien Claimants Motion*”), which claims may be held by Critical Vendors. To the extent the relief requested in the Lien Claimants Motion is not granted, the Debtors reserve the right to request, on appropriate notice to parties in interest, that the proposed caps on payment of Critical Vendor Claims be increased.

otherwise may have purchased additional items beyond the one product that they initially sought. In addition, certain of the Debtors' items are already included in advertisements. Without these core products, the Debtors' business would suffer greatly.

10. The Debtors obtain these core products from a limited number of highly specialized Critical Vendors that are irreplaceable, due to, among other things, demand created by branding and marketing for finished products, the technical supply and manufacturing process, and the perishability and geographic location of raw materials. Moreover, the Debtors rely on timely and frequent delivery of these critical goods and services, and any interruption in this supply—however brief—would disrupt the Debtors' operations and could potentially cause irreparable harm to their business, goodwill, customer base, and market share. The harm to the Debtors' estates of not having products or services provided by the Critical Vendors would far outweigh the cost of payment of the Critical Vendor Claims.

**A. Branded Products Suppliers**

11. The Debtors sell a variety of products which are GNC-branded, including, but not limited to, protein powders, vitamins, and other dietary supplements. These products, which the Debtors must keep readily available to satisfy customer demand, are manufactured and supplied by the Branded Products Suppliers. Before the Debtors will accept products to be used as their branded products, each Branded Products Supplier must be individually deemed qualified and have the applicable product specifications validated by the Debtors and, in some cases, a third party auditor. Onboarding a Branded Products Supplier can take 12 to 15 weeks of sampling and testing, an additional 8 to 12 weeks of lead times, 12 weeks of stability testing, and a minimum of two weeks of consumer testing. Coordination among product development, packaging, merchandising, the Debtors' brand contacts, project management, and formula and bottle/cap/labels specialists at fill and packaging vendors is required to complete the review process. This technical and time

consuming process is necessary to ensure uniform production of the high-quality products that the Debtors' customers have come to expect. In addition, the Debtors' third-party contract customers typically require their own approval and specification validation process for any replacement Branded Products Supplier. Due to the specialized nature of the supply chain, replacing an existing Branded Products Supplier would be extremely time consuming and disruptive. Accordingly, the Branded Products Suppliers are vital to the Debtors' businesses and not replaceable absent significant cost and disruption.

12. Certain of the Branded Products Suppliers provide products in quantities that would be difficult or impossible to replace. Simply put, without a consistent stream of goods from the Branded Products Suppliers, the Debtors would be unable to supply the requisite amount of product to meet customer demand, and the Debtors' shelves would quickly run empty, directly affecting sales and revenue. In addition, many of the Branded Products Suppliers are invaluable as they are sole- or limited-source or high-volume suppliers for certain products. Accordingly, Branded Products Suppliers are essential to the Debtors' business and the continued production of the Debtors' products.

**B. Third-Party Products Suppliers**

13. Certain of the Debtors' Critical Vendors are Third-Party Products Suppliers. Given the unique nature of the merchandise sold in the Debtors' stores, with certain products having strong, entrenched brand identities that render them irreplaceable, the inventory and merchandise that the Debtors purchase from the Third-Party Products Suppliers cannot be substituted. Furthermore, the Debtors' business is reliant on the sale of such products, as a failure to stock the highest quality, most in-demand products would render the Debtors' stores irrelevant to the vast majority of shoppers, resulting in significant lost revenue. Without these Third-Party Products

Suppliers' products and agreement to continue an ordinary course relationship, the Debtors cannot operate a profitable, successful business.

14. Furthermore, in the case of certain Third-Party Products Suppliers, the Debtors' have exclusivity arrangements for their products. These arrangements provide the Debtors an opportunity to provide products not offered by their competitors and are key to maintaining the Debtors' success in the market. If the Debtors are unable to pay such Critical Vendors, the Debtors may lose exclusivity, removing a key differentiating factor in the Debtors' business.

15. Additionally, in the case of both Third-Party Products Suppliers and Branded Products Suppliers, products supplied to and sold by the Debtors and the Debtors' non-debtor affiliates outside the United States usually must be registered with applicable government authorities. This registration process historically has taken between 12-18 months before such products were approved for sale in such locations. If the Debtors are unable to pay the Third-Party Products Suppliers and Branded Products Suppliers, any replacement products sold outside the United States in locations where product registration is required would not be able to be sold until such products are successfully registered. This would cause a significant reduction in the Debtors' product offerings and would likely result in significant lost revenue.

### **C. Packaging Suppliers**

16. The Debtors' rely on a number of Packaging Suppliers to provide packaging and labelling used to ship products directly to customers who purchase products via the Debtors' e-commerce channels. If the Debtors' supply of packaging and labelling provided by the Packaging Suppliers were interrupted, the Debtors would be unable to provide their products to customers until relationships with alternative suppliers are established, which could take some time and would be a significant disruption in the Debtors' business. Additionally, the products provided by the Packaging Suppliers are especially integral to the Debtors' e-commerce operation

(which is the fastest growing sales channel for the Debtors), and any disruption in the Debtors' relationship with the Packaging Suppliers could have a detrimental effect on this essential part of the Debtors' business.

**D. Nutra Manufacturing**

17. The Debtors' largest supplier by dollar value is Nutra Manufacturing, LLC ("**Nutra**"), and Nutra is the Debtors' most important Critical Vendor.

18. As discussed further in the First Day Declaration, in March 2019, non-Debtor affiliate GNC Newco Parent, LLC ("**GNC Newco Parent**") sold a 57.14% stake in Nutra to International Vitamin Corporation ("**IVC**") for an aggregate purchase price of \$101 million, and agreed to sell IVC the remaining stake in Nutra in equal installments on or around each of the four anniversaries following the initial sale, for an aggregate purchase price of \$75 million (subject to adjustment based on Nutra's performance). The Debtors currently own, indirectly through non-Debtor affiliate GNC Newco Parent, approximately 32.14% of Nutra, but will sell that stake in installments over the next three years to IVC.

19. In connection with the above-referenced transaction, (i) non-Debtor GNC Supply Purchaser, LLC ("**Supply Purchaser**") entered into a product supply agreement (the "**Product Supply Agreement**") with Nutra, whereby Nutra agreed to manufacture and supply products to Supply Purchaser, and (ii) Debtor General Nutrition Corporation entered into a contract with Supply Purchaser to provide Supply Purchaser the services required to perform Supply Purchaser's obligations under the Product Supply Agreement (including the obligation to pay Nutra), and Supply Purchaser agreed to direct Nutra to deliver all products directly to General Nutrition Corporation. No Debtor entity is party to the Product Supply Agreement with Nutra.

20. Payment to Nutra as a Critical Vendor is essential for several reasons. **First**, since the Debtors are not party to the Product Supply Agreement, and they do not have control of Nutra,

they cannot compel Nutra to continue supplying them product. *Second*, the disruption and loss of revenue from Nutra's failure to supply products would be significant. Nutra's products are unique GNC-branded products, and are sold throughout all of the Debtors' channels, including domestic, Canada, international, and wholesale. In addition, Nutra's products are some of the Debtors' highest margin products, and represent a disproportionate share of the Debtors' revenue and profit. *Third*, the three remaining installment payments from IVC for the purchase of Nutra are subject to adjustment based on the magnitude of product acquired under the Product Supply Agreement. Accordingly, a halt in the purchase of goods from Nutra would result in a significant reduction of the amount the Debtors will receive from IVC for the Debtors' remaining interest in Nutra. In the event the Product Supply Agreement is terminated, future installment payments could be reduced to zero. *Fourth*, GNC Newco Parent's interest in Nutra is pledged to IVC, such that in the event of a breach of the Product Supply Agreement, IVC may foreclose on GNC Newco Parent's remaining interests in Nutra.

## **II. INFORMATION TECHNOLOGY**

21. Additionally, the Debtors' business requires a global software platform in order to meet the needs of their customers. The Debtors rely on a number of Information Technology Service Providers to provide services which include marketing customer relationship management, a cloud-based system, data management, a semi-integrated payment support system, and a system that allows consumers to make online purchases, receive shipments from the Debtors' stores, and place orders for store pickup. The Information Technology Service Providers are instrumental in the Debtors' ability to manage their customers, and the services they provide are essential for the Debtors to maintain their physical and digital commerce channels. Disruptions to these services would result in significant damage to the Debtors' commercial platform.

22. Without the functions provided by the Information Technology Service Providers, the Debtors would not be able to meet the demands of consumers or maintain their business operations, and the Debtors could lose the sensitive and vital information that they have accumulated during their many years of operation. Furthermore, the costs that the Debtors would incur to replace these systems would be significant. Replacement of the current data system would require a technical, extensive, and time consuming process as the Debtors would need to coordinate among many departments and develop new software to set up these systems and rebuild them from the ground up.

### **III. ADVERTISING AND OTHER SERVICES**

23. A significant portion of the Debtors' business is derived from consistent customers who have come to expect quality customer service from the Debtors for their products. Certain Advertising and Other Service Providers allow customers to access chat and phone services where they are able to inquire about products, place orders, report any issues, and provide any other information which allows the Debtors to better meet consumer needs. Additionally, the Debtors rely on advertising support services to reach shoppers on desktops, tablets, and mobile devices, create relevant campaigns, and access transparent campaign metrics. The ability to maintain this platform is essential for the Debtors to continue operations and generate sales. The services provided by the Advertising and Other Service Providers allow the Debtors to support and maintain their customer base, and are responsible for a significant amount of the Debtors' sales. Without this, the Debtors would face significant loss to their revenue and be unable to maintain their current business operations.

### **REQUIREMENT OF CUSTOMARY TRADE TERMS**

24. As set forth in the Proposed Orders, the Debtors propose that any Critical Vendor that accepts payment of its Critical Vendor Claims be required—as a condition to the payment—



to provide the Debtors trade terms in line with historical practice, including with respect to credit limits, pricing, cash discounts, timing of payments, allowances, product mix, availability, other terms covered by existing agreements, or other programs, for all goods and services delivered postpetition and to continue supplying those goods and services for the duration of the Chapter 11 Cases. Therefore, the Debtors seek authority to condition the payment of any Critical Vendor Claim on the applicable Critical Vendor's agreement to continue to provide goods or services to the Debtors for the duration of the Chapter 11 Cases in accordance with trade terms at least as favorable to the Debtors as those in place as of 180 days before the Petition Date, as the same may be modified by any Trade Agreement (as defined below) (the "*Customary Trade Terms*").

25. To memorialize this agreement, the Debtors propose to execute a trade agreement, substantially in the form attached hereto as **Exhibit C** (each, a "*Trade Agreement*"). The Debtors request authority to enter into these Trade Agreements, including such modifications or amendments thereto as the Debtors may determine in their business judgment are in the best interests of their estates.

26. If any party accepts payment of its Critical Vendor Claim under the Proposed Orders and thereafter fails to provide the Debtors with the Customary Trade Terms, the Proposed Orders will provide that, subject to the terms of any Trade Agreement with that party: (a) the payment may be deemed to be an improper postpetition transfer on account of a prepetition claim and immediately recoverable by the Debtors in cash upon written request; (b) upon recovery by the Debtors, any prepetition claim of the party will be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to the party, the Debtors may elect to recharacterize and apply any payment made under the Proposed Orders to the outstanding postpetition balance, with the Critical Vendor being required to return any

amounts in excess of such balance to the Debtors without setoff or other provisions for payment of claims of any kind.

### **BASIS FOR RELIEF**

#### **I. PAYING THE CRITICAL VENDOR CLAIMS IS IN THE BEST INTERESTS OF THE DEBTORS' ESTATES AND THEIR CREDITORS**

27. In order to ensure the success of the Debtors' businesses, the Debtors necessarily rely on certain Critical Vendors that provide the Debtors with goods and services related to the Debtors' operations. Without the goods and services provided by the Critical Vendors, the Debtors would be unable to efficiently provide products to their customers. Unless the Debtors are authorized to pay the Critical Vendor Claims, the Debtors believe that the Critical Vendors may refuse to provide critical goods and services, resulting in a material disruption of the Debtors' operations. Such a disruption in operations could lead to a significant loss of business, erosion of goodwill, and deterioration in the value of the Debtors' operations to the detriment of the Debtors' stakeholders.

#### **II. PAYING THE CRITICAL VENDOR CLAIMS IS APPROPRIATE UNDER SECTION 363(B) AND 105(A) OF THE BANKRUPTCY CODE AND THE DOCTRINE OF NECESSITY.**

28. The relief requested in this motion is appropriate under sections 363(b) and 105(a) of the Bankruptcy Code. As described below, payment of Critical Vendor Claims is necessary to ensure continued operation of the Debtors' business and, in turn, preserve and enhance the value of the Debtors' estates.

##### **A. PAYING THE CRITICAL VENDOR CLAIMS IS A SOUND EXERCISE OF BUSINESS JUDGMENT AND THEREFORE SHOULD BE APPROVED.**

29. The Debtors should be authorized to pay the Critical Vendor Claims on the terms set forth in the Proposed Orders, as it reflects a sound exercise of their business judgment. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor "may use, sell, or lease,

other than in the ordinary course of business, property of the estate” after notice and a hearing. 11 U.S.C. § 363(b)(1). Generally, the debtor is only required to “show that a sound business purpose” justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring “good business reason” for use under section 363(b) of the Bankruptcy Code). This standard prohibits other parties from second-guessing the debtor’s business judgment if the debtor has shown that the proposed use will benefit the debtor’s estate. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

**B. PAYING THE CRITICAL VENDOR CLAIMS IS NECESSARY TO THE SUCCESS OF THE DEBTORS’ REORGANIZATION AND THEREFORE SHOULD BE APPROVED.**

30. In addition, the Debtors should be authorized to pay the Critical Vendor Claims as set forth in the Proposed Orders because doing so is necessary to the success of their reorganization. Section 105(a) of the Bankruptcy Code provides that a bankruptcy court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). Courts have interpreted this provision to authorize payments on prepetition claims where the payments are essential to the success of the debtor’s reorganization under what is known as the “necessity of payment doctrine.” *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) (“Thus, the ‘necessity of payment’ doctrine...teaches no more than, if a payment of a claim which arose prior to reorganization is essential to the continued operation of the [debtor’s business] during reorganization, payment may

be authorized...”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) “provides a statutory basis for payment of pre-petition claims” under necessity of payment doctrine); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (“The appropriate standard...is commonly referred to as ‘the necessity of payment doctrine.’”).

31. Courts in this District often authorize the satisfaction of prepetition vendor claims where it is critical to the debtor’s ongoing operations. *See In re Real Industry, Inc.*, No. 17-12464 (KJC) (Bankr. D. Del. Dec. 19, 2017); *In re True Religion Apparel, Inc.*, No. 17-11460 (CSS) (Bankr. D. Del. July 31, 2017); *In re Panda Temple Power, LLC*, No. 17-10839 (LSS) (Bankr. D. Del. May 12, 2017); *In re Chaparral Energy, Inc.*, No. 16-11144 (LSS) (Bankr. D. Del. May 11, 2016).

32. Further, where, as here, payment of select prepetition claims is critical to maximize the value of a debtor’s estate, courts in this District routinely authorize such payments. *In re Imerys Talc Am., Inc.*, Case No. 10289 (LSS) (Bankr. D. Del. Feb. 14, 2019) (D.I. 51); *In re Consolidated Infrastructure Grp., Inc.*, Case No. 19-10165 (BLS) (Bankr. D. Del. Jan. 31, 2019) (D.I. 29); *In re LBI Media, Inc.* Case No. 18-12655 (CSS) (Bankr. D. Del. Nov. 27, 2019) (D.I. 82); *In re ATD Corp.*, Case No. 18-12221 (KJC) (Bankr. D. Del. Oct. 5, 2018) (D.I. 102); *In re Color Spot Holdings, Inc.*, Case No. 18-11272 (LSS) (Bankr. D. Del. May 30, 2018) (D.I. 36); *In re The Nordam Grp., Inc.*, Case No. 18-11699 (MFW) (Bankr. D. Del. July 24, 2018) (D.I. 81). Given the nature of the goods and services provided by the Critical Vendors and the essential nature of these goods and services to the Debtors’ business, the consequences should the Critical Vendors cease to provide these goods and services, and the related potential loss of value to the Debtors’ estates, similar relief is warranted here, and the Court should authorize the payment of Critical

Vendor Claims under sections 363(b) and 105(a) of the Bankruptcy Code and the doctrine of necessity.

33. The Debtors have carefully reviewed their accounts payable and undertaken a process to identify vendors, suppliers, and service providers essential to ongoing operations. Without the Critical Vendors' goods and services, the Debtors may be forced to cease providing products their customers rely on, which would negatively impact the Debtors' ongoing business while they search for substitute vendors and the Debtors could be forced to forego existing favorable trade terms.

### **III. PAYING THE CRITICAL VENDOR CLAIMS IS SUPPORTED BY SECTION 503(B)(9) OF THE BANKRUPTCY CODE**

34. Furthermore, with respect to the Critical Vendor Claims that arise from goods provided within 20 days of the Petition Date and in the ordinary course of the Debtors' business, the issue of payment proves to mostly be one of timing. Section 503(b)(9) of the Bankruptcy Code provides administrative expense treatment to claims arising from goods received by the Debtors in the ordinary course of their business during the 20 days prior to the Petition Date. 11 U.S.C. § 503(b)(9). As a result, the Debtors would have to pay these Critical Vendor Claims in full, to the extent they fall within the scope of section 503(b)(9) of the Bankruptcy Code, regardless of timing of such payment. Consequently, the Debtors seek to have the Critical Vendors apply any postpetition payments received first against such Critical Vendors' claim arising under section 503(b)(9) of the Bankruptcy Code. As of the Petition Date, the Debtors estimate that approximately \$12.5 million of the Critical Vendor Claims qualify for administrative expense treatment under section 503(b)(9) of the Bankruptcy Code.

#### **IV. THE DEBTORS SHOULD BE AUTHORIZED TO PAY CRITICAL VENDOR CLAIMS UNDER SECTIONS 1107(A) AND 1108 OF THE BANKRUPTCY CODE**

35. The Debtors are operating their business as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code, and they are therefore fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) [their] equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). A chapter 11 debtor in possession has the implicit duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.*

36. Courts have noted that a debtor in possession can, in certain instances, fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* The court provided a three-prong test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*Id.* at 498.

37. Payment of the Critical Vendor Claims meets each *CoServ* element. First, it is critical that the Debtors deal with the Critical Vendors because the Critical Vendors provide goods and services necessary to the Debtors’ ongoing operations. Second, the Debtors believe that the Critical Vendors may otherwise be unwilling or unable to provide goods and services to the Debtors on a postpetition basis if their prepetition balances are not paid. Accordingly, not paying Critical Vendor Claims harms the Debtors financially because losing access postpetition to the

necessary goods and services provided by the Critical Vendors could force the Debtors to halt ongoing business and potentially forgo existing favorable trade terms. Third, the Debtors have examined other options short of paying Critical Vendor Claims and have determined that, to avoid any unexpected or inopportune interruptions to their business operations, there is no practical alternative to paying Critical Vendor Claims consistent with the applicable Critical Vendor Claims cap. Therefore, the Debtors submit that paying Critical Vendor Claims is a sound exercise of their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

**PROCESSING OF CHECKS AND  
ELECTRONIC FUND TRANSFERS SHOULD BE AUTHORIZED**

38. The Debtors have sufficient funds to pay any amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing and cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Critical Vendor Claims. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND  
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

39. Certain aspects of the relief requested herein are subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant this relief on an expedited basis if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth

herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

40. Additionally, with respect to any aspect of the relief sought herein that constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

#### **RESERVATION OF RIGHTS**

41. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.



## NOTICE

42. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; and (p) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank.]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Orders, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Joseph M. Mulvihill

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*Proposed Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	) Chapter 11
	)	)
GNC HOLDINGS, INC., <i>et al.</i> ,	)	) Case No. 20-11662 (____)
	)	)
Debtors. <sup>1</sup>	)	) (Jointly Administered)
	)	)
	)	) Re: Docket No. _____

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**INTERIM ORDER AUTHORIZING PAYMENT OF  
CERTAIN PREPETITION CRITICAL VENDOR CLAIMS**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an order authorizing the payment of the Critical Vendor Claims and granting certain related relief (this “*Interim Order*”); and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to honor, pay, or otherwise satisfy the Critical Vendor Claims in an amount not to exceed \$25.0 million on an interim basis.
3. The form of the Trade Agreement, substantially in the form attached to the Motion as **Exhibit C**, is approved in its entirety, and the Debtors are authorized, but not directed, to negotiate, modify, or amend the Trade Agreement as entered into with any Critical Vendor in their business judgment.
4. The Debtors are authorized, but not directed, to condition the honoring, payment, or other satisfaction of any Critical Vendor Claim on the execution of a Trade Agreement, and the Debtors are authorized, but not directed, to enter into such Trade Agreements when and if the Debtors determine it appropriate, in their business judgment.
5. If any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with Customary Trade Terms, then, subject to the terms of any Trade Agreement between the Debtors and such party: (a) any payment made on account of any prepetition claim held by such party shall be deemed, in the Debtors’ discretion, an improper postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim satisfied by such

payment shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding prepetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, recoupments, provisions for payment of any claims, or otherwise.

6. Payments made to Critical Vendors shall be applied, in the first instance, against claims held by such Critical Vendors which arise under section 503(b)(9) of the Bankruptcy Code, in whole or in part as applicable.

7. Any Critical Vendor that accepts payment or other form of satisfaction from the Debtors on account of all or a portion of a Critical Vendor Claim pursuant to this Interim Order shall be deemed to (a) agree to the terms and provisions of this Interim Order and (b) have waived, to the extent so paid or satisfied, any and all prepetition claims, of any type, kind, or priority (including any reclamation claim), against the Debtors, their estates, and their assets and properties.

8. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the Critical Vendor Claims, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

9. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

10. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

11. Notwithstanding anything contained in the Motion or this Interim Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a "*DIP Order*"), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency

between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

12. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Interim Order shall be effective and enforceable immediately upon entry hereof.

13. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

14. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

15. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order

16. A hearing to consider entry of an order granting the Motion on a final basis (the “*Final Hearing*”) shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_\_ .m. (prevailing Eastern time). Any objections or responses to the entry of such an order must be filed on or before 4:00 p.m. (prevailing Eastern time) on \_\_\_\_\_, 2020, and served on (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (email: caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com), and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel (jeffrey.mispagel@lw.com); and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); (c) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California



90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (d) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (e) counsel to the administrative agent under the DIP ABL FILO Facility, Simpson Thacher & Bartlett LLP, 425 Lexington Ave. New York, New York 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (email: squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); and (f) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: trigg.erin@dorsey.com and kohn.samuel@dorsey.com). In the event that no objections to entry of the Proposed Final Order on the Motion are timely received, this Court may enter such Proposed Final Order without need for the Final Hearing.

17. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	) Chapter 11
	)	)
GNC HOLDINGS, INC., <i>et al.</i> ,	)	) Case No. 20-11662 (___)
	)	)
Debtors. <sup>1</sup>	)	) (Jointly Administered)
	)	)
	)	) Re: Docket Nos. ___ & ___

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**FINAL ORDER AUTHORIZING PAYMENT OF  
CERTAIN PREPETITION CRITICAL VENDOR CLAIMS**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an order authorizing the payment of the Critical Vendor Claims and granting certain related relief (this “*Final Order*”); and this Court having reviewed the Motion, the First Day Declaration, and the Interim Order entered on [\_\_\_], 2020; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to honor, pay, or otherwise satisfy the Critical Vendor Claims in an aggregate final amount not to exceed \$40.0 million, inclusive of amounts paid pursuant to the Interim Order.
3. The form of the Trade Agreement, substantially in the form attached to the Motion as **Exhibit C**, is approved in its entirety, and the Debtors are authorized, but not directed, to negotiate, modify, or amend the Trade Agreement as entered into with any Critical Vendor in their business judgment.
4. The Debtors are authorized, but not directed, to condition the honoring, payment, or other satisfaction of any Critical Vendor Claim on the execution of a Trade Agreement, and the Debtors are authorized, but not directed, to enter into such Trade Agreements when and if the Debtors determine it appropriate, in their business judgment.
5. If any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with Customary Trade Terms, then, subject to the terms of any Trade Agreement between the Debtors and such party: (a) any payment made on account of any prepetition claim held by such party shall be deemed, in the Debtors’ discretion, an improper

postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim satisfied by such payment shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding prepetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, recoupments, provisions for payment of any claims, or otherwise.

6. Payments made to Critical Vendors shall be applied, in the first instance, against claims held by such Critical Vendors which arise under section 503(b)(9) of the Bankruptcy Code, in whole or in part as applicable.

7. Any Critical Vendor that accepts payment or other form of satisfaction from the Debtors on account of all or a portion of a Critical Vendor Claim pursuant to this Final Order shall be deemed to (a) agree to the terms and provisions of this Final Order and (b) have waived, to the extent so paid or satisfied, any and all prepetition claims, of any type, kind, or priority (including any reclamation claim), against the Debtors, their estates, and their assets and properties.

8. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the Critical Vendor Claims, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

9. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

10. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

11. Notwithstanding anything contained in the Motion or this Final Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a "***DIP Order***"), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms

of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

12. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Final Order shall be effective and enforceable immediately upon entry hereof.

13. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order

14. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT C**

**Trade Agreement**



**THIS TRADE AGREEMENT IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN. ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT FOR ANY SUCH CHAPTER 11 PLAN. THE INFORMATION IN THIS TRADE AGREEMENT IS SUBJECT TO CHANGE. THIS TRADE AGREEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.**

## TRADE AGREEMENT

[ ● ] (the “*Company*”), on the one hand, and the vendor identified in the signature block below (the “*Vendor*”), on the other hand, hereby enter into the following trade agreement (this “*Trade Agreement*”), dated as of the date with the Vendor’s signature below.

### Recitals

WHEREAS on [ ● ], 2020 (the “*Petition Date*”), General Nutrition Centers, Inc. and certain of its affiliated entities (collectively, the “*Debtors*”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), in the United States Bankruptcy Court for the District of Delaware (the “*Court*”).

WHEREAS on [ ● ], the Court entered its *Interim Order Authorizing Payment of Certain Prepetition Critical Vendor Claims* (the “*Interim Critical Trade Order*”) [Docket No. [ ● ]] authorizing the Debtors on an interim basis, under certain conditions, to pay the prepetition claims of certain vendors, including Vendor, subject to the terms and conditions set forth therein.

WHEREAS on [ ● ], the Court entered its *Final Order Authorizing Payment of Certain Prepetition Critical Vendor Claims* (the “*Final Critical Trade Order*,” and together with the Interim Critical Trade Order, the “*Critical Trade Orders*”) [Docket No. [ ● ]] authorizing the Debtors on a final basis, under certain conditions, to pay the prepetition claims of certain vendors, including Vendor, subject to the terms and conditions set forth therein.

WHEREAS prior to the Petition Date, Vendor delivered goods to the Company, and the Company paid Vendor for such goods, according to Customary Trade Terms (as defined herein).

WHEREAS the Company and Vendor (each a “*Party*,” and collectively, the “*Parties*”) agree to the following terms as a condition of payment on account of certain pre-petition claims Vendor may hold against the Company.

### Agreement

1. Recitals. The foregoing recitals are incorporated by reference as if set forth fully herein.
2. Vendor Payment. Vendor represents and agrees that, after due investigation, the sum of all amounts currently due and owing by the Company to Vendor is \$[●] (the “*Agreed Vendor Claim*”). Following execution of this Trade Agreement, the Company shall, in full and final satisfaction of the Agreed Vendor Claim, pay Vendor \$[●] on account of its prepetition claim (the “*Vendor Payment*”) (without interest, penalties, or other charges), as such invoices become due and payable.

3. Agreement to Supply.

a. Vendor shall supply goods and/or perform services to the Company, and the Company shall accept and pay for goods and/or service from Vendor, for the duration of the Debtors' chapter 11 cases based on the following "*Customary Trade Terms*": the trade terms at least as favorable to the Company as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances (as may be incorporated or contemplated by any agreements between the Parties or based on historic practice, as applicable), product mix, availability, and other programs) in place in the 180 days prior to the Petition Date except for any partial payments or other payments (or assurances) Company made with respect to any unfinished product.

b. The Customary Trade Terms may not be modified, adjusted, or reduced in a manner adverse to the Company except as agreed-to in writing by the Parties.

c. Vendor shall continue to honor any existing allowances, credits, contractual obligations, or balances that were accrued as of the Petition Date and shall apply all such allowances, credits, or balances towards future orders in the ordinary course of business.

4. Other Matters.

a. Vendor agrees that it shall not require a lump-sum payment upon the effective date of a plan in the Company's chapter 11 cases on account of any outstanding administrative claims Vendor may assert arising from the delivery of postpetition goods or services, to the extent that payment of such claims is not yet due. Vendor agrees that such claims will be paid in the ordinary course of business after confirmation of a plan pursuant to the Customary Trade Terms then in effect. The Vendor Payment will be made concurrently with payment of other outstanding administrative claims as provided in a confirmed plan.

b. Vendor will not separately seek payment from the Company on account of any prepetition claim (including, without limitation, any reclamation claim or any claim pursuant to section 503(b)(9) of the Bankruptcy Code) outside the terms of this Trade Agreement or a plan confirmed in the Company's chapter 11 case.

c. Vendor will not file or otherwise assert against the Company, its assets, or any other person or entity or any of their respective assets or property (real or personal) any lien, regardless of the statute or other legal authority upon which the lien is asserted, related in any way to any remaining prepetition amounts allegedly owed to Vendor by the Company arising from prepetition agreements or transactions. Furthermore, if Vendor has taken steps to file or assert such a lien prior to entering into this Trade Agreement, Vendor will promptly take all necessary actions to remove such liens.

5. Vendor Breach.

a. In the event that the Company pays Vendor its Vendor Payment and Vendor is determined to have breached this Trade Agreement (a "*Vendor Breach*"), upon written notice to Vendor, Vendor shall promptly pay to the Company immediately available funds in an amount equal to, at the election of the Company, the Vendor Payment or any portion of the Vendor Payment which cannot be recovered by the Company from the postpetition receivables then owing to Vendor from the Company.

b. In the event that the Company recovers the Vendor Payment pursuant to Section 5(a) hereof or otherwise, the full Agreed Vendor Claim shall be reinstated as if the Vendor Payment had not been made.

c. Vendor agrees and acknowledges that irreparable damage would occur in the event of a Vendor Breach and remedies at law would not be adequate to compensate the Company. Accordingly, Vendor agrees that the Company shall have the right, in addition to any other rights and remedies existing in its favor, to seek an injunction or injunctions to prevent breaches of the provisions of this Trade Agreement and to enforce its rights and obligations hereunder not only by an action or actions for damages but also by an action or actions for specific performance, injunctive relief and/or other equitable relief. The right to equitable relief, including specific performance or injunctive relief, shall exist notwithstanding, and shall not be limited by, any other provision of this Trade Agreement. Vendor hereby waives any defense that a remedy at law is adequate and any requirement to post bond or other security in connection with actions instituted for injunctive relief, specific performance, or other equitable remedies.

6. Notice.

If to Vendor, then to the person and address identified with Vendor's signature hereto.

If to Company:

[ ● ]  
300 Sixth Avenue  
Pittsburgh, Pennsylvania 15222  
Attn: Matthew Milanovich

and

Latham & Watkins LLP  
330 North Wabash Avenue, Suite 2800  
Chicago, Illinois 60611  
Attn: Richard Levy and Caroline Reckler  
Email: richard.levy@lw.com  
caroline.reckler@lw.com  
Facsimile: (312) 993-9767

7. Representations and Acknowledgements. The Parties, agree, acknowledge, and represent that:

a. the Parties have reviewed the terms and provisions of the Critical Trade Order and this Trade Agreement and consent to be bound by such terms and that this Trade Agreement is expressly subject to the procedures approved pursuant to the Critical Trade Order;

b. any payments made on account of the Agreed Vendor Claim shall be subject to the terms and conditions of the Critical Trade Order;

c. if Vendor refuses to supply goods or services to the Company as provided herein or otherwise fails to perform any of its obligations hereunder, the Company may exercise all rights and remedies available under the Critical Trade Order, the Bankruptcy Code, or applicable law; and

d. in the event of disagreement between the Parties regarding whether a breach has occurred, either Party may apply to the Court for a determination of their relative rights, in which event, no action may be taken by either Party, including, but not limited to, the discontinuing of shipment of goods from Vendor to the Company, until a ruling of the Court is obtained.

8. Confidentiality. In addition to any other obligations of confidentiality between Vendor and Company, Vendor agrees to hold in confidence and not disclose to any party: (a) this Trade Agreement; (b) any and all payments made by the Company pursuant to this Trade Agreement; (c) the terms of payment set forth herein; and (d) the Customary Trade Terms (collectively, the “*Confidential Information*”); *provided* that if any party seeks to compel Vendor’s disclosure of any or all of the Confidential Information, through judicial action or otherwise, or Vendor intends to disclose any or all of the Confidential Information, Vendor shall immediately provide the Company with prompt written notice so that the Company may seek an injunction, protective order or any other available remedy to prevent such disclosure; *provided, further*, that, if such remedy is not obtained, Vendor shall furnish only such information as Vendor is legally required to provide.

9. Miscellaneous.

a. The Parties hereby represent and warrant that: (i) they have full authority to execute this Trade Agreement on behalf of the respective Parties; (ii) the respective Parties have full knowledge of, and have consented to, this Trade Agreement; and (iii) they are fully authorized to bind that Party to all of the terms and conditions of this Trade Agreement.

b. This Trade Agreement sets forth the entire understanding of the Parties regarding the subject matter hereof and supersedes all prior oral or written agreements between them. This Trade Agreement may not be changed, modified, amended or supplemented, except in a writing signed by both Parties. Moreover, Vendor agrees to vote all claims now or hereafter beneficially owned by Vendor in favor of, and not take any direct or indirect action to oppose or impede confirmation of, any chapter 11 plan on a timely basis in accordance with the applicable procedures set forth in any related disclosure statement and accompanying solicitation materials, and timely return a duly-executed ballot to the Debtors in connection therewith, if such chapter 11 plan provides for a treatment of any Agreed Vendor Claim that is materially consistent with this Agreement.

c. Signatures by facsimile or electronic signatures shall count as original signatures for all purposes.

d. This Trade Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

e. The Parties hereby submit to the exclusive jurisdiction of the Court to resolve any dispute with respect to or arising from this Trade Agreement.

f. This Trade Agreement shall be deemed to have been drafted jointly by the Parties, and any uncertainty or omission shall not be construed as an attribution of drafting by any Party.

[*Signature page follows.*]

**[COMPANY]**

**[VENDOR]**

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By:  
Title:

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By:  
Title:  
Address:

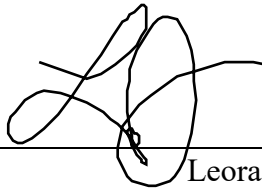
Date:

*[Signature page to Trade Agreement]*



TAB DD

THIS IS **EXHIBIT “DD”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

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Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

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**MOTION OF DEBTORS FOR ORDERS AUTHORIZING THE  
DEBTORS TO (I) MAINTAIN AND ADMINISTER PREPETITION CUSTOMER  
PROGRAMS AND (II) PAY PREPETITION OBLIGATIONS RELATED THERETO**

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The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Interim Order*”) and **Exhibit B** (the “*Proposed Final Order*,” and together with the Proposed Interim Order, the “*Proposed Orders*”), respectively, authorizing the Debtors to maintain and administer their Customer Programs (as defined below) and satisfy certain prepetition obligations related thereto.

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.



## **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a) and 363(b) of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

## **BACKGROUND**

3. On June 23, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief in this Court commencing cases (the “**Chapter 11 Cases**”) for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies’ Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is

set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”)<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

### **THE CUSTOMER PROGRAMS AND RELATED OBLIGATIONS**

6. The Debtors maintain a number of programs and policies for the benefit of their customers that promote loyalty and encourage repeat shopping at their stores and online (collectively, the “**Customer Programs**”). These Customer Programs include, without limitation, loyalty and subscription programs, special pricing and other incentives, return and exchange policies, gift cards, charitable fundraising, and third party retailer relationships. Because the Customer Programs encourage both new and long-term customers alike to shop with the Debtors instead of their competitors, continuing to honor the Customer Programs described below—including prepetition obligations arising under them—will maximize the value of the Debtors’ estates and benefit all creditors and stakeholders in the Chapter 11 Cases.

#### **I. LOYALTY PROGRAMS.**

7. The Debtors maintain two customer loyalty programs that have been highly successful since their introduction with the launch of “One New GNC” in December 2016. Approximately 81% of the Debtors’ sales are to members of the customer loyalty programs.<sup>4</sup> The first loyalty program, called “**myGNC Rewards**,” is free to all customers. Once signed up for

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court’s website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors’ proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

<sup>4</sup> Approximately 56% of sales made by the Debtor are to members of the myGNC Rewards program and approximately 25% of sales made by the Debtors are to members of the PRO Access program.

myGNC Rewards, a member begins accruing points with each purchase—one point for each dollar spent—which may be redeemed for cash discounts on any product that the Debtors sell. Specifically, for every 150 points earned, the member is entitled to a \$5 discount, which is either credited automatically to the member’s next purchase once earned, or accumulated on the member’s account until voluntarily redeemed (based on the member’s election). The points are valid for one year from the date they are earned and expire thereafter. The myGNC Rewards program includes more than 20 million members and approximately \$79 million in monthly sales revenue is generated by sales to myGNC Rewards members.

8. In addition to myGNC Rewards, the Debtors maintain a paid-membership loyalty program called “**PRO Access**.” To become a PRO Access member, a customer pays \$39.99 per year, which entitles them to certain benefits not available to basic myGNC Rewards members. PRO Access members receive two shipments from the Debtors each year (each, a “**PRO Box**”). Every PRO Box includes sample merchandise and other materials tailored specifically to each member. In addition, each PRO Access member is entitled to a full week of savings four times a year, during which he or she receives three rewards points per dollar spent on the Debtors’ products. Beyond these benefits, PRO Access members also earn one point per dollar on all purchases from the Debtors. Points for PRO Access members are redeemable for cash discounts just like they are for myGNC Rewards members—150 points equates to a \$5 discount. The PRO Access program has approximately 829,795 current members and approximately \$35 million in monthly sales<sup>5</sup> revenue is generated by sales to PRO Access members.

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<sup>5</sup> Due to the COVID-19 pandemic, the recent monthly sales revenue generated by PRO Access members may be lower than previous months.

9. The Debtors estimate that approximately \$4.3 million to \$6.2 million in potential cash discounts have accrued on account of unexpired points earned by myGNC Rewards and PRO Access members. The Debtors accrue approximately \$4.2 million to \$4.5 million in liabilities per month on account of their loyalty programs. Further, the average rate of points redemptions over the twelve months before the Petition Date equates to approximately \$2.1 million in cash discounts honored per month. The Debtors cannot predict to what extent the commencement of the Chapter 11 Cases may affect the redemption rate but request authority to honor all myGNC Rewards and PRO Access point redemptions, regardless of whether the points were accrued before or after the Petition Date. Due to the COVID-19 pandemic, the Debtors have not made shipments of PRO Boxes the second quarter of 2020, but instead provided PRO Access members with a coupon for a 30% discount on an entire purchase. As of the Petition Date, the Debtors estimate that the approximate cost of shipping PRO Boxes to PRO Access members on account of membership fees paid prepetition is approximately \$8.4 million. The Debtors request authority to send those PRO Boxes, and otherwise to maintain the myGNC Rewards and PRO Access programs postpetition – including by honoring rewards points earned prepetition – in the ordinary course.

## **II. GIFT CARDS.**

10. Like many other businesses, the Debtors have available for purchase in their stores and certain third-party locations prepaid, non-expiring gift cards (the “*Gift Cards*”) in various denominations. In addition, the Debtors issue Gift Cards in connection with certain returns of products, as described further below. The Gift Cards can be redeemed in stores for products at a later date. Further, the Debtors are currently implementing changes to their online platform that will allow customers to redeem Gift Cards for online purchases.

11. The Debtors estimate they have Gifts Cards with an aggregate value of approximately \$10.1 million outstanding which have not yet been redeemed by customers. The

Debtors do not track and have no information about the holders of Gift Cards. While the Debtors do not believe that all of the Gift Cards outstanding will be redeemed, they seek authority to honor all Gift Cards, including those purchased or issued prepetition, consistent with their prior practices and to continue the sale, issuance, and honoring of Gift Cards postpetition.<sup>6</sup>

### III. REFUNDS AND EXCHANGES

12. As is customary in the retail industry, the Debtors accept returns or exchanges from their customers within 30 days of the date of purchase if the customer is not satisfied with his or her purchase for any reason, except that purchases will not be refunded unless accompanied by a sales receipt, packing slip, or other approved proof of purchase (the “*Refund and Exchange Policy*”). Under the Refund and Exchange Policy, a customer is entitled to: (a) a refund of the full purchase price of the product in the original form of payment, if the return is accompanied by an original sales receipt or packing slip (for online orders); (b) an exchange for new products (i) up to the full purchase price, if accompanied by an original sales receipt or packing slip, or (ii) otherwise up to the lowest sale price in the preceding 60 days; or (c) a Gift Card, if the customer returns a product, does not want to complete an exchange, and does not want or is not entitled to a refund, in an amount (i) up to the full purchase price, if accompanied by an original sales receipt or packing slip, or (ii) otherwise up to the lowest sale price in the preceding 60 days. On average, the Debtors processed approximately \$3.6 million per month of refunds and exchanges under the Refund and Exchange Policy during the twelve months before the Petition Date.

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<sup>6</sup> In the event that the Debtors determine it appropriate to discontinue the practice of accepting Gift Cards, the Debtors shall file a notice regarding such termination, no later than 7 days after terminating such practice, and shall serve such notice on the United States Trustee for the District of Delaware, any statutory committee appointed in these Chapter 11 Cases, and all parties who file a request for notice under Bankruptcy Rule 2002.

#### **IV. PRICING AND SALES PROMOTIONS.**

13. The Debtors regularly conduct sales promotions in their stores and on their website (collectively, the “*Promotions*”), including pricing discounts (by dollars or percentage off of sales), “buy one get one” offers, coupons printed on sales receipts (subject to expiration), online offers through the customer rewards program, and similar Promotions. Often, Promotions are offered only in individual stores or on individual products or brands. Thus, at any one time, including as of the Petition Date, different Promotions may be available to different customers across the country and online. The Promotions are an important part of the Debtors’ overall marketing strategy, as they help attract new customers and retain existing ones by encouraging purchases of the Debtors’ products. By this Motion, the Debtors seek authority to continue to utilize Promotions in the ordinary course, including any Promotions ongoing as of the Petition Date.

#### **V. SUBSCRIPTION PROGRAM.**

14. The Debtors maintain a subscription-based program in which a customer pays a monthly fee and receives a monthly shipment of products the customer selects. As of the Petition Date, Debtors have approximately 400,722 active subscriptions which have provided approximately \$1.2 million in weekly total sales. Customers enrolled in the subscription program receive a 10% discount on re-occurring orders. The program, since its initial launch in 2018, has provided a consistent basis for future business. The Debtors accordingly request authority to continue this subscription program, including honoring all their obligations thereunder.

#### **VI. CHARITABLE FUNDRAISING.**

15. In the ordinary course of business, the Debtors’ accept charitable donations from customers at stores and online on behalf of various charitable organizations (the “*Charitable Fundraising Programs*”) including, for example, Fit Ops, American Red Cross, Operation

Homefront, Feeding America, and St. Jude Children’s Research Hospital. The Debtors then contribute these collected customer donations to the applicable charity. During the twelve months before the Petition Date, the Debtors’ collected and disbursed approximately \$478,281 in customer donations. As of the Petition Date, the Debtors do not believe they hold any customer donations which have not been contributed to the Debtors’ partnership charities.

16. As part of the Charitable Fundraising Program, the Debtors raise money for charities through contests and raffles, during which prizes are given. As of the Petition Date, the Debtors owe a prize to a winner of a contest held to raise money for a charity, the value of which is approximately \$5,750. By this Motion, the Debtors request relief to continue the Charitable Fundraising Programs in the ordinary course and to honor all prepetition obligations relating thereto.

## **VII. RELATIONSHIPS WITH THIRD PARTY RETAILERS**

17. The Debtors maintain relationships with third party retailers (the “*Third Party Retailers*”) that benefit both the Debtors and their customers. As an example, the Debtors have developed a beneficial relationship with Amazon in which the Debtors are a “Prime supplier”—that is, certain of the Debtors’ products are available through Amazon’s Prime membership program, which generally promises fast delivery windows at no extra charge to members. To facilitate the expedited delivery schedules that underpin the Prime membership program, the Debtors must permit Amazon to hold certain of the Debtors’ inventory in Amazon’s distribution centers. More specifically, approximately half of the Debtors’ products that are sold through Amazon are shipped from Amazon distribution centers, and the other half are shipped from the Debtors’ distribution centers once an Amazon-based order is routed to the Debtors for fulfillment.

18. The Debtors have benefitted greatly from their relationships with Amazon and other Third Party Retailers, and such relationships also benefit the Debtors’ customers through quick

(and low- or no-cost) deliveries of online orders. In exchange for the ability to use the Third Party Retailers' platforms to sell their goods, the Debtors pay commissions and fees which are taken out of total revenue from the goods sold which are paid directly to such Third Party Retailers from customers.<sup>7</sup> Third Party Retailers typically remit the remaining revenues to the Debtors on a monthly basis. In 2019, the gross revenue of the Debtors' goods sold through Third Party Retailers was approximately \$49.7 million, and Third Party Retailers withheld approximately \$20.0 million on account of commissions, marketing expenses, and fulfillment fees in connection with such sales. As of the Petition Date, the Debtors estimate that Third Party Retailers have received approximately \$1.4 million on account of commissions, marketing expenses, and fulfillment fees in connection with sales for which the Debtors have yet to receive revenues from the applicable Third Party Retailers. The Debtors' Third Party Retailers serve as the Debtors' agents with respect to a significant portion of the Debtors' sales and provide an invaluable platform for the Debtors to reach their customers. The disruption of this link between the Debtors and their customers would irreparably damage the Debtors' business. As such, the Debtors seek authority to continue these arrangements postpetition and honor any fulfillment or other obligations that may have arisen, but were not satisfied, prepetition, including allowing the Third Party Retailers to set off amounts owing to them and in their possession before remitting proceeds to the Debtors, consistent with prepetition practices.

19. The Third Party Retailers play a pivotal role in making the Debtors products more widely visible around the world and generating sales of the Debtors products on additional platforms. Without the Third Party Retailers, the Debtors' ability to reach customers through established retail channels in an effective and value-maximizing manner would be severely

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<sup>7</sup> The Debtors separately make payments directly to Third Party Retailers for marketing expenses.



undermined. Thus, to ensure a seamless transition into these Chapter 11 Cases and to prevent significant harm to these estates, the Debtors seek the relief requested herein to continue their arrangements with the Third Party Retailers in the ordinary course of business.

### **BASIS FOR RELIEF**

#### **I. HONORING PREPETITION OBLIGATIONS UNDER THE CUSTOMER PROGRAMS IS A SOUND EXERCISE OF BUSINESS JUDGMENT AND, THEREFORE, SHOULD BE APPROVED.**

20. The Debtors should be authorized to honor all prepetition obligations under the Customer Programs, as doing reflects a sound exercise of their business judgment. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor “may use, sell, or lease, other than in the ordinary course of business, property of the estate” after notice and a hearing. 11 U.S.C. § 363(b)(1). Generally, the debtor is only required to “show that a sound business purpose” justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring “good business reason” for use under section 363(b) of the Bankruptcy Code). This standard prohibits other parties from second-guessing the debtor’s business judgment if the debtor has shown that the proposed use will benefit the debtor’s estate. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”). Additionally, when retaining loyalty and patronage of customers is critical to successful reorganization, courts have not hesitated to grant the relief request. *In In re Federated Dep’t Stores, Inc.*, Case Nos. 1-90-00130 to 1-90-00196, 1990 Bankr. LEXIS 102 (Bankr. S.D. Ohio Jan. 15, 1990) (authorizing debtors to treat deposits or prepayments

on goods and services “in the same manner as Debtors treated Deposits prior to the commencement of [the] cases.”).

21. While honoring all the Customer Programs will involve the Debtors paying or otherwise satisfying prepetition claims and obligations, the cost of doing so is greatly outweighed by (a) the benefits of demonstrating mutual loyalty to and care for the Debtors’ customers, and (b) the potential damage to the Debtors’ businesses from being seen as neglecting their customers, were the Debtors to dishonor those obligations. The Customer Programs are a major factor in driving new and repeat business to their stores. For example, the myGNC Rewards and PRO Access programs encourage members to return to the Debtors’ stores and website to accumulate more points and cash in available discounts, and the Refund and Exchange Policy gives all customers the comfort to try new products with the knowledge that they can get their money back if they are unsatisfied. On the other hand, if the Debtors were to dishonor the Gift Cards, their reputation would be irreparably damaged, to the detriment of all of the Debtors’ stakeholders. Moreover, the Debtors would risk alienating certain customer constituencies or, possibly, even encouraging them to initiate business relationships with the Debtors’ competitors. Accordingly, in light of the relative weight of costs and benefits, the Debtors submit that honoring all prepetition obligations under the Customer Programs reflects a sound exercise of business judgment and should be approved. Accordingly, in the exercise of their sound business judgment, the Debtors believe that a sound business purpose exists for the relief requested herein because it will pay dividends with respect to the value of the Debtors’ business, both in terms of profitability and the engendering of goodwill, especially at this critical time following the commencement of the Chapter 11 Cases.

22. In addition, because the Debtors pay the Customer Obligations in the ordinary course of business, the Debtors submit that Court approval of the Debtors' payment of postpetition Customer Obligations is not necessary because of the authority granted to them by section 363(c) of the Bankruptcy Code. Indeed, most, if not all, of the Customer Programs are standard practice in the Debtors' industry. Nonetheless, out of an abundance of caution, the Debtors request that the Court grant the relief requested herein and enter an order authorizing them to pay the Customer Obligations in the ordinary course of the Debtors' business.

**II. HONORING PREPETITION OBLIGATIONS UNDER THE CUSTOMER PROGRAMS IS NECESSARY TO THE SUCCESS OF THE DEBTORS' REORGANIZATION AND, THEREFORE, SHOULD BE APPROVED.**

23. The Debtors believe that their proposed maintenance of the Customer Programs and payment of the Customer Obligations should also be authorized pursuant to section 105(a) of the Bankruptcy Code and the "doctrine of necessity." Section 105(a) of the Bankruptcy Code empowers the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). Courts have interpreted this provision to authorize payments on prepetition claims where the payments are essential to the success of the debtor's reorganization under what is known as the "necessity of payment doctrine." See *In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) ("Thus, the 'necessity of payment' doctrine...teaches no more than, if a payment of a claim which arose prior to reorganization is essential to the continued operation of the [debtor's business] during reorganization, payment may be authorized..."); see also *In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code "provides a statutory basis for payment of pre-petition claims" under necessity of payment doctrine); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) ("The appropriate standard...is commonly referred to as 'the necessity of payment doctrine.'").

24. Failing to honor the Customer Programs, including prepetition obligations thereunder, would directly jeopardize the Debtors' restructuring efforts. Any successful reorganization for the Debtors will be premised upon the value of their businesses as a going-concern, and estranging their loyal customers and deterring new ones can only damage that value, perhaps irreparably. Moreover, the potential disruptions that could result throughout the Debtors' complex enterprise both directly from implementing a cessation of the Customer Programs (or a freeze on related prepetition obligations) and indirectly from the ill effects of lost sales and reputational harm could derail the restructuring process before it is even able to begin. Accordingly, the Debtors submit that immediate authorization to honor all obligations under the Customer Programs, including prepetition ones, is necessary to their reorganization and appropriate under section 105(a) of the Bankruptcy Code. Specifically, as discussed above, the Third Party Retailers play an essential role in increasing the exposure of the Debtors' products and generating additional revenue. Without their services, the provision of which facilitates the Debtors' efforts to reach additional customers, the Debtors revenues would be significantly decreased. Any disruption to this relationship would irreparably damage the Debtors' relationship with thousands of customers and potential customers. The Debtors respectfully submit that payment of any claims held by the Third Party Retailers is warranted in these Chapter 11 Cases, particularly because such claims are generally satisfied in the ordinary course of business by netting such amounts from the sale proceeds that are in the possession of the Third Party Retailers before net proceeds are remitted to the Debtors. If the Debtors do not obtain authority to continue prepetition practices with the Third Party Retailers, the Third Party Retailers may stop performing services for the Debtors or may seek to exercise their contractual set off rights. Given the

significant revenue the Debtors collect from sales through the Third Party Retailers, a disruption in that relationship could have severe consequences for the Debtors' business.

25. Courts in this District often authorize the satisfaction of prepetition claims arising under customer-related programs where it is critical to the debtor's ongoing operations. *See In re The Bon-Ton Stores, Inc.*, No. 18-10248 (MFW) (Bankr. D. Del. Feb. 6, 2018); *In re Vitamin World, Inc.*, No. 17-11933 (KJC) (Bankr. D. Del. Oct. 6, 2017); *In re Model Reorg Acquisition, LLC*, No. 17-11794 (CSS) (Bankr. D. Del. Aug. 29, 2017); *In re True Religion Apparel, Inc.*, No. 17-11460 (CSS) (Bankr. D. Del. July 31, 2017).

**PROCESSING OF CHECKS AND  
ELECTRONIC FUND TRANSFERS SHOULD BE AUTHORIZED**

26. The Debtors have sufficient funds to pay any amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing and cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the obligations under the Customer Programs. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND  
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

27. Certain aspects of the relief requested herein are subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant this relief on an expedited basis if it is

necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

28. Additionally, with respect to any aspect of the relief sought herein that constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

#### **RESERVATION OF RIGHTS**

29. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be

construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**NOTICE**

30. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) the indenture trustee for the Debtors' prepetition convertible notes; (g) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (h) the United States Attorney's Office for the District of Delaware; (i) the attorneys general for all 50 states and the District of Columbia; (j) the United States Department of Justice; (k) the Internal Revenue Service; (l) the Securities and Exchange Commission; (m) the United States Drug Enforcement Agency; (n) the United States Food and Drug Administration; and (o) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank.]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Orders, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Joseph M. Mulvihill

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- and -

George A. Davis (*pro hac vice* pending)  
Jeffrey T. Mispagel (*pro hac vice* pending)  
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jeffrey.mispagel@lw.com

*Proposed Counsel for Debtors and Debtors in Possession*



**EXHIBIT A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ____

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**INTERIM ORDER AUTHORIZING THE DEBTORS  
TO (I) MAINTAIN AND ADMINISTER PREPETITION CUSTOMER  
PROGRAMS AND (II) PAY PREPETITION OBLIGATIONS RELATED THERETO**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an interim order authorizing them to maintain the Customer Programs and honor prepetition obligations arising under the Customer Programs (this “*Interim Order*”); and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue to administer the Customer Programs currently in effect and honor any prepetition obligations related to the Customer Programs.
3. The Debtors’ banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors’ bank accounts relating to the Customer Programs, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.
4. The Debtors’ banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such bank or

financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

5. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

6. Notwithstanding anything contained in the Motion or this Interim Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a "***DIP Order***"), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

7. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Interim Order shall be effective and enforceable immediately upon entry hereof.

8. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

9. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

10. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

11. A hearing to consider entry of an order granting the Motion on a final basis (the "**Final Hearing**") shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_\_ .m. (prevailing Eastern time). Any objections or responses to the entry of such an order must be filed on or before 4:00 p.m. (prevailing Eastern time) on \_\_\_\_\_, 2020, and served on (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (email: caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com), and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel (jeffrey.mispagel@lw.com); and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); (c) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and

(ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (d) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (e) counsel to the administrative agent under the DIP ABL FILO Facility, Simpson Thacher & Bartlett LLP, 425 Lexington Ave. New York, New York 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (email: squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); and (f) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: trigger.erin@dorsey.com and kohn.samuel@dorsey.com). In the event that no objections to entry of the Proposed Final Order on the Motion are timely received, this Court may enter such Proposed Final Order without need for the Final Hearing.

12. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

---

In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket Nos. ___ & ___

---

**FINAL ORDER AUTHORIZING THE DEBTORS  
TO (I) MAINTAIN AND ADMINISTER PREPETITION CUSTOMER  
PROGRAMS AND (II) PAY PREPETITION OBLIGATIONS RELATED THERETO**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for a final order authorizing them to maintain the Customer Programs and honor prepetition obligations arising under the Customer Programs (this “*Final Order*”); and this Court having reviewed the Motion, the First Day Declaration, and the Interim Order entered on [\_\_\_], 2020; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue to administer the Customer Programs currently in effect and honor any prepetition obligations related to the Customer Programs.
3. The Debtors’ banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors’ bank accounts relating to the Customer Programs, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.
4. The Debtors’ banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial

institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

5. Nothing in the Motion, the Interim Order, or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

6. Notwithstanding anything contained in the Motion or this Final Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a "***DIP Order***"), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

7. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Final Order shall be effective and enforceable immediately upon entry hereof.

8. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

9. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

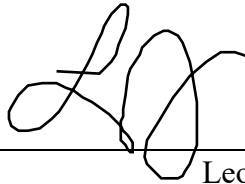
Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge



# TAB EE

THIS IS **EXHIBIT “EE”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', positioned above a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
	)	Case No. 20-11662 (___)
Debtors. <sup>1</sup>	)	
	)	(Joint Administration Requested)
	)	
	)	

**MOTION OF DEBTORS FOR ORDERS  
(I) AUTHORIZING THE DEBTORS TO (A) OBTAIN  
SENIOR SECURED POSTPETITION FINANCING, (B) GRANT  
LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,  
(C) USE CASH COLLATERAL OF PREPETITION SECURED PARTIES  
AND (D) GRANT ADEQUATE PROTECTION TO PREPETITION SECURED  
PARTIES; (II) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY  
RULES 4001(b) AND 4001(c); AND (III) GRANTING RELATED RELIEF**

The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of an interim order, substantially in the form attached hereto as **Exhibit 1** (the “*Proposed Interim Order*”)² and a final order (the “*Proposed*

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used herein but not defined have the meanings ascribed to such terms in the Proposed Interim Order.

*Final Order*,” and together with the Proposed Interim Order, the “*Proposed Orders*”),<sup>3</sup> respectively:

- (1) authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis in the aggregate principal amount of \$200,000,000 (the “*DIP Term Facility*,” and all amounts extended under the DIP Term Facility, the “*DIP Term Loans*”), consisting of (a) a \$100,000,000 new money delayed-draw term loan facility (“*New Money DIP Term Loans*”) and (b) subject to the Final Order, \$100,000,000 (the “*Term Roll-Up Amount*”) of term loans resulting from a dollar-for-dollar “roll-up” of term loans (the “*Term Roll-Up*”) outstanding under the Prepetition Term Credit Agreement (as defined below), pursuant to the terms and conditions of that certain *Debtor-in-Possession Credit Agreement* (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “*DIP Term Credit Agreement*”), by and among General Nutrition Centers, Inc., as borrower (in such capacity, the “*DIP Term Borrower*”), each of the entities listed on Exhibit A to the Interim Order as guarantors (the “*Guarantors*” and, together with the DIP Term Borrower, the “*Loan Parties*”), and GLAS Trust Company LLC as administrative agent and as collateral agent (in such capacities, the “*DIP Term Agent*”) for and on behalf of itself and the other lenders party thereto (collectively, including the DIP Term Agent, the “*DIP Term Lenders*”), substantially in the form of Exhibit 2, attached hereto;
- (2) authorizing the Debtors to execute and deliver the DIP Term Credit Agreement and any other agreements, instruments, pledge agreements, guarantees, fee letters, control agreements related thereto, and other Loan Documents (as defined in the DIP Term Credit Agreement) and documents related thereto (as amended, restated, supplemented, waived, and/or modified from time to time, collectively, with the DIP Term Credit Agreement, the “*DIP Term Documents*”), including the Backstop Commitment Letter (as defined in the DIP Term Credit Agreement), and to perform such other acts as may be necessary or desirable in connection with the DIP Term Documents;
- (3) authorizing the Debtors to borrow \$30,000,000 under the DIP Term Facility (the “*Interim Amount*”) upon entry of the Interim Order to avoid immediate and irreparable harm;
- (4) granting the DIP Term Facility and all obligations owing thereunder and under, or secured by, the DIP Term Documents to the DIP Term Agent and DIP Term Lenders (collectively, and including all “Obligations” as described in the DIP Term Credit Agreement, the “*DIP Term Obligations*”) allowed superpriority

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<sup>3</sup> The Debtors will file the Proposed Final Order in advance of the Final Hearing (as defined herein). In their forms as may be entered by the Court, the Proposed Interim Order, Proposed Final Order, and Proposed Orders are referred to herein as the “*Interim Order*,” “*Final Order*,” and “*Orders*,” respectively.

administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases (as defined in the Proposed Interim Order);

- (5) authorizing the Debtors to incur senior secured postpetition obligations on a superpriority basis in respect of a prepetition senior secured superpriority credit facility in the aggregate principal amount of \$275,000,000 plus any and all accrued and unpaid interest on all outstanding FILO Term Loans (as defined in the Prepetition ABL FILO Credit Agreement (as defined herein)) (the “**DIP ABL FILO Facility**” and, together with the DIP Term Facility, the “**DIP Facilities**”), consisting solely of FILO term loans (the “**DIP ABL FILO Loans**”) resulting from the “roll-up” (the “**ABL FILO Roll-Up**” and together with the Term Roll-Up, collectively, the “**Roll-Ups**”) of all outstanding FILO Term Loans in the aggregate principal amount of \$275,000,000, together with all accrued and unpaid interest thereon (the “**ABL FILO Roll-Up Amount**”), pursuant to the terms and conditions of that certain Debtor-in-Possession Amended and Restated ABL Credit Agreement (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “**DIP ABL FILO Credit Agreement**” and, together with the DIP Term Credit Agreement, the “**DIP Agreements**”), by and among General Nutrition Centers, Inc. and the other Loan Parties as borrowers or guarantors, and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (in such capacities, the “**DIP ABL FILO Agent**” and, together with the DIP Term Agent, the “**DIP Agents**”) for and on behalf of themselves and the other lenders party thereto (collectively, including the DIP ABL FILO Agent, the “**DIP ABL FILO Lenders**” and, together with the DIP Term Lenders, the “**DIP Lenders**”), substantially in the form of Exhibit 3, attached hereto;
- (6) authorizing the Debtors to pay the Prepetition ABL Loans (as defined in the Proposed Interim Order) in full in cash and to cash collateralize pre-petition letters of credit upon the entry of the Interim Order , pursuant to the Cash Collateral Agreement, to be entered into between General Nutrition Centers, Inc. and JPMorgan Chase Bank, N.A. (the “**LC Cash Collateral Agreement**”) and to terminate hedge agreements and make termination payments;
- (7) authorizing the Debtors to execute and deliver the DIP ABL FILO Credit Agreement and any other agreements, instruments, pledge agreements, guarantees, control agreements related thereto and other Loan Documents (as defined in the DIP ABL FILO Credit Agreement) and documents related thereto (including any security agreements, intellectual property security agreements, control agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, and collectively, with the DIP ABL FILO Credit Agreement, the “**DIP ABL FILO Documents**” and, together with the DIP Term Documents, the “**DIP Documents**”) and to perform such other acts as may be necessary or desirable in connection with the DIP ABL FILO Documents;
- (8) granting the DIP ABL FILO Facility and all obligations owing thereunder and under, or secured by, the DIP ABL FILO Documents, to the DIP ABL FILO Agent and DIP ABL FILO Lenders (collectively, and including all “Obligations” as



described in the DIP ABL FILO Credit Agreement, the “**DIP ABL FILO Obligations**” and, together with the DIP Term Obligations, the “**DIP Obligations**”) allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases;

- (9) granting to the each of (a) the DIP Term Agent, for the benefit of itself and the DIP Term Lenders and the other Secured Parties (as defined in the DIP Term Credit Agreement) under the applicable DIP Term Documents and (b) the DIP ABL FILO Agent, for the benefit of itself and the DIP ABL FILO Lenders and the other Secured Parties (as defined in the DIP ABL FILO Credit Agreement) under the applicable DIP ABL FILO Documents, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including all property constituting “cash collateral” as defined in section 363(a) of the Bankruptcy Code (“**Cash Collateral**”), which liens shall have the priorities set forth herein;
- (10) authorizing and directing the Debtors to pay the principal, interest, premiums, fees, expenses and other amounts payable under the DIP Documents as such become earned, due and payable, including continuing commitment fees, closing fees, audit fees, appraisal fees, valuation fees, liquidator fees, structuring fees, administrative agent’s fees, the fees and disbursements of each DIP Agent’s and other DIP Lenders’ attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the DIP Documents;
- (11) authorizing the Debtors to use the Prepetition Collateral (as defined in the Proposed Interim Order), including the Cash Collateral of the Prepetition ABL FILO Secured Parties under the Prepetition ABL FILO Documents and the Prepetition Term Secured Parties under the Prepetition Term Documents (each as defined in the Proposed Interim Order), and providing adequate protection to the Prepetition ABL FILO Secured Parties and Prepetition Term Secured Parties for, among other things, any diminution in value resulting from the imposition of the automatic stay, the Debtors’ use, sale, or lease of the Prepetition Collateral, including Cash Collateral, the priming of the Prepetition Secured Parties’ respective interests in the Prepetition Collateral (including by the Carve-Out (as defined in the Proposed Interim Order)) (“**Diminution in Value**”) of their respective interests in the Prepetition Collateral, including the Cash Collateral as contemplated hereunder;
- (12) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and the Interim Order; and
- (13) scheduling a final hearing (the “**Final Hearing**”) within 35 days of the Petition Date (as defined below) to consider the relief requested in the Motion and approving the form of notice with respect to the Final Hearing.

## **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105, 361, 362, 363, 364 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rules 2002 4001, 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rule 4001-2(a)(i) and (ii).

## **BACKGROUND**

3. On June 23, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “**Chapter 11 Cases**”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies’ Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”) filed contemporaneously herewith.<sup>4</sup>

6. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration, the *Declaration of Robert Del Genio, Senior Managing Director of FTI Consulting, Inc., in Support of the Motion of Debtors for Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(B) and 4001(C); and (III) Granting Related Relief* (the “**Del Genio Declaration**”), and the *Declaration of Pranav Goel, in Support of the Motion of Debtors for Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(B) and 4001(C); and (III) Granting Related Relief* (the “**Goel Declaration**” and together with the Del Genio Declaration and the First Day Declaration, the “**Declarations**”), each filed contemporaneously herewith.

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<sup>4</sup> The First Day Declaration and other relevant case information is available from (a) the Court’s website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors’ proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

## PRELIMINARY STATEMENT

7. The structure of the DIP Facilities largely mirrors the structure set forth in the Prepetition Secured Credit Documents (as defined herein). Specifically, the DIP Facilities consist of:

- (a) DIP Term Facility. A \$200 million senior secured superpriority DIP term loan facility with certain Prepetition Term Lenders (as defined below) consisting of \$100 million in new money term loans and a dollar-for-dollar “roll-up” of such amounts due under the Prepetition Term Credit Agreement (as defined below) for such lenders.
- (b) DIP ABL FILO Facility. A senior secured superpriority DIP first-in-last-out term loan with an initial principal amount of \$275 million plus all accrued and unpaid interest on account of the Prepetition FILO Term Loans (as defined herein) with the Prepetition ABL FILO Lenders (as defined below) consisting entirely of a “roll-up” of prepetition amounts outstanding under the Prepetition ABL FILO Credit Agreement (as defined below).

8. Upon entry of the Interim Order, the Debtors will make an initial draw (the “*Interim Draw*”) of the Interim Amount under the DIP Term Facility and will draw the remainder upon entry of the Final Order.

9. The Debtors, in consultation with their advisors, determined that the DIP Facilities represented the best postpetition DIP financing alternative available to the Debtors. The DIP Facilities were the product of extensive arm’s-length, good-faith negotiations. Alternative sources of postpetition financing were not readily available to the Debtors (whether unsecured or secured) on terms better than or comparable to the DIP Facilities. The proposed DIP Facilities provide the Debtors with immediate and critical access to liquidity that is necessary to ensure that the Debtors’ businesses are stabilized, that chapter 11 administrative costs are paid in full, and that value is preserved during the course of the Debtors’ Chapter 11 Cases (as defined below).

**THE DEBTORS' PREPETITION INDEBTEDNESS**

10. As described in further detail below, as of the Petition Date, the Debtors have outstanding funded debt obligations consisting of approximately \$903.4 million. The Debtors' prepetition funded debt consists of: (a) an asset-based revolving credit facility; (b) an asset-based first-in, last-out secured term loan facility; (c) a secured term loan facility; and (c) unsecured convertible notes. A summary of the Debtors' prepetition funded debt is provided below:

<b><u>Instrument</u></b>	<b><u>Line Size / Original Amount</u></b>	<b><u>Approximate Principal Amount Outstanding as of the Petition Date</u></b>	<b><u>Priority of Prepetition Security Interests</u></b>
ABL Revolving Credit Facility	Up to \$81 million <sup>5</sup>	\$60 million	<ul style="list-style-type: none"> <li>• First priority lien on ABL/FILO Priority Collateral (defined below); senior in right of payment to the FILO Term Loan Facility</li> <li>• Second priority lien on Term Priority Collateral (defined below)</li> </ul>
FILO Term Loan Facility	\$275 million	\$275 million	<ul style="list-style-type: none"> <li>• First priority lien on ABL/FILO Priority Collateral; subordinated in right of payment to the ABL Revolving Credit Facility</li> <li>• Second priority lien on Term Priority Collateral</li> </ul>
Term Loan Facility Tranche B-1	\$151.8 million	\$0	N/A

<sup>5</sup> The original amount of the commitments under the ABL Revolving Credit Facility was \$100 million, but commitments have been voluntarily reduced over time.

<u>Instrument</u>	<u>Line Size / Original Amount</u>	<u>Approximate Principal Amount Outstanding as of the Petition Date</u>	<u>Priority of Prepetition Security Interests</u>
Term Loan Facility Tranche B-2	\$704.3 million <sup>6</sup>	\$410.8 million	<ul style="list-style-type: none"> <li>• First priority lien on Term Priority Collateral</li> <li>• Second priority lien on ABL/FILO Priority Collateral</li> </ul>
Notes	\$287.5 million	\$157.6 million – net of conversion feature and discounts	Unsecured
<b>Total Outstanding:</b>		<b>\$903.4 million</b>	

## I. THE PREPETITION ABL REVOLVING CREDIT FACILITY AND FILO TERM LOAN

11. Certain of the Debtors are party to that certain ABL Credit Agreement, dated as of February 28, 2018 (as amended by that certain First Amendment, dated as of March 18, 2018, that certain Second Amendment, dated as of May 15, 2020, and that certain Third Amendment dated as of June 12, 2020, and as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “*Prepetition ABL FILO Credit Agreement*” and together with all documentation executed in connection therewith, collectively the “*Prepetition ABL FILO Documents*”), by and among the Debtors party thereto,<sup>7</sup> Barclays Bank plc, and Citizens Bank, N.A., as co-documentation agents, JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (in such capacity, the “*Prepetition ABL FILO Agent*”), and the revolving lenders from time to time party thereto (collectively, the “*Prepetition*

<sup>6</sup> After giving effect to certain mandatory prepayments occurring on the closing date thereof.

<sup>7</sup> The obligors under the ABL Credit Agreement are: GNC Corporation, General Nutrition Centers, Inc., General Nutrition Corporation, General Nutrition Investment Company, Lucky Oldco Corporation, GNC Funding, Inc., GNC Canada Holdings, Inc., General Nutrition Centres Company, GNC Government Services, LLC, and GNC International Holdings, Inc. (collectively, the “*Debtor Obligors*”).

*ABL Lenders*”), the term lenders party thereto from time to time (the “*Prepetition FILO Lenders*” and, together with the Prepetition ABL FILO Agent, the “*Prepetition ABL Secured Parties*”). Pursuant to the ABL Credit Agreement, the Prepetition ABL FILO Lenders have provided (a) an asset-based revolving credit facility of up to \$81 million (the “*Prepetition ABL Revolving Credit Facility*”), and (b) an asset-based secured term loan incurred on a “first-in, last-out” basis in an initial principal amount of \$275 million (the “*Prepetition FILO Term Loan Facility*” and together with the Prepetition ABL Revolving Credit Facility, collectively, the “*Prepetition ABL FILO Facility*”).

12. The obligations arising under the Prepetition ABL FILO Facility are secured by first priority security interests in, and liens upon all of the following assets of the Debtor Obligors other than certain excluded assets (collectively, the “*Prepetition ABL Priority Collateral*”): (a) accounts receivable (other than those arising as a result of the disposition of Prepetition Term Priority Collateral (as defined herein)), (b) inventory, (c) tax refunds (except tax refunds in respect of Prepetition Term Priority Collateral), (d) cash, deposit accounts, securities accounts and investment property (other than (i) capital stock and (ii) any deposit account or securities account (or amount on deposit therein) established solely to hold identifiable proceeds of Prepetition Term Priority Collateral), (e) all insurance proceeds (including business interruption insurance) (other than proceeds in respect of Prepetition Term Priority Collateral), (f) all general intangibles, contract rights (including under franchise agreements and customer contracts), chattel paper, documents, documents of title, supporting obligations and books and records related to the foregoing, provided that to the extent any of the foregoing items in this clause (f) also relates to Prepetition Term Priority Collateral, only that portion related to the items referred to in the preceding clauses (a) through (e) shall be included in the Prepetition ABL Priority Collateral, (g)

all commercial tort claims and letter of credit rights to the extent such commercial tort claims and letter of credit rights arise in connection with collateral that is Prepetition ABL Priority Collateral pursuant to clauses (a) through (f) above, and (h) all products and proceeds of any and all of the foregoing (other than identifiable proceeds of Prepetition Term Priority Collateral).

13. Additionally, the obligations arising under the Prepetition ABL FILO Facility are secured by second priority security interests in, and liens upon all of the following assets of the Debtor Obligors other than certain excluded assets (collectively, the “*Prepetition Term Priority Collateral*” and, together with the Prepetition ABL Priority Collateral, the “*Prepetition Collateral*”): (a) all capital stock issued by Debtor General Nutrition Centers, Inc. and certain capital stock issued by certain of its Restricted Subsidiaries (as defined in the Prepetition Term Loan Credit Agreement (as defined herein)), (b) all intellectual property, (c) all other assets to the extent not constituting Prepetition ABL Priority Collateral, including, without limitation, contracts (other than those relating to Prepetition ABL Priority Collateral), equipment, other general intangibles (other than those relating to Prepetition ABL Priority Collateral) and intercompany notes, (d) all products and proceeds of any and all of the foregoing (other than identifiable proceeds of Prepetition ABL Priority Collateral).

14. On May 15, 2020, the Prepetition ABL FILO Credit Agreement was amended to allow the Debtor Obligors to avoid a springing maturity provision that would have resulted in the accelerated maturity of the Prepetition ABL FILO Facility on May 16, 2020; the amendment changed such springing maturity date to August 10, 2020, as described below. The Prepetition ABL Revolving Credit Facility matures on the earlier of (a) August 28, 2022 or (b) August 10, 2020 (or, if later, the date that is 91 days prior to the maturity date of any debt that refinances the Notes (as defined herein)) (the “*Revolver Springing Maturity Date*”) if, as of such date, the



outstanding principal balance under the Notes is greater than \$50 million (the “**Springing Maturity Trigger**”). The Prepetition FILO Term Loan Facility matures on the earlier of (y) December 31, 2022 or (z) August 10, 2020 (or, if later, the date that is 91 days prior to the maturity date of any debt that refinances the Notes) (the “**FILO Term Loan Springing Maturity Date**”), if, as of such date, the Springing Maturity Trigger has occurred. Notwithstanding the foregoing, each of the Revolver Springing Maturity Date and the FILO Term Loan Springing Maturity Date (and the testing of the Springing Maturity Trigger) would have accelerated from August 10, 2020 to June 15, 2020 (the “**Accelerated Springing Maturity Date**”) if (a) liquidity of the Debtor Obligors and certain of their subsidiaries is less than \$100 million on June 15, 2020 or on any date thereafter and (b) the holders of more than 25% of any of (i) the loans and commitments under the Prepetition ABL Revolving Credit Facility, (ii) the loans under the Prepetition FILO Term Loan Facility or (iii) the loans under the Prepetition Term Loan Facility (as defined herein) elect to so accelerate (and if any such acceleration occurs, each of the Revolver Springing Maturity Date, the FILO Term Loan Springing Maturity Date and the Term Loan Springing Maturity Date (as defined herein) shall accelerate to June 15, 2020) (the foregoing clauses (a) and (b) are referred to herein collectively as the “**Liquidity Trigger**”).

15. On June 12, 2020, the ABL/FILO Credit Agreement was further amended to change the Accelerated Springing Maturity Date to June 30, 2020.

16. As of the Petition Date, there was approximately (a) \$60 million in principal amount outstanding of revolving credit loans (the “**Prepetition ABL Loans**”) outstanding under the Prepetition ABL Revolving Credit Facility, (b) \$275 million in principal outstanding under the Prepetition FILO Term Loan Facility (the “**Prepetition FILO Term Loans**”), (c) approximately \$5.1 million in face amount of letters of credit outstanding under the Prepetition ABL FILO

Documents (the “*Prepetition Letters of Credit*”), and (d) in respect of the Specified Hedge Agreement (as defined in the Prepetition ABL FILO Credit Agreement) entered into with the Prepetition ABL FILO Agent pursuant to an ISDA Master Agreement and accompanying schedule dated March 16, 2007 and by subsequent trade confirmations, and which was terminated on or about the Petition Date (the “*Agent Hedge Agreement*”).

## II. THE TERM LOAN FACILITY

17. The Debtor Obligors are party to that certain amended and restated term loan credit agreement (as amended by that certain First Amendment, dated as of May 15, 2020, and that certain Second Amendment, dated as of June 12, 2020, and as may be further amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “*Prepetition Term Credit Agreement*” and together with all documentation executed in connection therewith, collectively, the “*Prepetition Term Documents*”)<sup>8</sup> by and among, the Debtor Obligors, Barclays Bank plc, and Citizens Bank, N.A., as co-documentation agents, GLAS Trust Company LLC as collateral agent (in such capacity, the “*Prepetition Term Collateral Agent*”), JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the “*Prepetition Term Administrative Agent*” and together with the Prepetition Term Collateral Agent, the “*Prepetition Term Agents*” and the Prepetition Term Agents together with the Prepetition ABL FILO Agent, the “*Prepetition Agents*”), and the lenders from time to time party thereto (the “*Prepetition Term Lenders*” and, together with the Prepetition Term Agents, the “*Prepetition Term Secured Parties*” and together with the Prepetition ABL Secured Parties, the “*Prepetition Secured Parties*”). Pursuant to the Prepetition Term Credit Agreement, the Prepetition Term Lenders have provided a secured term

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<sup>8</sup> The Prepetition ABL FILO Documents and Prepetition Term Loan Documents are referred to herein collectively as the “*Prepetition Secured Credit Documents*.”

loan facility in the initial principal amount of approximately \$856.1 million (the “*Prepetition Term Facility*”).<sup>9</sup> The Prepetition Term Credit Agreement represents an amendment and restatement of the Debtors’ previous credit agreement, dated as of November 26, 2013 (the “*Old Credit Agreement*”) and was entered into at the same time as the Prepetition ABL FILO Credit Agreement as part of a restructuring of the Company’s capital structure in connection with the Harbin Transaction described in greater detail herein.

18. The obligations arising under the Prepetition Term Facility are secured by (a) first priority security interests in, and liens upon the Prepetition Term Priority Collateral and (b) second priority security interests in, and liens upon the Prepetition ABL Priority Collateral. On May 15, 2020, the Prepetition Term Credit Agreement was amended to allow the Debtor Obligors to avoid a springing maturity provision that would have resulted in the accelerated maturity of the Prepetition Term Facility on May 16, 2020; the amendment changed such springing maturity date to August 10, 2020, as described below. The Prepetition Term Facility matures on the earlier of (y) March 4, 2021 or (z) August 10, 2020 (or, if later, the date that is 91 days prior to the maturity date of any debt that refinances the Notes) (the “*Term Springing Maturity Date*”; the Term Springing Maturity Date, together with the Revolver Springing Maturity Date and the FILO Term Loan Springing Maturity Date are referred to herein collectively as the “*Springing Maturity Dates*”) if, as of such date, the Springing Maturity Trigger has occurred. Notwithstanding the foregoing, the Term Springing Maturity Date (and the testing of the Springing Maturity Trigger) would have accelerated from August 10, 2020 to June 15, 2020 if the Liquidity Trigger had

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<sup>9</sup> On the initial closing date of the Term Loan Facility, the Term Loan Facility consisted of a Tranche B-1 in the initial principal amount of \$151.8 million and a Tranche B-2 in the initial principal amount of \$704.3 million. Tranche B-1 was fully repaid on March 4, 2019.

occurred. On June 12, 2020, the Term Loan Credit Agreement was amended to change the Accelerated Spring Maturity Date to June 30, 2020.

19. As of the Petition Date, there was approximately \$410.8 million in principal outstanding under the Prepetition Term Loan Facility.

### **III. CONVERTIBLE SENIOR NOTES**

20. On August 10, 2015, Debtor GNC Holdings, Inc. (“*GNC Holdings*”) issued \$287.5 million principal amount of 1.5% convertible senior notes due 2020 (the “*Notes*”) in a private offering. The Notes are governed by the terms of an Indenture between GNC Holdings, as issuer, the subsidiary guarantors party thereto, and BNY Mellon Trust Company, N.A., as the Trustee (the “*Indenture*”). The Notes will mature on August 15, 2020, unless earlier purchased by GNC Holdings or converted by the holders. In connection with the issuance of the Notes, the Company paid down \$164.3 million of its then outstanding term loan facility.

21. The Notes are unsecured obligations and do not contain any financial covenants or restrictions on the payments of dividends, the incurrence of indebtedness, or the issuance or repurchase of securities by GNC Holdings or any of its subsidiaries. The Notes are fully and unconditionally guaranteed on an unsecured basis by certain subsidiaries of GNC Holdings (the “*Note Guarantors*”) and rank equal in right of payment with respect to the Note Guarantors’ other obligations.

22. On December 20, 2017, GNC Holdings executed exchange agreements with certain holders of the Notes to exchange, in privately negotiated transactions, \$98,935,000 aggregate principal amount of the Notes for an aggregate of 14,626,473 newly issued shares of GNC Holding’s Class A common stock, \$0.001 par value per share, together with approximately \$500,000 in cash, representing accrued and unpaid interest on the Notes being exchanged.

#### **IV. TOTAL PREPETITION FUNDED INDEBTEDNESS**

23. As of the Petition Date, the Debtor Obligors, were indebted (a) to the Prepetition ABL Secured Parties, without defense, counterclaim or offset of any kind, in respect of loans made and letters of credit issued in the aggregate outstanding principal amount under the Prepetition ABL FILO Facility of not less than (i) \$60 million of revolving credit loans, plus accrued and unpaid interest and fees with respect thereto, (ii) \$275 million of term loans, plus accrued and unpaid interest and fees with respect thereto, (iii) \$5.1 million in face amount of outstanding Letters of Credit (as defined in the Prepetition ABL FILO Credit Agreement), and (iv) in respect of Specified Hedge Agreements (as defined in the Prepetition ABL FILO Credit Agreement) entered into with the Prepetition ABL FILO Agent pursuant to an ISDA Master Agreement and accompanying schedule dated March 16, 2007 and by subsequent trade confirmations, and (b) to the Prepetition Term Secured Parties, without defense, counterclaim or offset of any kind, in respect of loans made in the aggregate outstanding principal amount under the Prepetition Term Facility of not less than \$410.8 million, plus accrued and unpaid interest and fees with respect thereto, which amounts set forth in the preceding clause (a) and (b), for the avoidance of doubt, do not include the Prepetition Secured Parties' accrued and unpaid attorneys' fees, costs, and expenses, or any premium, make-whole or penalty payments otherwise required by the terms of the Prepetition Secured Credit Documents, including, without limitation, upon a prepayment or acceleration of the obligations thereunder (such amounts, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition Secured Credit Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Debtors'

obligations pursuant to the Prepetition Secured Credit Documents, collectively the “*Prepetition Secured Obligations*”), and (c) in respect of Notes issued pursuant to the Prepetition Indenture in the aggregate outstanding principal amount under the Prepetition Indenture of not less than \$157.6 million, plus accrued and unpaid interest and fees with respect thereto, which amounts, for the avoidance of doubt, do not include the Indenture Trustee’s accrued and unpaid attorneys’ fees, costs, and expenses, or any premium, make-whole or penalty payments otherwise required by the terms of the Prepetition Indenture, including, without limitation, upon a prepayment or acceleration of the obligations thereunder (such amounts, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition Indenture, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Debtors’ obligations pursuant to the Prepetition Indenture, collectively the “*Prepetition Notes Obligations*”).

24. As described above, to secure the Prepetition Secured Obligations, the Borrowers and Guarantors granted to the Prepetition Secured Parties the Prepetition Liens (as defined herein) upon all the Prepetition Collateral.

## **THE DEBTORS’ EFFORTS TO OBTAIN POSTPETITION FINANCING**

### **I. THE MARKETING PROCESS**

25. Given the Debtors’ prepetition capital structure, liquidity needs and the challenges facing the Debtors’ businesses, the DIP Facilities represent the best available postpetition financing. As set forth in greater detail in the Goel Declaration, the Debtors recognized from the outset that their choices with respect to postpetition financing were limited. In addition to difficult market conditions, substantially all of the Debtors’ assets, other than certain excluded assets as set

forth in the Prepetition Secured Credit Documents, are pledged as collateral to the Prepetition ABL FILO Credit Agreement and the Prepetition Term Credit Agreement. Because the Debtors' unpledged assets that could be used to support a financing were limited, the Debtors, together with their investment banker Evercore Group, L.L.C. ("**Evercore**") determined that any postpetition financing would require pledging as collateral assets already subject to the Prepetition ABL FILO Credit Agreement and the Prepetition Term Credit Agreement as well as certain unpledged assets. However, in discussions with the Debtors, the Prepetition Agents insisted that they would not consent to any priming of their security interests as part of a third-party DIP financing. Thus, the Debtors faced limited options to raise debtor-in-possession financing: (a) prime the liens held by the Prepetition Secured Parties, thereby initiating a contested priming fight; or (b) locate a third-party lender willing to provide DIP financing either on an unsecured basis or secured by liens junior in priority to the liens securing interests in the Prepetition Collateral.

26. As set forth in greater detail in the Goel Declaration, Evercore conducted a robust marketing process in search of third-party postpetition financing. And, at the same time, the Debtors and their advisors commenced hard-fought, arm's length negotiations with the Prepetition ABL FILO Agent as well as the an ad hoc group of holders of loans under both the Prepetition Term Loan Facility and Prepetition FILO Term Loan Facility (the "**Ad Hoc Group of Crossover Lenders**") and an ad hoc group of lenders under the Prepetition FILO Term Loan Facility (the "**Ad Hoc FILO Term Lender Group**") with respect to postpetition financing. Ultimately, the Debtors and these parties came to a mutual agreement in the form of the proposed DIP Facilities.

## **II. THE DIP TERM FACILITY**

27. As set forth in the Goel Declaration, the Debtors engaged in arm's-length negotiations with the Ad Hoc Group of Crossover Lenders with respect to funding these Chapter 11 Cases through a new money investment. As part of the financing package, the parties focused

on the ultimate DIP sizing to fund these Chapter 11 Cases and certain costs that might be associated with exiting from bankruptcy. The Ad Hoc Group of Crossover Lenders ultimately agreed to provide the \$200 million DIP Term Facility, which provides \$100 million new money and refinances \$100 million of the Prepetition Term Facility upon entry of the Final Order. The DIP Term Facility is backstopped by certain members of the Ad Hoc Group of Crossover Lenders and open to all Prepetition Term Lenders. The Term Roll-Up is a material component of the structure of the DIP Term Facility and was required by the lenders as a condition to their commitment to provide postpetition financing. The Term Roll-Up will become effective only upon entry of the Final Order.

28. The DIP Term Facility is directly connected to a restructuring support agreement (the “*Restructuring Support Agreement*”), which provides a framework within which the Debtors can restructure their capital structure. Under the Restructuring Support Agreement, the DIP Term Lenders have agreed to roll their exposure into long-term exit financing for the Debtors should the plan contemplated within the Restructuring Support Agreement be consummated.

29. The DIP Term Facility includes various fees and postpetition liens, which were expressly required by the lenders as a condition to provide the DIP Facilities and are an integral component of the financing package. These fees and liens were each subject to arm’s-length negotiations.

### **III. REPAYMENT OF PREPETITION ABL REVOLVING CREDIT FACILITY**

30. The Debtors’ Prepetition ABL Revolving Credit Facility and Prepetition FILO Term Loan Facility are subject to compliance with a borrowing base. The Debtors’ borrowing base has declined to the point where the Debtors are forced to pledge cash into the borrowing base to support the Prepetition ABL Loans and Prepetition FILO Term Loans. The pledged cash is therefore restricted and unavailable to fund the Debtors’ operations. As of the Petition Date, a



significant portion of cash is pledged to the borrowing base in support of the outstanding Prepetition ABL Loans. The Debtors have therefore reasonably concluded that it is prudent to pay down the Prepetition ABL Loans using the cash currently pledged to the borrowing base to avoid unnecessary interest expense and potential fees associated with keeping the Prepetition ABL Revolving Credit Facility in place.

#### **IV. THE DIP ABL FILO FACILITY**

31. The Debtors focused their discussions with the Prepetition ABL FILO Lenders on a package that would provide the Prepetition ABL FILO Lenders with reasonable adequate protection, but also provide the Debtors with use of cash collateral and additional liquidity through relief from continuing to pledge cash into the borrowing base. The Prepetition ABL FILO Lenders expressly conditioned any consensual adequate protection package on continuing to have borrowing base protection.

32. After multiple rounds of negotiations, the Prepetition ABL FILO Lenders agreed to make changes to the borrowing base requirement that are favorable to the Debtors. The Prepetition ABL FILO Lenders agreed not to step down the advance rates of the borrowing base upon repayment of the Prepetition ABL Revolving Credit Facility, and also agreed to provide up to \$30 million of incremental liquidity through the Chapter 11 Cases and a commitment to convert the DIP ABL FILO Facility into long-term exit financing for the Debtors should the plan outlined under the Restructuring Support Agreement be consummated.

33. In exchange, the Prepetition ABL FILO Lenders required the ABL FILO Roll-Up. Although the lenders initially asked for fees in association with this conversion, the Debtors successfully negotiated to remove such fees. Because the Prepetition ABL FILO Lenders, who the Debtors believe are covered by the current borrowing base and did not seek any additional fees for this roll up, were providing incremental liquidity by increasing their risk exposure and were

providing potential long-term post-emergence capital for the Debtors, the Debtors agreed to convert Prepetition FILO Term Loans into DIP ABL FILO Loans. Given the nature of the Debtors' covenants related to collateral securing the Prepetition ABL FILO Facility and its oversecured status, the Prepetition ABL FILO Lenders' unwillingness to modify these terms, and all of the benefits to modifying that facility detailed herein, the Debtors believe the conversion of the Prepetition ABL FILO Facility into DIP ABL FILO Loans is reasonable, from a financial point of view, under the circumstances and substantially beneficial to the Debtors and their stakeholders.

34. The DIP Facilities are the best postpetition financing available to the Debtors. The Debtors are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, and new credit is not available to the Debtors without providing the DIP Agents, for the benefit of the DIP Lenders, the (i) DIP Superpriority Claims (as defined herein); (ii) the Roll-Ups; and (iii) DIP Liens in the DIP Collateral, as provided herein and in the DIP Documents.

**NEED FOR DEBTOR IN POSSESSION FINANCING  
AND USE OF PREPETITION COLLATERAL**

35. If this Motion is not approved and the Debtors do not obtain authorization to borrow under the DIP Facilities and to use the Cash Collateral, the Debtors will suffer immediate and irreparable harm. The Debtors, like many other retailers, face unprecedented challenges due to the COVID-19 pandemic, which has led to declining sales and reduction in the Debtors' available liquidity. As of the Petition Date, substantially all of the Debtors' cash is restricted because it is pledged to support the borrowing base under the Prepetition ABL FILO Credit Agreement.

36. The Debtors, with the assistance of their financial advisor, FTI Consulting, Inc. ("*FTI*") and Evercore, analyzed potential liquidity needs for a chapter 11 process. The Debtors determined, in consultation with their advisors, that procuring sufficient financing at the start of

these Chapter 11 Cases would be essential to meet operational expenses and to fund these Chapter 11 Cases. The DIP Facilities into which the Debtors seek authority to enter are critical to the Debtors' ability to administer these Chapter 11 Cases, to provide the Debtors with liquidity to continue operations in the ordinary course and to avoid irreparable harm to their business, and to pursue a restructuring of their capital structure. If the Debtors do not obtain postpetition financing, the Debtors will soon be unable to pay their vendors, landlords, and employees, rendering it likely that the Debtors would cease operations.

**THE PREPETITION AND POSTPETITION PRIORITY OF THE PREPETITION SECURED PARTIES' COLLATERAL**

37. The following chart illustrates the prepetition and postpetition priority scheme for the Prepetition Secured Parties and the DIP Secured Parties.

**Current Collateral (Simplified)**

<b>LIEN PRIORITY ON COLLATERAL</b>	<b>Term Priority Collateral</b>	<b>ABL Priority Collateral</b>	<b>Unencumbered Collateral</b>	<b>Other Encumbered Collateral (not ABL or Term Priority Collateral)</b>
<b>1.</b>	Prepetition Term Liens	Prepetition ABL Liens	All creditors	Other Secured Creditors
<b>2.</b>	Prepetition ABL Liens	Prepetition Term Liens		

**Post-Filing Collateral (Simplified)**

<b>LIEN PRIORITY ON COLLATERAL</b>	<b>DIP Term Priority Collateral</b>	<b>DIP ABL FILO Priority Collateral</b>	<b>Unencumbered Collateral (other than Avoidance Action Proceeds)</b>	<b>Avoidance Action Proceeds</b>	<b>Other Encumbered Collateral (not DIP ABL FILO Priority Collateral nor DIP Term Priority Collateral)</b>
<b>1</b>	Carve-Out	Carve-Out	Carve-Out	Carve-Out	Other Liens
<b>2</b>	DIP Term Liens	DIP ABL FILO Liens	DIP Term Liens	DIP Term Liens (to the extent of New Money DIP Term Claims)	Carve-Out
<b>3</b>	Prepetition Term Liens; Term Adequate Protection Liens	Prepetition ABL FILO Liens; ABL FILO Adequate Protection Liens	Term Adequate Protection Liens	DIP Term Liens (to the extent of Roll-Up DIP Term Claims) DIP ABL FILO Liens	DIP Term Liens
<b>4</b>	DIP ABL FILO Liens	DIP Term Liens	DIP ABL FILO Liens	Term Adequate Protection Liens ABL FILO Adequate Protection Liens	DIP ABL FILO Liens
<b>5</b>	Prepetition ABL FILO Liens; ABL FILO Adequate Protection Liens <sup>10</sup>	Prepetition Term Liens; Term Adequate Protection Liens	ABL FILO Adequate Protection Liens		Term Adequate Protection Liens

<sup>10</sup> The references herein to the ABL FILO Adequate Protection Liens are in the event the “roll-up” of Prepetition FILO Term Loans is successfully challenged or not effective.

6					ABL FILO Adequate Protection Liens
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**SUMMARY OF RELIEF REQUESTED**

38. The Debtors seek authority to establish the DIP Facilities that provide for postpetition secured loans in an amount not to exceed \$475,000,000 (the “*DIP Loans*”), subject to the terms and conditions of the DIP Documents. The Debtors further seek authority pursuant to the Interim Order to (a) draw \$30,000,000 in New Money DIP Term Loans under the DIP Term Facility on an interim basis prior to the Final Hearing on this Motion, (b) repay the remaining Prepetition ABL Loans, together with any interest or fees due thereunder, in full in cash (the “*ABL Repayment*”); (c) cash collateralize the outstanding Prepetition Letters of Credit pursuant to the LC Cash Collateral Agreement with the Prepetition ABL FILO Agent; and (d) “roll-up” and convert \$275,000,000 of Prepetition FILO Term Loans, together with all accrued and unpaid interest thereon, through an amendment and restatement of the Prepetition ABL FILO Credit Agreement into DIP ABL FILO Loans in accordance with the DIP ABL FILO Credit Agreement. The Debtors seek authority pursuant to the Final Order to: (a) draw up to an additional \$70,000,000 in New Money DIP Term Loans, and (b) “roll-up” and convert \$100,000,000 of Prepetition Term Loans into DIP Term Loans.

**SUMMARY OF TERMS OF THE DIP FACILITIES**

**I. CONCISE STATEMENT REGARDING THE DIP FACILITIES**

39. In accordance with the disclosure requirements of Bankruptcy Rule 4001(b) and (c) and Local Rule 4001-2(a)(i) and (ii), the material terms of the DIP Facilities, and certain highlighted provisions, are as follows:<sup>11</sup>

<b>Material Terms<sup>12</sup></b>	<b>Summary of Relevant DIP ABL FILO Facility Provisions</b>	<b>Summary of Relevant DIP Term Facility Provisions</b>
<b>Borrowers</b>	General Nutrition Centers, Inc.	General Nutrition Centers, Inc.
<b>Guarantors</b>	GNC Corporation, GNC Holdings, Inc., GNC Parent LLC, General Nutrition Centres Company, and each Subsidiary Guarantor (as defined in the DIP ABL FILO Credit Agreement)	GNC Corporation, GNC Holdings, Inc., GNC Parent LLC, General Nutrition Centres Company, and each Subsidiary Guarantor (as defined in the DIP Term Credit Agreement)
<b>Lenders</b>	Lenders party to the DIP ABL FILO Credit Agreement	Lenders party to the DIP Term Credit Agreement
<b>Administrative Agent and Collateral Agent</b>	JPMorgan Chase Bank, N.A.	GLAS Trust Company LLC
<b>Purpose</b>	The DIP ABL FILO Facility consists entirely of the ABL FILO Roll-Up Amount (as defined herein).  See Proposed Interim Order ¶ 1.	The DIP Term Facility shall be used for a) ongoing working capital and other general corporate purposes of the Debtors; (b) permitted payment of costs of administration of the Chapter 11 Cases, including restructuring charges arising on account of the Chapter 11 Cases, including statutory fees of the U.S. Trustee and allowed professional fees and expenses of the Debtor Professionals and professionals retained by a Committee (if any), subject to the Investigation Budget Amount; (c) payment of such prepetition expenses as consented to by the DIP Term Agent, acting at the direction of the Required Term Lenders or otherwise permitted under the DIP Documents in accordance with the Budget (subject to Permitted Variances; (d) payment of interest, premiums, fees, expenses, and

<sup>11</sup> This summary is qualified in its entirety by the provisions of the applicable DIP Documents and the Interim Order. To the extent there are any conflicts between this summary and any applicable DIP Document or the Interim Order, the terms of such DIP Document or the Interim Order, as applicable shall govern. Capitalized terms used but not defined herein shall have the meanings set forth in the DIP Term Credit Agreement or the Proposed Interim Order, as applicable.

<sup>12</sup> Except where stated otherwise, the sources of the material terms selected for inclusion herein are Federal Rule of Bankruptcy Procedure 4001(c)(1)(B) and Local Rule 4001-2(a)(ii).

Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
		<p>other amounts (including, without limitation, legal and other professionals' fees and expenses of the DIP Agents and the DIP Lenders) owed under the DIP Documents, including those incurred in connection with the preparation, negotiation, documentation, and Court approval of the DIP Facilities whether incurred before or after the Petition Date; (e) payment of certain adequate protection amounts to the Prepetition Secured Parties, as set forth in paragraphs 12-13 of the Interim Order; and (f) payment of obligations arising from or related to the Carve-Out.</p> <p><i>See Proposed Interim Order ¶ I(v).</i></p>
<b>Borrowing Limits</b>	<p>Inapplicable, the DIP ABL FILO Facility consists entirely of the Roll-Up Amount.</p> <p><i>See Proposed Interim Order Recitals.</i></p>	<p>Up to \$100 million in new money delayed draw term loans, \$30 million of which shall be available upon entry of the Interim Order</p> <p><i>See Proposed Interim Order Recitals.</i></p>
<b>Roll-Up of Prepetition Loans</b> <i>Local Rule 4001-2(a)(i)(E)</i>	<p>Upon entry of the Interim Order, \$275,000,000 of Prepetition FILO Term Loans, together with all accrued and unpaid interest thereon, shall be converted by amendment and restatement into DIP ABL FILO Loans in accordance with the DIP ABL FILO Credit Agreement.</p> <p><i>See Proposed Interim Order Recitals, ¶ I(viii), 3.</i></p>	<p>Subject to the entry of the Final Order and the making of \$100,000,000 of DIP Term Loans, \$100,000,000 of Prepetition Term Loans shall be converted into DIP Term Loans.</p> <p><i>See Proposed Interim Order Recitals, ¶ I(viii).</i></p>
<b>Interest Rate</b>	<p>The Loans under the DIP Term Facility bear interest at:</p> <ul style="list-style-type: none"> <li>• For the Loans comprising ABR Borrowings, the Alternate Base Rate plus 8%</li> <li>• For the Loans comprising Eurodollar Borrowings, the Adjusted LIBO Rate plus 9%</li> </ul> <p><i>See DIP ABL FILO Credit Agreement § 2.16.</i></p>	<p>The Loans under the DIP Term Facility bear interest at:</p> <ul style="list-style-type: none"> <li>• For the Loans comprising ABR Borrowings, the Alternate Base Rate plus 12%</li> <li>• For the Loans comprising Eurodollar Borrowings, the Adjusted LIBO Rate plus 13%</li> </ul> <p>DIP Term Credit Agreement § 2.16.</p>
<b>Maturity Date</b>	<p>The earliest to occur of (i) the date that is six months from the Petition Date, (ii) the date that is 35 days (or such later date as the Required Lenders may agree) after the Petition Date if the Final DIP Order has not been entered prior to the expiration of such 35-day period, (iii) the date the Bankruptcy Court orders the conversion of the Chapter 11 Cases to a Chapter 7 liquidation or the dismissal of the Chapter 11 Cases, (iv) the</p>	<p>The earliest to occur of (i) the date that is six months from the Petition Date, (ii) the date that is 35 days (or such later date as the Required Lenders may agree) after the Petition Date if the Final DIP Order has not been entered prior to the expiration of such 35-day period, (iii) the date the Court orders the conversion of the Chapter 11 Cases to a Chapter 7 liquidation or the dismissal of the Chapter 11 Cases, (iv) the acceleration of the</p>

Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
	<p>acceleration of the Loans and the termination of the Commitment under the Facility, (v) the sale of all or substantially all of the Loan Parties' assets and (vi) the consummation of a Chapter 11 plan of reorganization for the Loan Parties; <u>provided</u> that if the Exit Conversion occurs, the Loans shall not be paid in cash and shall convert in accordance with the terms and conditions set forth in Section 2.23 of the DIP ABL FILO Credit Agreement.</p> <p>DIP ABL FILO Credit Agreement § 1.1 (Definitions).</p>	<p>Loans and the termination of the Commitment under the Facility, (v) the sale of all or substantially all of the Loan Parties' assets and (vi) the consummation of a Chapter 11 plan of reorganization for the Loan Parties; <u>provided</u> that if the Exit Conversion occurs, the Loans shall not be paid in cash and shall convert in accordance with the terms and conditions set forth in Section 2.23 of the DIP Term Credit Agreement.</p> <p>DIP Term Credit Agreement § 1.1 (Definitions).</p>
<b>Fees</b>	<p><u>Agency and Arranger Fees.</u> Certain Agency and Arranger Fees relating to each of, the DIP Term Credit Agreement and the DIP ABL FILO Credit Agreement in an aggregate amount less than \$200,000.</p> <p><u>LC Fee.</u> A letter of credit fee equal to 1% of the daily amount outstanding to be drawn under the outstanding letters of credit, payable quarterly, in arrears to o the DIP ABL FILO Agent pursuant to the LC Cash Collateral Agreement.</p> <p>DIP ABL FILO Credit Agreement § 2.14(c).</p>	<p><u>Original Issue Discount.</u> A discount of 4% of the aggregate amount of New Money DIP Term Loans due and payable on, with respect to \$30,000,000 of such New Money DIP Term Loans, the date of the Interim DIP Order, and with respect to the remaining \$70,000,000 of such New Money DIP Loans, the date of the Final Order.</p> <p><u>Backstop Premium.</u> A fee equal to 6% of the aggregate amount of the New Money DIP Term Loans, paid as original issue discount upon entry of the Interim DIP Order.</p> <p><u>Exit Conversion Fee.</u> A fee equal to 3% of the aggregate amount of the New Money DIP Term Loans on conversion thereof from obligations under the DIP Term Facility to obligations under an exit facility upon such conversion, by the Debtors, payable in cash.</p> <p><u>Agency and Arranger Fees.</u> Certain Agency and Arranger Fees under, relating to each of, the DIP Term Credit Agreement and the DIP ABL FILO Credit Agreement in an aggregate amount less than \$200,000.</p> <p>DIP Term Credit Agreement § 2.14.</p>
<b>DIP Budget</b>	A copy of the Initial Budget is attached as <u>Schedule 1</u> to the Proposed Interim Order.	
<b>Limitation on Use of Proceeds</b> <i>Bankruptcy Rule 4001(b)(1)(B)(ii); Local Rule 4001-2(a)(ii)</i>	No portion of the Carve-Out, the proceeds of any DIP Term Loans, or any Cash Collateral may be used to (or support any other party to) litigate, object to, contest or challenge in any manner or raise any defenses to the debt, collateral position, liens or claims of any of the DIP Lenders, the DIP Agents, or the Prepetition Secured Parties, whether by challenging the validity, extent, amount, perfection, priority or enforceability of the indebtedness under the DIP Facilities, the Prepetition ABL FILO Credit Agreement or the Prepetition Term Credit	



Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
	<p>Agreement, or the validity, extent, perfection, priority or enforceability of any mortgage, security interest or lien with respect thereto or any other rights or interests or replacement liens with respect thereto or any other rights or interests of any of the DIP Lenders, the DIP Agents, or the Prepetition Secured Parties, or by seeking to subordinate or recharacterize the DIP Facilities (or amounts outstanding thereunder), the Prepetition ABL FILO Credit Agreement (or amounts outstanding thereunder) or the Prepetition Term Credit Agreement (or amounts outstanding thereunder), or to disallow or avoid any claim, mortgage, security interest, lien, or replacement lien or by asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against any of the DIP Lenders, the DIP Agents, or the Prepetition Secured Parties, or any of their respective officers, directors, agents, or employees; provided, however, that the Carve-Out and such collateral proceeds and loans under the DIP Documents may be used for allowed fees and expenses, in an amount not to exceed \$75,000 (the “<i>Investigation Budget Amount</i>”) incurred solely by a Committee (if appointed), in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority, or extent of the Prepetition Liens (the “<i>Investigation</i>”) before the Challenge Deadline. In addition, none of the Carve-Out, proceeds of DIP Term Loans, nor any Cash Collateral shall be used in connection with (a) preventing, hindering or delaying any of the DIP Lenders’, the DIP Agents’, or the Prepetition Secured Parties’ enforcement or realization upon the DIP Collateral or the exercise of rights by the DIP Agents or the Prepetition Agents once an Event of Default has occurred and is continuing, (b) using or seeking to use Cash Collateral or selling or otherwise disposing of the DIP Collateral other than as provided herein, (c) using or seeking to use any insurance proceeds related to the DIP Collateral without the consent of the DIP Term Agent, the DIP ABL FILO Agent, the Prepetition ABL FILO Agent or the Prepetition Term Agents, as applicable; or (d) incurring Indebtedness (as defined in the DIP Term Credit Agreement) other than in accordance with the Budget or other than as permitted in the DIP Documents; provided that the foregoing limitations shall not prevent the Loan Parties and their professionals from being heard on whether an Event of Default has occurred and is continuing.</p> <p><i>See Proposed Interim Order ¶ 30.</i></p>	
<p><b>Conditions Precedent to Lending</b></p>	<p>The effectiveness of the DIP ABL FILO Credit Agreement is subject to the satisfaction of conditions precedent are set forth at <u>Section 4</u> of the DIP ABL FILO Credit Agreement.</p> <p><i>See DIP ABL FILO Credit Agreement § 4.</i></p>	<p>The effectiveness of the DIP Term Credit Agreement, the Closing Date, the Initial Extension of Credit, and each Extension of Credit are subject to the satisfaction of conditions precedent are set forth at <u>Section 4</u> of the DIP Term Credit Agreement.</p> <p><i>See DIP Term Credit Agreement § 4.</i></p>
<p><b>Priority of Claims and Liens</b> <i>Local Rule 4001-2(a)(i)(D), (G)</i></p>	<p><b>Claims.</b> Subject and subordinate to the Carve-Out, upon entry of the Interim Order, the DIP Agents, on their own behalf and on behalf of the DIP Lenders, are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in each of the Chapter 11 Cases and any Successor Cases (collectively, the “<i>DIP Superpriority Claims</i>”) for all DIP Obligations (a) with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases or any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code or any other provision of the Bankruptcy Code and (b) which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law. Notwithstanding anything contained in the Interim Order or in any of the DIP Documents to the contrary, the DIP Superpriority Claims granted to (x) the DIP ABL FILO Lenders shall, at all times be in respect of any assets or property that constitute, or, but</p>	

Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
	<p>for the commencement of the Chapter 11 Cases would have constituted, DIP ABL FILO Priority Collateral, senior to the DIP Superpriority Claims granted to the DIP Term Lenders, and (y) the DIP Term Agent, on their own behalf and on behalf of the DIP Term Lenders shall, at all times be in respect of any assets or property that constitute, or, but for the commencement of the Chapter 11 Cases would have constituted, Prepetition Term Priority Collateral or proceeds or products thereof, senior to the DIP Superpriority Claims granted to the DIP ABL FILO Lenders.</p> <p>See Proposed Interim Order ¶ 8.</p> <p><b>Liens.</b> The DIP Liens shall have the priority as set forth below and as illustrated in <u>Exhibit B</u> attached to the Interim Order:<sup>13</sup></p> <ul style="list-style-type: none"> <li>(i) <u>Liens on Unencumbered Collateral</u> pursuant to Section 364(c) of the Bankruptcy Code, the liens securing the DIP Term Facility (the “<b>DIP Term Liens</b>”) shall be first-priority liens on all Unencumbered Collateral, other than “Excluded Assets” (as defined in the DIP Documents), senior in priority on such Unencumbered Collateral to the liens securing the DIP ABL FILO Facility (the “<b>DIP ABL FILO Liens</b>”) and the Term Adequate Protection Liens, and, subject to paragraph 12(f) of the Interim Order, the Prepetition ABL FILO Liens and the ABL FILO Adequate Protection Liens; <i>provided</i>, that, as to the Avoidance Action Proceeds, the DIP Term Liens shall be senior to the DIP ABL FILO Liens solely to the extent of the aggregate outstanding principal amount of New Money DIP Loans, plus unpaid interest on, the New Money DIP Loans and all fees, and other expenses related thereto and arising and payable under the DIP Facility (the “<b>New Money DIP Term Claims</b>”) and <i>pari passu</i> with the DIP ABL FILO Liens to the extent of the aggregate outstanding principal amount of, plus unpaid interest on, the Term Loan Roll-Up Loans, and all fees, and other expenses related thereto and arising and payable under the DIP Facility (the “<b>Roll-Up DIP Term Claims</b>”);</li> <li>(ii) <u>Junior Liens on Other Encumbered Collateral</u>, pursuant to Section 364(c)(3) of the Bankruptcy Code, the DIP Term Liens shall be immediately junior to any liens on all of each Loan Party’s present and future assets and properties, in each case other than the DIP Term Priority Collateral and the DIP ABL FILO Priority Collateral, that are subject to any validly perfected, enforceable and unavoidable security interest or lien in existence as of the Petition Date (the “<b>Other Encumbered Collateral</b>” and such security interests or liens, the “<b>Other Liens</b>”), senior in priority on such Other Encumbered Collateral to (x) the Term Adequate Protection Liens, (y) the DIP ABL FILO Liens, and (z) subject to paragraph 12(f) of the Interim Order, the Prepetition ABL FILO Liens and the ABL FILO Adequate Protection Liens;</li> <li>(iii) <u>First-Priority Priming Liens</u>. pursuant to Section 364(d) of the Bankruptcy Code, (i) the DIP Term Liens shall be priming first-priority liens on DIP Collateral that constitutes or, but for the commencement of the Chapter 11 Cases would have constituted, Prepetition Term Priority Collateral or proceeds or products thereof (the “<b>DIP Term Priority Collateral</b>”), in all respects senior in priority to the Prepetition Term Liens, the Term Adequate Protection Liens, the DIP ABL FILO Liens, and, subject to paragraph 12(f) of the Interim Order, the Prepetition ABL FILO Liens and the ABL FILO Adequate Protection Liens thereon, and (ii) the DIP ABL FILO Liens shall be priming first-priority liens on DIP Collateral that constitutes, or, but for the</li> </ul>	

<sup>13</sup> In the event of any conflict between the text of the Interim Order and the illustrative chart contained in Exhibit B thereto, the text of the Interim Order shall control.

Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
	<p>commencement of the Chapter 11 Cases would have constituted, Prepetition ABL FILO Priority Collateral or proceeds or products thereof (the “<i>DIP ABL FILO Priority Collateral</i>”),<sup>14</sup> in all respects senior in priority to the Prepetition ABL FILO Liens and the ABL FILO Adequate Protection Liens, to the extent such foregoing liens are permitted pursuant to paragraph 12 of the Interim Order, and the DIP Term Liens, the Prepetition Term Liens and the Term Adequate Protection Liens thereon;</p> <p>(iv) <u>Second Priority Priming Liens</u>: pursuant to Bankruptcy Code Section 364(d) or other applicable law, (i) the DIP Term Liens shall be priming second-priority liens upon all DIP ABL FILO Priority Collateral, in each case junior in priority to the DIP ABL FILO Liens, and, subject to paragraph 12(f) of the Interim Order, the Prepetition ABL FILO Liens and the ABL FILO Adequate Protection Liens, but senior in priority to the Prepetition Term Liens and the Term Adequate Protection Liens and (ii) the DIP ABL FILO Liens shall be priming second-priority liens upon all DIP Term Priority Collateral, in each case junior in priority to the DIP Term Liens, the Prepetition Term Liens, and the Term Adequate Protection Liens, but senior in priority to, subject to paragraph 12(f) of the Interim Order, the Prepetition ABL FILO Liens and the ABL FILO Adequate Protection Liens; and</p> <p>(v) <u>Other Priorities</u>: other than as set forth in the Interim Order (including with respect to the Carve-Out) or permitted under the DIP Documents, the DIP Liens shall not be made subject to or <i>pari passu</i> with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to any Successor Case, and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to any of sections 510, 549 or 550 of the Bankruptcy Code (subject, as applicable, to the Challenge Deadline and related provisions set forth in paragraph 36 of the Interim Order). No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be <i>pari passu</i> with or senior to the DIP Liens.</p> <p>See Proposed Interim Order ¶ 7.</p>	
<p><b>The Debtors’ Stipulations &amp; Release</b>  <i>Fed. R. Bankr. P. 4001(c)(1)(B)(iii); Local Rule 4001-2(a)(i)(B)</i></p>	<p><b>Stipulations</b> Without prejudice to the rights of any party in interest and subject to the limitations thereon summarized herein, the Debtors admit, stipulate and agree, among other things (the below list summarizing the most noteworthy stipulations), that</p> <p>(i) <u>Prepetition ABL FILO Facility</u>. Pursuant to that certain ABL Credit Agreement, dated as of February 28, 2018 (as amended by that certain First Amendment, dated as of March 20, 2018, that certain Second Amendment, dated as of May 15, 2020, and that certain Third Amendment, dated as of June 12, 2020, and as further amended, amended and restated, supplemented or otherwise modified prior to the date hereof), the “<i>Prepetition ABL FILO Credit Agreement</i>” and, collectively with the Loan Documents (as defined in the Prepetition ABL FILO Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as amended, restated, supplemented, waived, or otherwise modified from time to time, the “<i>Prepetition ABL FILO Documents</i>”) among (a) GNC Corporation (“<i>Parent</i>”), (b) General Nutrition Centers, Inc. (in such capacity, the “<i>Prepetition ABL FILO</i>”</p>	

<sup>14</sup> For the avoidance of doubt, neither of the Operating Account nor the DIP Funding Account (each as defined in the DIP Term Credit Agreement) shall constitute or may be deemed to constitute DIP ABL FILO Priority Collateral.

Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
	<p><i>Administrative Borrower</i>”), (c) the subsidiaries of the Prepetition ABL FILO Administrative Borrower party thereto (together with the Prepetition ABL FILO Administrative Borrower, the “<i>Prepetition ABL FILO Borrowers</i>”), (d) JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (in such capacities, the “<i>Prepetition ABL FILO Agent</i>”), (e) the guarantors thereunder (in such capacities, the “<i>Prepetition ABL FILO Guarantors</i>” and, together with the Prepetition ABL FILO Borrowers, the “<i>Prepetition ABL FILO Obligors</i>”) and (f) the term lenders party thereto from time to time (the “<i>Prepetition FILO Lenders</i>”), and the revolving lenders party thereto from time to time (the “<i>Prepetition ABL Lenders</i>” and, together with the Prepetition ABL FILO Agent and the Prepetition FILO Lenders, the “<i>Prepetition ABL FILO Secured Parties</i>”), as applicable, provided revolving credit, term loans and other financial accommodations to, and issued letters of credit for the account of, the Prepetition ABL FILO Borrowers pursuant to the Prepetition ABL FILO Documents (the “<i>Prepetition ABL FILO Facility</i>”).</p> <p>(ii) <u>Prepetition ABL FILO Obligations.</u> As of the Petition Date, the Prepetition ABL FILO Obligors were indebted to the Prepetition ABL FILO Secured Parties, without defense, counterclaim, or offset of any kind, in respect of the loans and other financial obligations incurred under the Prepetition ABL FILO Facility, and other obligations incurred thereunder or secured thereby, (i) in the aggregate principal amount of not less than \$60,000,000 of revolving credit loans outstanding under the Prepetition ABL FILO Facility (the “<i>Prepetition ABL Loans</i>”), (ii) in the aggregate principal amount of not less than \$275,000,000 of term loans outstanding under the Prepetition ABL FILO Facility (the “<i>Prepetition FILO Term Loans</i>”), and (iii) in the face amount of \$5,122,067.00 of outstanding Letters of Credit (as defined in the Prepetition ABL FILO Credit Agreement) (the “<i>Prepetition Letters of Credit</i>”), and (iv) in respect of the Specified Hedge Agreement (as defined in the Prepetition ABL FILO Credit Agreement) entered into with the Prepetition ABL FILO Agent pursuant to an ISDA Master Agreement and accompanying schedule dated March 16, 2007 and by subsequent trade confirmations, and which was terminated on or about the Petition Date (the “<i>Agent Hedge Agreement</i>” and together with the Prepetition ABL Loans, the Prepetition FILO Term Loans and the Prepetition Letters of Credit, together with accrued and unpaid interest, outstanding bankers’ acceptances, any reimbursement obligations (contingent or otherwise) in respect of letters of credit and bankers’ acceptances, any fees, expenses and disbursements (including attorneys’ fees, accountants’ fees, auditor fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), treasury, cash management obligations including “Cash Management Obligations” (as defined in the Prepetition ABL FILO Credit Agreement), bank product and derivative obligations including “Obligations” in respect of “Specified Hedge Agreements” (each as defined in the Prepetition ABL FILO Credit Agreement), indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition ABL FILO Borrowers’ or the Prepetition ABL FILO Guarantors’ obligations pursuant to, or secured by, the Prepetition ABL FILO Documents, including all “Obligations” as defined in the Prepetition ABL FILO Credit Agreement, and all interest, fees, prepayment premiums, costs and other charges allowable under section 506(b) of the Bankruptcy Code, the “<i>Prepetition ABL FILO Obligations</i>”).</p> <p>(iii) <u>Prepetition ABL FILO Liens and Prepetition ABL FILO Priority Collateral.</u> As more fully set forth in the Prepetition ABL FILO Documents, prior to the Petition Date, the Prepetition ABL FILO Borrowers and the Prepetition ABL FILO Guarantors granted to the Prepetition ABL FILO Agent, for the benefit of itself and the Prepetition FILO</p>	

Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
	<p>Lenders, a security interest in and continuing lien on (the “<b><i>Prepetition ABL FILO Liens</i></b>”) substantially all of their assets and property (with certain exceptions set out in the Prepetition ABL FILO Documents) including (a) a first-priority security interest in and continuing lien on ABL Priority Collateral (as defined in that certain Intercreditor Agreement referred to below) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (the foregoing clause (a) collectively, the “<b><i>Prepetition ABL FILO Priority Collateral</i></b>”), and (b) a second priority security interest in and continuing lien on Term Priority Collateral (as defined in that certain Intercreditor Agreement referred to below) and proceeds, products, and rents of any of the foregoing (collectively, the “<b><i>Prepetition Term Priority Collateral</i></b>” and, together with the Prepetition ABL FILO Priority Collateral, the “<b><i>Prepetition Collateral</i></b>”), subject in the case of (b) only to the liens of the Prepetition Term Agents on the Prepetition Term Priority Collateral and Prepetition ABL FILO Permitted Prior Liens.</p> <p>iv) <b><i>Prepetition Term Facility.</i></b> Pursuant to that certain Amended and Restated Term Loan Credit Agreement, dated as of February 28, 2018 (as amended by that certain First Amendment, dated as of May 15, 2020, and that certain Second Amendment, dated as of June 15, 2020, and as further amended, amended and restated, supplemented or otherwise modified from time to time, the “<b><i>Prepetition Term Credit Agreement</i></b>” and, collectively with the Loan Documents (as defined in the Prepetition Term Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as amended, restated, supplemented, waived, or otherwise modified from time to time, the “<b><i>Prepetition Term Documents</i></b>” and, collectively with the Prepetition ABL FILO Documents, the “<b><i>Prepetition Documents</i></b>”) among (a) Parent, (b) General Nutrition Centers, Inc. (in such capacity, the “<b><i>Prepetition Term Borrower</i></b>” and, together with the Prepetition ABL FILO Borrowers, the “<b><i>Prepetition Borrowers</i></b>”), (c) JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the “<b><i>Prepetition Term Administrative Agent</i></b>”), (d) GLAS Trust Company LLC, as collateral agent (in such capacity, the “<b><i>Prepetition Term Collateral Agent</i></b>” and, together with the Prepetition Term Administrative Agent, the “<b><i>Prepetition Term Agents</i></b>” and, the Prepetition Term Agents together with the Prepetition ABL FILO Agent, the “<b><i>Prepetition Agents</i></b>”), (e) the guarantors thereunder (the “<b><i>Prepetition Term Guarantors</i></b>” and, together with the Prepetition Term Borrower, the “<b><i>Prepetition Term Obligors</i></b>”) and, together with the Prepetition ABL FILO Obligors, the “<b><i>Prepetition Obligors</i></b>”), and (f) the lenders party thereto (the “<b><i>Prepetition Term Lenders</i></b>” and, collectively with the Prepetition Term Agents, the “<b><i>Prepetition Term Secured Parties</i></b>” and, together with the Prepetition ABL FILO Secured Parties, the “<b><i>Prepetition Secured Parties</i></b>”), the Prepetition Term Lenders provided term loans to the Prepetition Borrower (the “<b><i>Prepetition Term Facility</i></b>” and, together with the Prepetition ABL FILO Facility, the “<b><i>Prepetition Secured Facilities</i></b>”).</p> <p>(v) <b><i>Prepetition Term Obligations.</i></b> As of the Petition Date, the Prepetition Term Obligors were indebted to the Prepetition Term Secured Parties, without defense, counterclaim, or offset of any kind, in respect of the loans incurred under the Prepetition Term Facility (collectively, the “<b><i>Prepetition Term Loans</i></b>”), in an aggregate principal amount, as of the Petition Date, not less than \$410.8 million (collectively, together with accrued and unpaid interest, fees, expenses, and disbursements (including, without limitation, any accrued and unpaid attorneys’ fees, accountants’ fees, appraisers’ fees, financial advisors’ fees, Prepetition Term Agents’ fees, fees and disbursements of the Prepetition Term Agents’ attorneys, advisors, accountants and other consultants, and related expenses and disbursements), indemnification obligations, and other charges, amounts, and costs of whatever nature owing, whether or not contingent, whenever arising,</p>	

Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
	<p>accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Term Obligors' obligations pursuant to the Prepetition Term Documents, including all "Obligations" as defined in the Prepetition Term Credit Agreement), in each case, as of the Petition Date, and all interest, fees, costs, and other charges allowable under section 506(b) of the Bankruptcy Code (the "<b><i>Prepetition Term Obligations</i></b>" and, together with the Prepetition ABL FILO Obligations, the "<b><i>Prepetition Secured Obligations</i></b>")</p> <p>vi) <u>Prepetition Term Liens and Prepetition Term Priority Collateral.</u> As more fully set forth in the Prepetition Term Documents, prior to the Petition Date, the Prepetition Term Borrower and the Prepetition Term Guarantors granted to the Prepetition Term Agents, for the benefit of themselves and the Prepetition Term Lenders, a security interest in and continuing lien on (the "<b><i>Prepetition Term Liens</i></b>" and, together with the Prepetition ABL FILO Liens, the "<b><i>Prepetition Liens</i></b>") substantially all of their assets and property (with certain exceptions set out in the Prepetition Term Documents), including (a) a first-priority security interest in and continuing lien on the Prepetition Term Priority Collateral, and (b) a second priority security interest in and continuing lien on the Prepetition ABL FILO Priority Collateral, subject in the case of (b) only to the liens of the Prepetition ABL FILO Agent on the Prepetition ABL FILO Priority Collateral and Prepetition Term Permitted Prior Liens.</p> <p>vii) <u>Priority of Prepetition Liens; Intercreditor Agreement.</u> The Prepetition ABL FILO Agent and the Prepetition Term Agents entered into that certain Intercreditor Agreement dated as of February 28, 2018 (as amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms, the "<b><i>Intercreditor Agreement</i></b>") to govern the respective rights, interests, obligations, priority, and positions of the Prepetition Secured Parties with respect to the assets and properties of the Debtors and other obligors. Each of the Prepetition Obligors under the Prepetition Documents is also a party to the Intercreditor Agreement. The Prepetition Intercreditor Agreement is a valid and enforceable "subordination agreement" under section 510(a) of the Bankruptcy Code and is, as of the Petition Date, and shall continue to be as provided herein binding on all parties thereto.</p> <p>iii) <u>Validity, Perfection, and Priority of Prepetition ABL FILO Liens and Prepetition ABL FILO Obligations.</u> The Debtors acknowledge and agree that as of the Petition Date (a) the Prepetition ABL FILO Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition ABL FILO Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition ABL FILO Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to (1) the Prepetition Term Liens on the Prepetition Term Priority Collateral, and (2) certain liens otherwise permitted by the Prepetition ABL FILO Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition ABL FILO Liens as of the Petition Date or were valid non-avoidable senior liens that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, the "<b><i>Prepetition ABL FILO Permitted Prior Liens</i></b>"; (c) the Prepetition ABL FILO Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition ABL FILO Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition ABL FILO Liens or Prepetition ABL FILO Obligations exist, and no portion of the Prepetition ABL FILO Liens or Prepetition ABL FILO Obligations is subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy</p>	

Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
	<p>Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition ABL FILO Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition ABL FILO Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition ABL FILO Obligations, the priority of the Debtors’ obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition ABL FILO Obligations; and (g) the Prepetition ABL FILO Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.</p>	<p>ix) <u>Validity, Perfection, and Priority of Prepetition Term Liens and Prepetition Term Obligations.</u> The Debtors acknowledge and agree that, as of the Petition Date, (a) the Prepetition Term Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Term Collateral Agent on behalf of the Prepetition Term Lenders for fair consideration and reasonably equivalent value; (b) the Prepetition Term Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to (1) the Prepetition ABL FILO Liens on the Prepetition ABL FILO Priority Collateral, and (2) certain liens otherwise permitted by the Prepetition Term Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition Term Liens as of the Petition Date or were valid non-avoidable senior liens that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, the “<i>Prepetition Term Permitted Prior Liens</i>” and, together with the Prepetition ABL FILO Permitted Prior Liens, the “<i>Permitted Prior Liens</i>”);<sup>15</sup> (c) the Prepetition Term Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition Term Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Term Liens or Prepetition Term Obligations exist, and no portion of the Prepetition Term Liens or Prepetition Term Obligations is subject to any challenge or defense, including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Term Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Term Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition Term Obligations, the priority of the Debtors’ obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition Term Obligations; and (g) the Prepetition Term Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.</p>

<sup>15</sup> For the avoidance of doubt, as used in the Interim Order, no reference to the Prepetition ABL FILO Permitted Prior Liens, the Prepetition Term Permitted Prior Liens, or the Permitted Prior Liens shall refer to or include the Prepetition ABL FILO Liens or the Prepetition Term Liens.

Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
	<p>(x) <u>Indemnification.</u> The Prepetition Secured Parties have acted in good faith, and without negligence or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining the requisite approvals of the DIP Facilities and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Adequate Protection Liens, any challenges or objections to the DIP Facilities or the use of Cash Collateral, and all documents related to any and all transactions contemplated by the foregoing. Accordingly, the Prepetition Secured Parties shall be and hereby are indemnified and held harmless by the Debtors in respect of any claim or liability incurred in respect thereof or in any way related thereto; provided that no such parties will be indemnified for any cost, expense, or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such parties' gross negligence, actual fraud or willful misconduct. No exception or defense exists in contract, law, or equity as to any obligation set forth, as the case may be, in paragraph F(x) of the Interim Order, in the Prepetition Documents, or in the DIP Documents, to the Debtors' obligation to indemnify and/or hold harmless the Prepetition Secured Parties.</p> <p>(xi) <u>No Challenges/Claims.</u> No offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Secured Obligations exist, and no portion of the Prepetition Liens or Prepetition Secured Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtors and their estates have no valid Claims (as such term is defined in section 101(5) of the Bankruptcy Code) objections, challenges, causes of action, and/or choses in action against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees with respect to the Prepetition Documents, the Prepetition Secured Obligations, the Prepetition Liens, or otherwise, whether arising at law or at equity, including, without limitation, any challenge, recharacterization, subordination, avoidance, recovery, disallowance, reduction, or other claims arising under or pursuant to sections 105, 502, 510, 541, 542 through 553, inclusive, or 558 of the Bankruptcy Code or applicable state law equivalents. The Prepetition ABL FILO Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code. The Prepetition Term Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.</p> <p>(xii) <u>Releases.</u> The Debtors hereby stipulate and agree that they forever and irrevocably release, discharge, and acquit the DIP Agent, the Prepetition Secured Parties, all current and future DIP Lenders, and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys, and agents, past, present, and future, and their respective heirs, predecessors, successors, and assigns, each solely in their capacities as such (collectively, the "<b>Releasees</b>"), of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys' fees), debts, liens, actions, and causes of action of any and every nature whatsoever relating to, as applicable, this Interim Order, the DIP Facilities, the DIP Documents, the Prepetition Secured Facilities, the Prepetition Documents, and/or the transactions contemplated hereunder or thereunder including, without limitation, (x) any so-called "lender liability" or equitable subordination or recharacterization claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection, or</p>	



Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
	<p>avoidability of the liens or claims of the Prepetition Secured Parties, the DIP Agent, or the DIP Lenders; <i>provided, however</i>, the foregoing release shall not apply with respect to any act or omission of a Releasee that constitutes gross negligence, actual fraud or willful misconduct. The Debtors further waive and release any defense, right of counterclaim, right of set-off, or deduction to the payment of the Prepetition Secured Obligations or the DIP Obligations that the Debtors may now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to the Court’s entry of the Interim Order.</p> <p><i>See Proposed Interim Order ¶ F(i)-(xii)</i></p> <p><b>Releases of the DIP Released Parties.</b></p> <p>(i) Subject to entry of the Final Order, the Debtors hereby absolutely and unconditionally release and forever discharge and acquit the DIP Agents, the DIP Lenders and each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns, each in such capacity (collectively, the “<b>DIP Released Parties</b>”) from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type (in each case, arising on or prior to the date of the Final Order), whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, in each case, arising in connection with or relating to the DIP Facilities, the DIP Liens or any of the DIP Documents; <i>provided</i>, that nothing herein shall relieve the DIP Released Parties from fulfilling their obligations under the DIP Documents and/or the Interim Order.</p> <p><i>See Proposed Interim Order ¶ 41</i></p>	
<p><b>Adequate Protection</b> <i>Fed. R. Bankr. P. 4001(c)(1)(B)(ii)</i></p>	<p>Subject to paragraph 12(f) of the Interim Order, the Prepetition ABL FILO Agent, for the benefit of the Prepetition ABL FILO Secured Parties, is entitled to receive adequate protection solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral, including, without limitation, the Cash Collateral. Pursuant to sections 361, 363 and 507(b) of the Bankruptcy Code, as adequate protection, subject in all respects to the Carve-Out and subject to paragraph 36 of the Interim Order, the Prepetition ABL FILO Secured Parties will receive (a) solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral, ABL FILO Adequate Protection Liens with the relative priorities set forth on <u>Exhibit B</u> to the Proposed Interim Order and ABL FILO 507(b) Claims;</p>	<p>The Prepetition Term Agents, for the benefit of the Prepetition Term Secured Parties, are entitled to receive adequate protection solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral, including, without limitation, the Cash Collateral. Pursuant to sections 361, 363 and 507(b) of the Bankruptcy Code, as adequate protection, subject in all respects to the Carve-Out and subject to paragraph 36 of the Interim Order, the Prepetition Term Secured Parties will receive (a) solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral, Term Adequate Protection Liens with the relative priorities set forth on <u>Exhibit B</u> to the Proposed Interim Order and Term 507(b) Claims; (b) current payment of reasonable and documented fees and expenses and other disbursements as set</p>

<b>Material Terms<sup>12</sup></b>	<b>Summary of Relevant DIP ABL FILO Facility Provisions</b>	<b>Summary of Relevant DIP Term Facility Provisions</b>
	<p>(b) current payment of reasonable and documented fees and expenses and other disbursements as set forth in paragraph 12 the Interim Order; and (c) financial and other reporting, in each case, as set forth in paragraph 12 the Interim Order.</p> <p><i>See Proposed Interim Order ¶J(i).</i></p>	<p>forth in paragraph 13 of the Interim Order; and (c) financial and other reporting, in each case, as set forth in paragraph 13 of the Interim Order.</p> <p><i>See Proposed Interim Order ¶J(ii).</i></p>
<b>Events of Default</b>	<p>The DIP ABL FILO Credit Agreement contains customary events of default for financings of this type and are set forth at <u>Section 7</u> of the DIP ABL FILO Credit Agreement.</p>	<p>The DIP Term Loan Credit Agreement contains customary events of default for financings of this type and are set forth at <u>Section 7</u> of the DIP Term Credit Agreement</p>

**Carve-Out**  
*Local Rule 4001-2(a)(i)(F)*

As used in the Interim Order, the term “**Carve-Out**” means the sum of:

(i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest at the statutory rate (without regard to the notice set forth in clause (iv) below);

(ii) all reasonable fees and expenses up to \$75,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in clause (iv) below);

(iii) to the extent allowed at any time, whether by interim or final compensation order, procedural order, or otherwise, all unpaid fees and expenses (including any monthly or success or Transaction Fee payable to estate professionals) (the “**Allowed Professional Fees**”) incurred by persons or firms retained the Loan Parties pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “**Debtor Professionals**”) and the Committee (if any) pursuant to section 328 or 1103 of the Bankruptcy Code (the “**Committee Professionals**”) and, together with the Debtor Professionals, the “**Professional Persons**”) at any time before or on the first business day following delivery by the DIP Term Agent or the DIP ABL FILO Agent of a Carve-Out Trigger Notice, whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice (the amounts set forth in clauses (i) through (iii), the “**Pre-Carve-Out Trigger Notice Cap**”); and

(iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$2,500,000 incurred after the first business day following the date of delivery by the DIP Term Agent or the DIP ABL FILO Agent of the Carve-Out Trigger Notice (such date, the “**Trigger Date**”), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “**Post-Carve-Out Trigger Notice Cap**” and, together with the Pre-Carve-Out Trigger Notice Cap, the “**Carve-Out Cap**”); *provided*, that under no circumstances shall any success, completion, or similar fees be paid from the Carve-Out following delivery of a Trigger Notice unless such fee was earned and payable prior to the Trigger Date; *provided, further* that nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in the Carve-Out Cap on any other grounds.

For purposes of the foregoing, “**Carve-Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by the DIP Term Agent or the DIP ABL FILO Agent to each other, the Loan Parties, their lead restructuring counsel (Latham & Watkins LLP), the U.S. Trustee, counsel to the Committee (if any), and counsel to each of the Ad Hoc Committees and the DIP Agents, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the obligations under either of the DIP Facilities, stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

On the day on which a Carve Out Trigger Notice is given by either DIP Agent to the Loan Parties with a copy to counsel to the Committee (if any) (the “**Termination Declaration Date**”), the Carve-Out Trigger Notice shall constitute a demand to the Loan Parties to utilize (i) first, all cash in the DIP Funding Account, and then the Operating Account, notwithstanding anything in the DIP Term Documents to the contrary, including with respect to the existence of a default or an Event of Default, the failure of the Debtors to satisfy any or all of the conditions precedent for the withdrawal of funds from the DIP Funding Account or the Operating Account, including any Milestone or entry of the Final Order, or any termination of the commitments under the DIP Term Facility, and (ii) second, to the extent the cash set forth in clause (i) is insufficient, all cash on hand as of such date and any available cash thereafter generated by the Debtors to deposit in a segregated account at the DIP Term Agent (the “**Escrow Account**”) an amount equal to the Carve-Out Cap and hold in trust to pay such amounts benefiting from the Carve-Out. On or after the Termination Declaration Date, immediately following the consummation of (A) the sale of the business as a going concern,

Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
	<p>whether in one or a series of transactions, or (B) the consummation of a plan of reorganization (in each case, a “<i>Consummated Transaction</i>”), in either case having the support of the Ad Hoc Committees, (1) the Post-Carve-Out Trigger Notice Cap shall be increased in an amount not to exceed \$4,500,000 by the Restructuring Fee or Sale Fee (as defined in the engagement letter referred to below in this clause (1)), as applicable, payable to Evercore Group L.L.C., as financial advisor of the Loan Parties (any such fee, a “<i>Transaction Fee</i>”), in accordance with that certain engagement letter, dated April 16, 2020 between Evercore Group L.L.C., Latham &amp; Watkins LLP and GNC Holdings, Inc. in effect on the date hereof, subject to the approval of the Court, earned as a result of such Consummated Transaction, and (2) an amount equal to any such Transaction Fee, not to exceed \$4,500,000, shall be deposited in the Escrow Account and used to pay any such Transaction Fees to the extent such Transaction Fees are earned and payable and to the extent such Transaction Fees are not paid directly to the applicable Debtor Professional at the consummation of the transaction. Notwithstanding the foregoing, the Post-Carve-Out Trigger Notice Cap shall not be increased in the event of a liquidation of the assets.</p> <p>Notwithstanding anything to the contrary in the Interim Order, (i) the failure of the Escrow Account to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out, and (ii) in no way shall the Budget, the Carve-Out, the Escrow Account, or any of the foregoing be construed as a cap or limitation on the amount of Allowed Professional Fees due and payable by the Debtors. None of the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Persons incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in the Interim Order or otherwise shall be construed to obligate the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Any payment or reimbursement made on or after the occurrence of the Trigger Date in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis.</p> <p>Proceeds from the DIP Facilities not to exceed the Investigation Budget Amount may be used on account of professional fees and expenses of Committee Professionals in connection with the Investigation, which obligations will benefit from the Carve-Out in an amount not to exceed the Investigation Budget Amount to the extent unpaid as of the delivery of a Carve-Out Trigger Notice.</p> <p>For the avoidance of doubt, if a DIP Repayment occurs or the DIP Facilities are otherwise terminated, the Interim Order shall remain in full force and effect, including with respect to the Debtors’ use of Cash Collateral, the Carve-Out, and all related provisions in respect thereof, and the Prepetition Agents shall assume any rights and obligations that the DIP Agents previously had with respect to the Carve-Out.</p> <p>See Proposed Interim Order ¶ 29.</p>	

**Lien & Other Challenges**  
*Local Rule 4001-2(a)(i)(B)*

**Generally.** The Stipulations shall be binding on the Debtors, any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee for any of the Loan Parties or any other estate representative appointed in the Chapter 11 Cases or any Successor Cases) in all circumstances and for all purposes. The Stipulations shall also be binding on all creditors and other parties in interest and all of their respective successors and assigns, including, without limitation, a Committee (if appointed) and any other person or entity acting or seeking to act on behalf of the Loan Parties' estates in all circumstances and for all purposes, unless (i) the Committee or a party in interest (in each case, to the extent requisite standing is obtained pursuant to an order of this Court entered prior to the Challenge Deadline) has timely commenced an appropriate proceeding or contested matter required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 36) by the Challenge Deadline challenging any of the Stipulations (each such proceeding or contested matter, a "**Challenge**") and (ii) there is entered a final non-appealable order in favor of the plaintiff in any such timely filed Challenge; *provided* that any pleadings filed in any Challenge (or in any application to extend the Challenge Deadline) shall set forth with specificity the basis for such Challenge (and any Challenges not so specified prior to the Challenge Deadline shall be deemed forever, waived, released and barred). The Court may fashion any appropriate remedy following a successful Challenge.

If any such Challenge is timely and properly filed prior to the Challenge Deadline, the Stipulations shall nonetheless remain binding and preclusive (as provided in paragraph 36(a) of the Interim Order) on the Committee (if appointed) and on any other person or entity, the Loan Parties and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Loan Parties in the Chapter 11 Cases or any Successor Cases), except to the extent that such Stipulations were expressly and successfully challenged by such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. If any such Challenge is timely and properly filed prior to the Challenge Deadline and remains pending and the Chapter 11 Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such Challenge on behalf of the Debtors' estates; *provided* that if the Challenge Deadline has elapsed and no timely and properly filed Challenge has been commenced either before or after conversion of the Chapter 11 Cases to chapter 7 cases, or any Challenge has been resolved prior to the conversion of the Chapter 11 Cases to chapter 7 cases, the chapter 7 trustee shall be bound by the Stipulations or such resolution, as applicable; *provided further* that if a chapter 7 trustee is appointed prior to the expiration of the Challenge Deadline, such trustee shall have until the expiration of the Challenge Deadline to commence a Challenge.

The "**Challenge Deadline**" shall mean the earlier of (i) 60 days from the date of the formation of the Committee (if appointed) and (ii) 75 days following the entry of the Interim Order, as such deadline may be extended (x) in writing prior to the expiration of the Challenge Deadline (which writing may be in the form of email by counsel) from time to time in the sole discretion of the Prepetition ABL FILO Agent (with respect to the Prepetition ABL FILO Liens and Prepetition ABL FILO Obligations or the adequate protection afforded to the Prepetition ABL FILO Secured Parties) and the Prepetition Term Administrative Agent (with respect to the Prepetition Term Liens and Prepetition Term Obligations or the adequate protection afforded to the Prepetition Term Secured Parties) or (y) by this Court for good cause shown upon an application for an extension filed and served by a party in interest, pursuant to an order entered prior to the expiration of the Challenge Deadline; *provided*, that an extension pursuant to the foregoing clause (y) shall only be applicable as to such party in interest and the particular Challenge set forth in such application. Nothing in the Interim Order vests or confers on any entity (as defined in the Bankruptcy Code), including the Committee (if appointed) or any non-statutory committees appointed or formed in these Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Stipulations, and all rights to object to such standing are expressly reserved.

Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
	<p><b>Binding Effect.</b> To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such Challenge does not result in a final and non-appealable judgment or order that is inconsistent with any of the Stipulations, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Stipulations shall, pursuant to the Interim Order, become irrevocably binding on any person, entity, or party in interest in the Chapter 11 Cases, as well as their successors and assigns, and in any Successor Case for all purposes and shall not be subject to further challenge or objection. Notwithstanding anything to the contrary in the Interim Order, if any Challenge is properly and timely commenced by a party in interest, the Stipulations shall nonetheless remain binding on all other parties in interest. For the avoidance of doubt, initiation of a timely and procedurally proper Challenge shall preserve the Challenge only with respect to the party initiating such Challenge (and such Challenge shall be limited to the Challenge identified with specificity prior to the expiration of the Challenge Deadline). To the extent any Challenge is timely and properly commenced and is unsuccessful, the Prepetition Secured Parties shall be entitled to, as adequate protection, payment of the related costs and expenses, including, but not limited to, reasonable and documented attorneys’ fees, incurred in defending themselves against any unsuccessful Challenge.</p> <p><i>See Proposed Interim Order ¶ 36.</i></p>	
<p><b>Milestones</b> <i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p>	<p>As a condition to the DIP Facilities and the use of Cash Collateral, the Debtors shall comply with the “<b>Milestones</b>” set forth on <b>Schedule 2</b> to the Interim Order. The failure of the Debtors to comply with any of the Milestones shall (a) constitute an Event of Default under (i) each of the DIP Agreements and (ii) the Interim Order and, (b) subject to the expiration of the Remedies Notice Period, result in the automatic termination of the Debtors’ authority to use Cash Collateral under the Interim Order, and (c) permit the DIP Agents, subject to the terms of paragraph 28 of the Interim Order, to exercise the rights and remedies provided for in the Interim Order and the DIP Documents:</p> <p><i>See Proposed Interim Order ¶ 27.</i></p>	
<p><b>Waiver of the Automatic Stay</b> <i>Fed. R. Bankr. P. 4001(c)(1)(B)(iv)</i></p>	<p>The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of the Interim Order, including, without limitation, to (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and 507(b) Claims; (b) permit the Debtors to perform such acts as the DIP Agents, the Prepetition ABL FILO Agent, and the Prepetition Term Agents each may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Agents, DIP Lenders, and Prepetition Secured Parties under the DIP Documents, the DIP Facilities, and this Interim Order, as applicable; and (d) authorize the Debtors to pay, and the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of the Interim Order.</p> <p><i>See Proposed Interim Order ¶ 18.</i></p>	

Material Terms <sup>12</sup>	Summary of Relevant DIP ABL FILO Facility Provisions	Summary of Relevant DIP Term Facility Provisions
<p><b>506(c) Waiver</b>  <i>Bankruptcy Rule 4001(c)(1)(B)(x); Local Rule 4001-2(a)(i)(C)</i></p>	<p>Upon entry of a Final Order, the DIP Agents, the DIP Lenders, and, the Prepetition Secured Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.</p> <p>Subject to entry of the Final Order, except to the extent of the Carve-Out, no costs or expenses of administration that have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the DIP Agents, the DIP Lenders, the Prepetition ABL FILO Agent, the Prepetition FILO Lenders, the Prepetition Term Agents, the DIP Collateral, or the Prepetition Term Lenders, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Term Agent, the DIP ABL FILO Agent, the Prepetition ABL FILO Agent, or the Prepetition Term Agents, as applicable, and no such consent shall be implied from any action, inaction, or acquiescence by any party.</p> <p><i>See Proposed Interim Order ¶ K, 38</i></p>	
<p><b>Equities of the Case</b>  <i>Local Rule 4001-2(a)(i)(H)</i></p>	<p>Upon entry of a Final Order, the Prepetition Secured Parties are entitled to a waiver of any “equities of the case” exception under section 552(b) of the Bankruptcy Code.</p> <p>Subject to entry of the Final Order, the Prepetition ABL FILO Agent, the Prepetition FILO Lenders, the Prepetition Term Agents, and the Prepetition Term Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception thereunder shall not apply to any of them.</p> <p><i>See Proposed Interim Order ¶ K, 40</i></p>	
<p><b>Liens on Avoidance Actions</b>  <i>Local Rule 4001-2(a)(i)(D)</i></p>	<p>Subject to entry of a Final Order, the DIP Agents, or the benefit of the DIP Lenders, shall be granted DIP Liens on the proceeds of any avoidance actions (such actions, “<b>Avoidance Actions</b>”) brought pursuant to chapter 5 of the Bankruptcy Code or section 724(a) of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or applicable state law equivalents (the “<b>Avoidance Action Proceeds</b>”); <i>provided</i>, that no liens shall attach to Avoidance Actions.</p> <p><i>See Proposed Interim Order ¶ 6.</i></p>	
<p><b>Indemnification</b>  <i>Fed. R. Bankr. P. 4001(c)(ix)</i></p>	<p>The Debtors agree to indemnify and hold harmless the DIP Agents and the DIP Lenders in accordance with the terms and conditions of the DIP Agreements.</p> <p><i>See Proposed Interim Order ¶ F(x).</i></p>	
<p><b>Cross-Collateralization</b>  <i>Local Rule 4001-2(a)(i)(A)</i></p>	<p>No provision of the DIP ABL FILO Credit Agreement, the Interim Order, or the Final Order grants cross-collateralization protection of the type contemplated by Local Rule 4001-2(a)(i)(A).</p>	<p>No provision of the DIP Term Credit Agreement, the Interim Order, or the Final Order grants cross-collateralization protection of the type contemplated by Local Rule 4001-2(a)(i)(A).</p>

## **BASIS FOR RELIEF**

### **I. STANDARDS OF APPROVAL UNDER SECTIONS 364(C) AND 364(D)(1) OF THE BANKRUPTCY CODE**

40. Section 364(c) of the Bankruptcy Code requires a finding, made after notice and a hearing, that a debtor seeking postpetition financing on a secured basis cannot “obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense.” 11 U.S.C. § 364(c).

41. In addition, under section 364(d)(1) of the Bankruptcy Code, courts may, after notice and a hearing, authorize a debtor to obtain postpetition credit secured by a “priming” lien from affected secured parties if (i) the debtor obtains the consent of such parties or (ii) the debtor cannot obtain credit elsewhere and the interests of existing lienholders are adequately protected. 11 U.S.C. § 364(d)(1). Specifically, section 364(d)(1) provides, in relevant part, that a court may, after notice and a hearing:

authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if-

(A) the [debtor] is unable to obtain credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

42. In evaluating proposed postpetition financing under sections 364(c) and 364(d)(1) of the Bankruptcy Code, courts perform a qualitative analysis and generally consider various factors including whether:

- i. unencumbered credit or alternative financing without superpriority status is available to the debtor;
- ii. the credit transactions are necessary to preserve assets of the estate;



- iii. the terms of the credit agreement are fair, reasonable, and adequate;
- iv. the proposed financing agreement was negotiated in good faith and at arm's-length and entry thereto is an exercise of sound and reasonable business judgment and in the best interest of the debtors' estate and their creditors; and
- v. the proposed financing agreement adequately protects prepetition secured creditors.

*See, e.g., In re Aqua Assoc.*, 123 B.R. 192 (Bankr. E.D. Pa. 1991) (applying the first three factors in making a determination under section 364(c)); *In re Crouse Group, Inc.*, 71 B.R. 544 (Bankr. E.D. Pa. 1987) (same); *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003) (applying all factors in making a determination under section 364(d)).

43. Section 364 of the Bankruptcy Code also allows for postpetition financing secured by a priming lien. Section 364(d)(1) provides that the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt if:

- (A) the trustee is unable to obtain such credit otherwise; and
- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

44. For the reasons discussed herein, the Debtors satisfy the standards required to access postpetition financing on a superpriority claim and priming lien basis under sections 364(c) and 364(d) of the Bankruptcy Code.

**A. The Debtors Cannot Obtain Financing on More Favorable Terms**

45. In demonstrating that credit was not available without the protections afforded by section 364(c) or 364(d) of the Bankruptcy Code, a debtor need only make a good faith effort. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c)

to obtain less onerous terms where debtor approached four lending institutions, was rejected by two and selected the least onerous financing option from the remaining two lenders); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (“[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”); *In re Phoenix Steel Corp.*, 39 B.R. 218, 222 (D. Del. 1984) (holding the debtor satisfied its burden to show an inability to obtain credit on other terms through its time and effort spent trying to obtain credit on alternative terms and conditions).

46. Moreover, where few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff d sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met).

47. As set forth above, and in the Del Genio and Goel Declarations, given their current financial condition, financing arrangements and capital structure, the Debtors were unable to obtain sufficient interim and long-term financing from sources other than the DIP Lenders on terms more favorable than those under the DIP Facilities and the DIP Documents, and are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. New credit is unavailable to the Debtors without providing the DIP Agent, for the benefit of the DIP Lenders, the (i) DIP Superpriority Claims and (ii) DIP Liens in the DIP Collateral, as provided herein and in the DIP Documents.

**B. The DIP Facilities are Necessary to Preserve the Value of the Debtors' Estates**

48. As debtors in possession, the Debtors have a fiduciary duty to protect and maximize their estates' assets. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004). The DIP Facilities, if approved, will provide working capital critical to funding the Debtors' day-to-day operations. Without access to the DIP Facilities, the Debtors will be forced to cease operations, which would result in immediate and irreparable harm to their business and deplete the going concern value of such business. The Debtors' ability to maintain business relationships with their vendors, suppliers, operators and managers, to make capital expenditures and to satisfy other working capital and operational needs and otherwise finance their operations is essential to the Debtors' continued viability. Because the Debtors' available and projected Cash Collateral is insufficient to fund their operations, the credit to be provided under the DIP Facilities is necessary to preserve the value of the Debtors' estates for the benefit of all stakeholders.

**C. Terms of the DIP Facilities are Fair, Reasonable and Adequate under the Circumstances**

49. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the proposed lender. *In re L.A. Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (stating that approval of the DIP Facility transaction requires terms that are "fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender"); *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See Transcript of Record at 740:4-6, In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y.

Feb. 27, 2009) (“[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the provisions [of a DIP that included a roll-up of prepetition secured debt] reasonable here and now.”).

50. Given the urgent need of the Debtors to obtain financial stability for the benefit of all parties in interest, the terms of the DIP Facilities are fair, appropriate, reasonable and in the best interests of the Debtors, their estates and their creditors. The DIP Documents were negotiated extensively by the Debtors and the DIP Lenders, in good faith and at arm’s length as required by section 364(e) of the Bankruptcy Code, with all parties represented by experienced counsel.

**D. Entry into the DIP Documents Reflects the Debtors’ Reasonable Business Judgment**

51. A debtor’s decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del 1994) (noting that the interim loan, receivable facility and asset based facility were approved because they “reflect[ed] sound and prudent business judgment [were] reasonable under the circumstances and in the best interests of TWA and its creditors”); *Ames Dep’t Stores, Inc.*, 115 B.R. at 40 (“cases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest”); *Group of Institutional Holdings v. Chicago Mil. St. P. & Pac. Ry.*, 318 U.S. 523, 550 (1943); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985) (“Business judgments should be left to the board room and not to this Court.”); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) (same).

52. Bankruptcy courts typically defer to the debtors' business judgment on the decision to borrow money unless such decision is arbitrary and capricious. *See In re Trans World Airlines, Inc.*, 163 B.R. at 974. In fact, "[m]ore exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

53. For the reasons set forth above, the Debtors submit that the entry into the DIP Facilities is the exercise of the Debtors' reasonable business judgment.

**E. Proposed Adequate Protection is Appropriate**

54. To the extent a secured creditor's interests in the collateral constitute valid and perfected security interests and liens as of the Petition Date, section 364(d)(1)(B) of the Bankruptcy Code requires that adequate protection be provided where the liens of such secured creditor are being primed to secure the obligations under a debtor in possession financing facility. Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens and other forms of relief. What constitutes adequate protection must be decided on a case-by-case basis. *See In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at \*2 (Bankr. D. Del. Feb. 18, 1992); *In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985). The focus of the requirement is to protect a secured creditor from the diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) ("The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.") (internal citations omitted).

55. The proposed adequate protection provided to the Prepetition Term Secured Parties comprises the following: (a) solely to the extent of any Diminution in Value of their interests in

the Prepetition Collateral, Term Adequate Protection Liens (as defined in the Proposed Interim Order) with the relative priorities set forth on Exhibit B to the Proposed Interim Order and Term 507(b) Claims (as defined in the Proposed Interim Order); (b) current payment of reasonable and documented fees and expenses and other disbursements as set forth in paragraph 13 of the Proposed Interim Order; and (c) financial and other reporting, in each case, as set forth in paragraph 13 of the Proposed Interim Order.

56. The proposed adequate protection provided to the Prepetition ABL FILO Secured Parties comprises the following: subject to (i) the repayment in full of the Prepetition ABL FILO Obligations in cash and/or through the conversion into the DIP ABL FILO Loans as contemplated hereunder and (ii) the expiration of the Challenge Deadline without a Challenge (as defined in the Proposed Interim Order) in respect of the Prepetition ABL FILO Obligations and/or Prepetition ABL FILO Liens being commenced (or if commenced, upon the dismissal of such Challenge, with prejudice), the Prepetition ABL FILO Secured Parties will receive (a) current payment of interest, commitment fees and/or letter of credit fees (as applicable) as more fully set forth in paragraph 12 of the Proposed Interim Order, (b) solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral, ABL FILO Adequate Protection Liens (as defined in the Proposed Interim Order) with the relative priorities set forth on Exhibit B to the Proposed Interim Order and ABL FILO 507(b) Claims (as defined in the Proposed Interim Order); (c) current payment of reasonable and documented fees and expenses and other disbursements as set forth in paragraph 12 of the Proposed Interim Order; and (d) financial and other reporting, in each case, as set forth in paragraph 12 of the Proposed Interim Order.

57. The Debtors believe that the adequate protection proposed herein to protect any diminution in value of the Prepetition Secured Parties' interest in the Prepetition Collateral is fair

and reasonable. Further, in reliance upon, among other things, such adequate protection, the Prepetition Secured Parties have consented to the priming of Prepetition Liens. The consent of the Prepetition Secured Parties permits the Debtors to avoid potentially time-consuming and unpredictable priming litigation. The Prepetition Secured Parties' consent to the priming of their liens thus permits the Debtors to save considerable resources, not to mention avoid a delay, in obtaining postpetition financing. Accordingly, based upon the foregoing, the Debtors respectfully request that the Court authorize the Debtors to provide the adequate protection described above to such parties.

**F. The Debtors Should be Authorized to Pay the Fees and Payments Required by the DIP Agents and the DIP Lenders Under the DIP Documents**

58. In addition to the various Adequate Protection Payments (as defined in the Proposed Interim DIP Order) and other reimbursement obligations, in each case specified under the DIP Documents, and the Proposed Interim DIP Order the Debtors have agreed, subject to Court approval, to pay certain fees and other payments to the DIP Agents and the DIP Lenders. In particular, as noted above, the Debtors have agreed to pay:

- (a) Original Issue Discount. A discount of 4% of the aggregate amount of New Money DIP Term Loans due and payable on, with respect to \$30,000,000 of such New Money DIP Term Loans, the date of the Interim DIP Order, and with respect to the remaining \$70,000,000 of such New Money DIP Loans, the date of the Final Order.
- (b) Backstop Premium. A fee equal to 6% of the aggregate amount of the New Money DIP Term Loans, paid as original issue discount upon entry of the Interim DIP Order.
- (c) Exit Conversion Fee. A fee equal to 3% of the aggregate amount of the New Money DIP Term Loans on conversion thereof from obligations under the DIP Term Facility to obligations under an exit facility upon consummation of such conversion, payable in cash.
- (d) Agency and Arranger Fees. Certain Agency and Arranger Fees relating to each of, the DIP Term Credit Agreement and the DIP

ABL FILO Credit Agreement in an aggregate amount less than \$200,000.

- (e) LC Fee. A letter of credit fee equal to 1% of the daily amount outstanding to be drawn under the outstanding letters of credit under the Prepetition ABL FILO Credit Agreement, payable quarterly, in arrears to the DIP ABL FILO Agent pursuant to the LC Cash Collateral Agreement.

59. It is understood and agreed by all parties, including the Debtors, that these fees are an integral component of the overall terms of the DIP Facilities and were required by the applicable DIP Agents and DIP Lenders as consideration for the extension of postpetition financing after arm's-length and good faith negotiations. Accordingly, the Bankruptcy Court should authorize the Debtors to pay the fees provided under the DIP Documents in connection with entering into those agreements

**G. The Proposed Roll-Ups of Prepetition Secured Obligations and the ABL Repayment Should Be Approved**

60. As set forth herein, the Roll-Ups contemplate refinancing certain amounts of the Prepetition Secured Obligations outstanding as of the Petition Date. Specifically, the DIP ABL FILO Credit Agreement contemplates a "roll-up" into the DIP ABL FILO Facility, on a dollar-for-dollar basis, of \$275 million in Prepetition FILO Term Loans, together with all accrued and unpaid interest thereon. Pursuant to the Interim Order, the Debtors also seek authority to repay all outstanding Prepetition ABL Loans.

61. Further, the DIP Term Loan Agreement contemplates a dollar-for-dollar "roll-up" into the DIP Term Loan Facility of amounts outstanding under the Prepetition Term Credit Agreement, pursuant to the Final Order. Specifically, under the Term Roll-Up, a principal amount of loans outstanding under the Prepetition Term Credit Agreement will be exchanged for the DIP New Money Term Loans in an amount equal to one dollar of loans outstanding under the



Prepetition Term Facility Credit Agreement for every one dollar of DIP New Money Term Loans provided by the DIP Term Loan Lenders.

62. As of the Petition Date, significant cash is pledged to support the borrowing base under the Prepetition ABL FILO Credit Agreement. The Debtors have therefore reasonably concluded that it is prudent to pay down the Prepetition ABL Loans using the cash currently pledged to the borrowing base to avoid unnecessary interest expense and potential fees associated with keeping the Prepetition ABL Revolving Credit Facility in place. Such payments will not prejudice the Debtors or their estates, because the Prepetition ABL Loans are substantially oversecured, such payments are subject to challenge provisions of the Interim Order, and this refinancing will result in a substantial increase in the Debtors' available financing in order to support these Chapter 11 Cases. Courts in this district have permitted debtors to use postpetition financing to pay prepetition claims of a lender where, as here, the loan cannot be obtained on any other basis and the claims of the prepetition lender are fully secured. *See In re Capmark Fin. Grp. Inc.*, 438 B.R. 471, 511 (Bankr. D. Del. 2010) ("post-petition refinancing of uneconomical secured debt through a DIP loan may be authorized by section 363(b) of the Bankruptcy Code as a use of estate property outside the ordinary course of business"); *In re Energy Future Holding Corp.*, 527 B.R. 157, 167 (D. Del. 2015).

63. The Debtors and the DIP Lenders engaged in arm's-length negotiations and ultimately agreed to the Roll-Ups as consideration for, among other things, the Debtors' continued use of Cash Collateral, the Prepetition ABL FILO Lenders' agreement to make adjustments to the borrowing base calculation under the Prepetition ABL FILO Credit Agreement providing the Debtors with approximately \$30 million in additional liquidity (after factoring in the ABL Repayment), and the risk associated with the extension of the DIP Facilities throughout these

Chapter 11 Cases. Thus, after careful consideration of all available alternatives, the Debtors determined that refinancing a certain portion of the Prepetition Secured Obligations is necessary and appropriate to obtain access to the liquidity necessary to preserve the value of their business for the benefit of all stakeholders. Importantly, the proposed Roll-Ups are subject to review by a creditors' committee (if appointed) or another party-in-interest with requisite standing if a committee is not appointed.

64. Roll-ups are a common feature in debtor in possession financing arrangements. Courts in this jurisdiction have approved similar debtor in possession financing features on the first day of the case. *See, e.g., In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Oct. 2, 2019) (authorizing a “creeping” roll up of Prepetition ABL FILO Facility of \$60 million pursuant to interim order and a final roll up of remaining amounts pursuant to final order); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Aug. 13, 2019) (authorizing an approximately \$240 million DIP that included a roll-up of \$70 million in prepetition term loans debt and up to \$82 million of prepetition ABL debt pursuant to interim order); *In re Charming Charlie LLC*, No. 19-11534 (CSS) (Bankr. D. Del. July 12, 2019) (authorizing a “creeping” roll up of Prepetition ABL FILO Facility of \$9.5 million pursuant to interim order and a final roll up of remaining amounts pursuant to final order); *In re Bon-Ton Stores, Inc.*, No. 18-10248 (MFW) (Bankr. D. Del. Feb. 6, 2018) (authorizing full roll-up of all \$489 million outstanding prepetition revolving obligations pursuant to interim order); *In re Real Indus. Inc.*, No. 17-12464 (KJC) (Bankr. D. Del. Nov. 20, 2017) [Docket Nos. 59, 348] (authorizing approximately \$365 million DIP that included a creeping roll-up, pursuant to an interim order, and a full roll-up, pursuant to final order of approximately \$266 million prepetition debt); *In re American Apparel, Inc.*, No. 15-

12055 (Bankr. D. Del. Oct. 6, 2017) (approving on an interim basis the repayment in full of all outstanding amounts under the prepetition revolving credit agreement).

65. Accordingly, the Debtors respectfully submit that the Court should approve the Debtors' request to enter into the DIP Facilities and comply with the provisions thereof, including the Roll-Ups under the DIP Facilities, as a sound exercise of the Debtors' business judgment.

## **II. APPROVAL OF USE OF CASH COLLATERAL IS APPROPRIATE**

66. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use, sell or lease cash collateral unless "(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section."

67. The Debtors have an urgent need for the immediate use of the Prepetition Collateral, including the Cash Collateral, and seek to use all Cash Collateral existing on or after the Petition Date pursuant to the terms of the DIP Documents. The Debtors need the Cash Collateral to pay operating expenses, including essential vendors, in order to ensure a continued supply of goods and services essential to the Debtors' business. Indeed, absent such relief, the Debtors' businesses will be brought to an immediate halt, with damaging consequences for the Debtors and their estates and creditors.

68. The Debtors believe that the terms and conditions of their use of the Cash Collateral (including the provision of adequate protection described above) are appropriate and reasonable and that such adequate protection is sufficient to secure any adequate protection obligations under the circumstances. Furthermore, the Prepetition Secured Parties have consented to the Debtors' use of the Cash Collateral subject to the terms and conditions of the DIP Documents and the Interim Order. Therefore, the Debtors submit that they should be authorized to use the Cash Collateral on the terms set forth in the DIP Documents.

### **III. MODIFICATION OF THE AUTOMATIC STAY**

69. The proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agents and the DIP Lenders to exercise, upon the occurrence and during the continuation of any Event of Default under the DIP Credit Agreement, all rights and remedies provided in the DIP Credit Agreement without further order of or application to the Court. However, the DIP Agents must provide the Debtors and various other parties with five (5) business days' notice prior to exercising any enforcement rights or remedies in respect of their collateral. During such period, the Debtors and other parties in interest may contest whether an Event of Default has occurred and is continuing.

70. Stay modification provisions of this sort are common features of postpetition financing facilities and, in the Debtors' business judgment, are reasonable under these circumstances. Accordingly, the Debtors request that the Court modify the automatic stay to the extent contemplated by the DIP Credit Agreement and the proposed Interim Order and Final Order.

### **IV. APPROVAL OF INTERIM RELIEF**

71. Bankruptcy Rules 4001(b)(2) and 4001(c)(2) provide that a final hearing on a motion to use cash collateral or obtain credit, respectively, may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the court may conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit on an interim basis "to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2); (c)(2).

72. As described above in some detail, the Debtors have an urgent and immediate need for cash in order to maintain business relationships with their vendors, suppliers, operators and managers, to make capital expenditures and to satisfy other working capital and operational needs

and otherwise finance their operations. Given the immediate and irreparable harm to be suffered by the Debtors, their estates and their creditors absent interim relief, the Debtors request that, pending the Final Hearing, the Court schedule an interim hearing within two (2) business days of the Petition Date or as soon thereafter as practicable to consider the interim relief requested in the Motion.

#### **V. REQUEST FOR A FINAL HEARING**

73. The DIP Credit Agreement requires that a Final Order approving the Motion be entered within thirty (30) days after the Petition Date. As such, pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, but in no event later than thirty (30) days following the Petition Date, and fix the time and date prior to the Final Hearing for parties to file objections to the Motion.

#### **BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

74. Certain aspects of the relief requested herein are subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant this relief on an expedited basis if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

75. Additionally, with respect to any aspect of the relief sought herein that constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their

businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

### **RESERVATION OF RIGHTS**

76. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

### **NOTICE**

77. Notice of this Motion will be given to (collectively, the "*Notice Parties*"): (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the

Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; and (p) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Orders, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

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*Proposed Counsel for Debtors and Debtors in Possession*



**Exhibit 1**

**Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ___

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**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED LENDERS, (V) MODIFYING AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

Upon the motion, dated June 24, 2020 (the “*Motion*”)<sup>2</sup> of GNC Holdings, Inc. (“*Holdings*”) and its affiliated debtors in the above-captioned chapter 11 cases (collectively, the “*Chapter 11 Cases*”), as debtors and debtors in possession (collectively, the “*Debtors*”), seeking entry of an interim order (this “*Interim Order*”) and a Final Order (as defined below), as applicable, pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), and 507 of chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy*

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

**Rules**”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) *inter alia*:

(i) authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis in the aggregate principal amount of \$200,000,000 (the “**DIP Term Facility**,” and all amounts extended under the DIP Term Facility, the “**DIP Term Loans**”), consisting of (a) a \$100,000,000 new money delayed-draw term loan facility (“**New Money DIP Term Loans**”) and (b) subject to the Final Order, up to \$100,000,000 (the “**Term Roll-Up Amount**”) of DIP Term Loans resulting from a dollar-for-dollar “roll-up” of the principal amount of prepetition term loans outstanding under the Prepetition Term Credit Agreement (as defined below), pursuant to the terms and conditions of that certain *Debtor-in-Possession Credit Agreement* (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “**DIP Term Credit Agreement**”), by and among General Nutrition Centers, Inc., as borrower (in such capacity, the “**DIP Term Borrower**”), each of the entities listed on **Exhibit A** hereto as guarantors (the “**Guarantors**” and, together with the DIP Term Borrower, the “**Loan Parties**”), and GLAS Trust Company LLC as administrative agent and as collateral agent (in such capacities, the “**DIP Term Agent**”) for and on behalf of itself and the lenders party thereto (collectively, including the DIP Term Agent, the “**DIP Term Lenders**”), substantially in the form of **Exhibit 2** attached to the Motion;

(ii) authorizing the Debtors to execute and deliver the DIP Term Credit Agreement and any other agreements, instruments, pledge agreements, guarantees, control agreements related thereto, and other Loan Documents (as defined in the DIP Term Credit Agreement) and documents related thereto (as amended, restated, supplemented, waived, and/or modified from time to time, collectively, with the DIP Term Credit Agreement, the “**DIP Term Documents**”), including the

Backstop Commitment Letter (as defined in the DIP Term Credit Agreement), and to perform such other acts as may be necessary or desirable in connection with the DIP Term Documents;

(iii) authorizing the Debtors to borrow \$30,000,000 under the DIP Term Facility (the “*Interim Amount*”) upon entry of this Interim Order to avoid immediate and irreparable harm;

(iv) granting the DIP Term Facility and all obligations owing thereunder and under, or secured by, the DIP Term Documents to the DIP Term Agent and DIP Term Lenders (collectively, and including all “Obligations” as described in the DIP Term Credit Agreement, the “*DIP Term Obligations*”) allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases (as defined herein);

(v) authorizing the Debtors to incur senior secured postpetition obligations on a superpriority basis in respect of a prepetition senior secured superpriority credit facility in the aggregate principal amount of \$275,000,000 (the “*DIP ABL FILO Facility*” and, together with the DIP Term Facility, the “*DIP Facilities*”), consisting solely of FILO term loans (the “*DIP ABL FILO Loans*”) resulting from the “roll-up” of all outstanding FILO Term Loans (as defined in the Prepetition ABL FILO Credit Agreement (as defined herein)) in the aggregate principal amount of \$275,000,000, together with all accrued and unpaid interest thereon (the “*ABL FILO Roll-Up Amount*”), pursuant to the terms and conditions of that certain *Amended and Restated ABL Credit Agreement* (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “*DIP ABL FILO Credit Agreement*” and, together with the DIP Term Credit Agreement, the “*DIP Agreements*”), by and among General Nutrition Centers, Inc. and the other Loan Parties as borrowers or guarantors, and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (in such capacities, the “*DIP ABL FILO Agent*” and, together with the DIP Term Agent, the “*DIP Agents*”) for and on behalf of themselves and the other lenders party

thereto (collectively, including the DIP ABL FILO Agent, the “*DIP ABL FILO Lenders*” and, together with the DIP Term Lenders, the “*DIP Lenders*”), substantially in the form of **Exhibit 3** attached to the Motion;

(vi) authorizing the Debtors to pay the Prepetition ABL Loans (as defined herein) in full in cash, to cash collateralize existing pre-petition letters of credit upon the entry of this Interim Order pursuant to the LC Cash Collateral Agreement (as defined in the DIP ABL FILO Credit Agreement), and to terminate hedge agreements and make termination payments;

(vii) authorizing the Debtors to execute and deliver the DIP ABL FILO Credit Agreement and any other agreements, instruments, pledge agreements, guarantees, fee letters, control agreements related thereto and other Loan Documents (as defined in the DIP ABL FILO Credit Agreement) and documents related thereto (including any security agreements, intellectual property security agreements, control agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, and collectively, with the DIP ABL FILO Credit Agreement, the “*DIP ABL FILO Documents*” and, together with the DIP Term Documents, the “*DIP Documents*”) and to perform such other acts as may be necessary or desirable in connection with the DIP ABL FILO Documents;

(viii) granting the DIP ABL FILO Facility and all obligations owing thereunder and under, or secured by, the DIP ABL FILO Documents, to the DIP ABL FILO Agent and DIP ABL FILO Lenders (collectively, and including all “Obligations” as described in the DIP ABL FILO Credit Agreement, the “*DIP ABL FILO Obligations*” and, together with the DIP Term Obligations, the “*DIP Obligations*”) allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases;

(ix) granting to the each of (a) the DIP Term Agent, for the benefit of itself and the

DIP Term Lenders and the other Secured Parties (as defined in the DIP Term Credit Agreement) under the applicable DIP Term Documents and (b) the DIP ABL FILO Agent, for the benefit of itself and the DIP ABL FILO Lenders and the other Secured Parties (as defined in the DIP ABL FILO Credit Agreement) under the applicable DIP ABL FILO Documents, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including all property constituting “cash collateral” as defined in section 363(a) of the Bankruptcy Code (“*Cash Collateral*”), which liens shall have the priorities set forth herein;

(x) authorizing and directing the Debtors to pay the principal, interest, premiums, fees, expenses and other amounts payable under the DIP Documents as such become earned, due and payable, including continuing commitment fees, closing fees, audit fees, appraisal fees, valuation fees, liquidator fees, structuring fees, administrative agent’s fees, the fees and disbursements of each DIP Agent’s and other DIP Lenders’ attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the DIP Documents;

(xi) authorizing the Debtors to use the Prepetition Collateral (as defined herein), including the Cash Collateral of the Prepetition ABL FILO Secured Parties under the Prepetition ABL FILO Documents and the Prepetition Term Secured Parties under the Prepetition Term Documents (each as defined herein), and providing adequate protection to the Prepetition ABL FILO Secured Parties and Prepetition Term Secured Parties for, among other things, any diminution in value resulting from the imposition of the automatic stay, the Debtors’ use, sale, or lease of the Prepetition Collateral, including Cash Collateral, the priming of the Prepetition Secured Parties’ respective interests in the Prepetition Collateral (including by the Carve-Out (as defined below)) (“*Diminution in Value*”) of their respective interests in the Prepetition Collateral, including the Cash Collateral as contemplated hereunder;

(xii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order; and

(xiii) scheduling a final hearing (the “*Final Hearing*”) within 35 days of the Petition Date (as defined below) to consider the relief requested in the Motion and approving the form of notice with respect to the Final Hearing.

The Court having considered the Motion, the exhibits attached thereto, the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings*, [Docket No. \_\_\_], the *Declaration of Robert Del Genio of FTI Consulting Inc. in Support of Debtors’ Motion of Debtors for Orders (I) Authorizing The Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties, and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (III) Grant Related Relief*, [Docket No. \_\_\_], the *Declaration of Pranav Goel of Evercore Group LLC in Support of Debtors’ Motion of Debtors for Orders (I) Authorizing The Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties, and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (III) Grant Related Relief*, [Docket No. \_\_\_], and the evidence submitted and arguments made at the interim hearing held on June [\_\_\_], 2020 (the “*Interim Hearing*”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the Interim Hearing having been held and concluded; and all

objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and all parties-in-interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Agreements and the other DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

**BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. **Petition Date.** On June [\_\_\_], 2020 (the "*Petition Date*"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court.

B. **Debtors in Possession.** The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. **Jurisdiction and Venue.** This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for the Chapter 11 Cases and proceedings with respect to the Motion is proper before this

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<sup>3</sup> The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.



Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. **Committee Formation.** As of the date hereof, the United States Trustee for the District of Delaware (the “*U.S. Trustee*”) has not yet appointed an official committee of unsecured creditors in the Chapter 11 Cases (a “*Committee*”) pursuant to section 1102 of the Bankruptcy Code.

E. **Notice.** Notice of the Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion with respect to the relief requested at the Interim Hearing or the entry of this Interim Order shall be required.

F. **Debtors’ Stipulations.** After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest, including any Committee, as set forth in paragraph 36 herein, the Debtors admit, stipulate, acknowledge, and agree as follows (paragraphs F(i) through F(xii) below are referred to herein, collectively, as the “*Stipulations*”):

(i) *Prepetition ABL FILO Facility.* Pursuant to that certain ABL Credit Agreement, dated as of February 28, 2018 (as amended by that certain First Amendment, dated as of March 20, 2018, that certain Second Amendment, dated as of May 15, 2020, and that certain Third Amendment, dated as of June 12, 2020, and as further amended, amended and restated, supplemented or otherwise modified prior to the date hereof, the “*Prepetition ABL FILO Credit Agreement*” and, collectively with the Loan Documents (as defined in the Prepetition ABL FILO Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as amended, restated, supplemented, waived, or otherwise modified from time to time, the “*Prepetition ABL FILO Documents*”) among (a) GNC Corporation (“*Parent*”), (b) General Nutrition Centers, Inc. (in such capacity, the “*Prepetition ABL FILO Administrative*

*Borrower*”), (c) the subsidiaries of the Prepetition ABL FILO Administrative Borrower party thereto (together with the Prepetition ABL FILO Administrative Borrower, the “*Prepetition ABL FILO Borrowers*”), (d) JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (in such capacities, the “*Prepetition ABL FILO Agent*”), (e) the guarantors thereunder (in such capacities, the “*Prepetition ABL FILO Guarantors*” and, together with the Prepetition ABL FILO Borrowers, the “*Prepetition ABL FILO Obligors*”) and (f) the term lenders party thereto from time to time (the “*Prepetition FILO Lenders*”), and the revolving lenders party thereto from time to time (the “*Prepetition ABL Lenders*” and, together with the Prepetition ABL FILO Agent and the Prepetition FILO Lenders, the “*Prepetition ABL FILO Secured Parties*”), as applicable, provided revolving credit, term loans and other financial accommodations to, and issued letters of credit for the account of, the Prepetition ABL FILO Borrowers pursuant to the Prepetition ABL FILO Documents (the “*Prepetition ABL FILO Facility*”).

(ii) *Prepetition ABL FILO Obligations.* As of the Petition Date, the Prepetition ABL FILO Obligors were indebted to the Prepetition ABL FILO Secured Parties, without defense, counterclaim, or offset of any kind, in respect of the loans and other financial obligations incurred under the Prepetition ABL FILO Facility, and other obligations incurred thereunder or secured thereby, (i) in the aggregate principal amount of not less than \$[60,000,000] of revolving credit loans outstanding under the Prepetition ABL FILO Facility (the “*Prepetition ABL Loans*”), (ii) in the aggregate principal amount of not less than \$[275,000,000] of term loans outstanding under the Prepetition ABL FILO Facility (the “*Prepetition FILO Term Loans*”), and (iii) in the face amount of \$[5,122,067.00] of outstanding Letters of Credit (as defined in the Prepetition ABL FILO Credit Agreement) (the “*Prepetition Letters of Credit*”), and (iv) in respect of the Specified Hedge Agreement (as defined in the Prepetition ABL FILO Credit Agreement)

entered into with the Prepetition ABL FILO Agent pursuant to an ISDA Master Agreement and accompanying schedule dated March 16, 2007 and by subsequent trade confirmations, and which was terminated on or about the Petition Date (the “*Agent Hedge Agreement*” and together with the Prepetition ABL Loans, the Prepetition FILO Term Loans and the Prepetition Letters of Credit, together with accrued and unpaid interest, outstanding bankers’ acceptances, any reimbursement obligations (contingent or otherwise) in respect of letters of credit and bankers’ acceptances, any fees, expenses and disbursements (including attorneys’ fees, accountants’ fees, auditor fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), treasury, cash management obligations including “Cash Management Obligations” (as defined in the Prepetition ABL FILO Credit Agreement), bank product and derivative obligations including “Obligations” in respect of “Specified Hedge Agreements” (each as defined in the Prepetition ABL FILO Credit Agreement), indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition ABL FILO Borrowers’ or the Prepetition ABL FILO Guarantors’ obligations pursuant to, or secured by, the Prepetition ABL FILO Documents, including all “Obligations” as defined in the Prepetition ABL FILO Credit Agreement, and all interest, fees, prepayment premiums, costs and other charges allowable under section 506(b) of the Bankruptcy Code, the “*Prepetition ABL FILO Obligations*”).

(iii) *Prepetition ABL FILO Liens and Prepetition ABL FILO Priority Collateral.* As more fully set forth in the Prepetition ABL FILO Documents, prior to the Petition Date, the Prepetition ABL FILO Borrowers and the Prepetition ABL FILO Guarantors granted to the Prepetition ABL FILO Agent, for the benefit of itself and the Prepetition FILO Lenders, a

security interest in and continuing lien on (the “*Prepetition ABL FILO Liens*”) substantially all of their assets and property (with certain exceptions set out in the Prepetition ABL FILO Documents) including (a) a first-priority security interest in and continuing lien on ABL Priority Collateral (as defined in that certain Intercreditor Agreement referred to below) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (the foregoing clause (a) collectively, the “*Prepetition ABL FILO Priority Collateral*”), and (b) a second priority security interest in and continuing lien on Term Priority Collateral (as defined in that certain Intercreditor Agreement referred to below) and proceeds, products, and rents of any of the foregoing (collectively, the “*Prepetition Term Priority Collateral*” and, together with the Prepetition ABL FILO Priority Collateral, the “*Prepetition Collateral*”), subject in the case of (b) only to the liens of the Prepetition Term Agents (as defined herein) on the Prepetition Term Priority Collateral and Prepetition ABL FILO Permitted Prior Liens (as defined herein).

(iv) *Prepetition Term Facility*. Pursuant to that certain Amended and Restated Term Loan Credit Agreement, dated as of February 28, 2018 (as amended by that certain First Amendment, dated as of May 15, 2020, and that certain Second Amendment, dated as of June 15, 2020, and as further amended, amended and restated, supplemented or otherwise modified from time to time, the “*Prepetition Term Credit Agreement*” and, collectively with the Loan Documents (as defined in the Prepetition Term Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as amended, restated, supplemented, waived, or otherwise modified from time to time, the “*Prepetition Term Documents*” and, collectively with the Prepetition ABL FILO Documents, the “*Prepetition Documents*”) among (a) Parent, (b) General Nutrition Centers, Inc. (in such capacity, the

*“Prepetition Term Borrower”* and, together with the Prepetition ABL FILO Borrowers, the *“Prepetition Borrowers”*), (c) JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the *“Prepetition Term Administrative Agent”*), (d) GLAS Trust Company LLC, as collateral agent (in such capacity, the *“Prepetition Term Collateral Agent”* and, together with the Prepetition Term Administrative Agent, the *“Prepetition Term Agents”* and, the Prepetition Term Agents together with the Prepetition ABL FILO Agent, the *“Prepetition Agents”*), (e) the guarantors thereunder (the *“Prepetition Term Guarantors”* and, together with the Prepetition Term Borrower, the *“Prepetition Term Obligors”* and, together with the Prepetition ABL FILO Obligors, the *“Prepetition Obligors”*), and (f) the lenders party thereto (the *“Prepetition Term Lenders”* and, collectively with the Prepetition Term Agents, the *“Prepetition Term Secured Parties”* and, together with the Prepetition ABL FILO Secured Parties, the *“Prepetition Secured Parties”*), the Prepetition Term Lenders provided term loans to the Prepetition Borrower (the *“Prepetition Term Facility”* and, together with the Prepetition ABL FILO Facility, the *“Prepetition Secured Facilities”*).

(v) *Prepetition Term Obligations.* As of the Petition Date, the Prepetition Term Obligors were indebted to the Prepetition Term Secured Parties, without defense, counterclaim, or offset of any kind, in respect of the loans incurred under the Prepetition Term Facility (collectively, the *“Prepetition Term Loans”*), in an aggregate principal amount, as of the Petition Date, not less than \$[410,800,000] (collectively, together with accrued and unpaid interest, fees, expenses, and disbursements (including, without limitation, any accrued and unpaid attorneys’ fees, accountants’ fees, appraisers’ fees, financial advisors’ fees, Prepetition Term Agents’ fees, fees and disbursements of the Prepetition Term Agents’ attorneys, advisors, accountants and other consultants, and related expenses and disbursements), indemnification

obligations, and other charges, amounts, and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Term Obligors' obligations pursuant to the Prepetition Term Documents, including all "Obligations" as defined in the Prepetition Term Credit Agreement), in each case, as of the Petition Date, and all interest, fees, costs, and other charges allowable under Section 506(b) of the Bankruptcy Code (the "***Prepetition Term Obligations***" and, together with the Prepetition ABL FILO Obligations, the "***Prepetition Secured Obligations***").

(vi) *Prepetition Term Liens and Prepetition Term Priority Collateral.*

As more fully set forth in the Prepetition Term Documents, prior to the Petition Date, the Prepetition Term Borrower and the Prepetition Term Guarantors granted to the Prepetition Term Agents, for the benefit of themselves and the Prepetition Term Lenders, a security interest in and continuing lien on (the "***Prepetition Term Liens***" and, together with the Prepetition ABL FILO Liens, the "***Prepetition Liens***") substantially all of their assets and property (with certain exceptions set out in the Prepetition Term Documents), including (a) a first-priority security interest in and continuing lien on the Prepetition Term Priority Collateral, and (b) a second priority security interest in and continuing lien on the Prepetition ABL FILO Priority Collateral, subject in the case of (b) only to the liens of the Prepetition ABL FILO Agent on the Prepetition ABL FILO Priority Collateral and Prepetition Term Permitted Prior Liens (as defined herein).

(vii) *Priority of Prepetition Liens; Intercreditor Agreement.*

The Prepetition ABL FILO Agent and the Prepetition Term Agents entered into that certain Intercreditor Agreement dated as of February 28, 2018 (as amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms, the "***Intercreditor Agreement***") to govern the respective rights, interests, obligations, priority, and positions of the Prepetition

Secured Parties with respect to the assets and properties of the Debtors and other obligors. Each of the Prepetition Obligors under the Prepetition Documents is also a party to the Intercreditor Agreement. The Prepetition Intercreditor Agreement is a valid and enforceable “subordination agreement” under section 510(a) of the Bankruptcy Code and is, as of the Petition Date, and shall continue to be as provided herein binding on all parties thereto.

(viii) *Validity, Perfection, and Priority of Prepetition ABL FILO Liens and Prepetition ABL FILO Obligations.* The Debtors acknowledge and agree that as of the Petition Date (a) the Prepetition ABL FILO Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition ABL FILO Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition ABL FILO Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to (1) the Prepetition Term Liens on the Prepetition Term Priority Collateral, and (2) certain liens otherwise permitted by the Prepetition ABL FILO Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition ABL FILO Liens as of the Petition Date or were valid non-avoidable senior liens that are perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code, the “***Prepetition ABL FILO Permitted Prior Liens***”); (c) the Prepetition ABL FILO Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition ABL FILO Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition ABL FILO Liens or Prepetition ABL FILO Obligations exist, and no portion of the Prepetition ABL FILO Liens or Prepetition ABL FILO Obligations is subject to any challenge or defense including avoidance, disallowance,

disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition ABL FILO Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition ABL FILO Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition ABL FILO Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition ABL FILO Obligations; and (g) the Prepetition ABL FILO Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(ix) *Validity, Perfection, and Priority of Prepetition Term Liens and Prepetition Term Obligations.* The Debtors acknowledge and agree that, as of the Petition Date, (a) the Prepetition Term Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Term Collateral Agent on behalf of the Prepetition Term Lenders for fair consideration and reasonably equivalent value; (b) the Prepetition Term Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to (1) the Prepetition ABL FILO Liens on the Prepetition ABL FILO Priority Collateral, and (2) certain liens otherwise permitted by the Prepetition Term Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition Term Liens as of the Petition Date or were valid non-avoidable senior liens that are perfected subsequent to the Petition Date as permitted by



Section 546(b) of the Bankruptcy Code, the “*Prepetition Term Permitted Prior Liens*” and, together with the Prepetition ABL FILO Permitted Prior Liens, the “*Permitted Prior Liens*”;<sup>4</sup> (c) the Prepetition Term Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition Term Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Term Liens or Prepetition Term Obligations exist, and no portion of the Prepetition Term Liens or Prepetition Term Obligations is subject to any challenge or defense, including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Term Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Term Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition Term Obligations, the priority of the Debtors’ obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition Term Obligations; and (g) the Prepetition Term Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(x) *Indemnification.* The Prepetition Secured Parties have acted in good faith, and without negligence or violation of public policy or law, in respect of all actions taken by

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<sup>4</sup> For the avoidance of doubt, as used in this Interim Order, no reference to the Prepetition ABL FILO Permitted Prior Liens, the Prepetition Term Permitted Prior Liens, or the Permitted Prior Liens shall refer to or include the Prepetition ABL FILO Liens or the Prepetition Term Liens.

them in connection with or related in any way to negotiating, implementing, documenting, or obtaining the requisite approvals of the DIP Facilities and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Adequate Protection Liens (as defined below), any challenges or objections to the DIP Facilities or the use of Cash Collateral, and all documents related to any and all transactions contemplated by the foregoing. Accordingly, the Prepetition Secured Parties shall be and hereby are indemnified and held harmless by the Debtors in respect of any claim or liability incurred in respect thereof or in any way related thereto; provided that no such parties will be indemnified for any cost, expense, or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such parties' gross negligence, actual fraud or willful misconduct. No exception or defense exists in contract, law, or equity as to any obligation set forth, as the case may be, in this paragraph F(x), in the Prepetition Documents, or in the DIP Documents, to the Debtors' obligation to indemnify and/or hold harmless the Prepetition Secured Parties.

(xi) *No Challenges/Claims.* No offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Secured Obligations exist, and no portion of the Prepetition Liens or Prepetition Secured Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtors and their estates have no valid Claims (as such term is defined in section 101(5) of the Bankruptcy Code) objections, challenges, causes of action, and/or choses in action against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees with respect to the Prepetition Documents, the

Prepetition Secured Obligations, the Prepetition Liens, or otherwise, whether arising at law or at equity, including, without limitation, any challenge, recharacterization, subordination, avoidance, recovery, disallowance, reduction, or other claims arising under or pursuant to sections 105, 502, 510, 541, 542 through 553, inclusive, or 558 of the Bankruptcy Code or applicable state law equivalents. The Prepetition ABL FILO Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code. The Prepetition Term Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(xii) *Releases.* The Debtors hereby stipulate and agree that they forever and irrevocably release, discharge, and acquit the DIP Agent, the Prepetition Secured Parties, all current and future DIP Lenders, and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys, and agents, past, present, and future, and their respective heirs, predecessors, successors, and assigns, each solely in their capacities as such (collectively, the “*Releasees*”), of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys’ fees), debts, liens, actions, and causes of action of any and every nature whatsoever relating to, as applicable, this Interim Order, the DIP Facilities, the DIP Documents, the Prepetition Secured Facilities, the Prepetition Documents, and/or the transactions contemplated hereunder or thereunder including, without limitation, (x) any so-called “lender liability” or equitable subordination or recharacterization claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection, or avoidability of the liens or claims of the Prepetition Secured Parties, the DIP Agent, or the DIP Lenders; *provided, however*, the foregoing

release shall not apply with respect to any act or omission of a Releasee that constitutes gross negligence, actual fraud or willful misconduct. The Debtors further waive and release any defense, right of counterclaim, right of set-off, or deduction to the payment of the Prepetition Secured Obligations or the DIP Obligations that the Debtors may now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to the Court's entry of this Interim Order.

G. **Cash Collateral**. All of the Debtors' cash, including any cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes or will constitute Cash Collateral of the Prepetition Secured Parties and DIP Lenders, as applicable.

H. **Intercreditor Agreement**. Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreement and any other applicable intercreditor or subordination provisions contained in any of the other Prepetition Documents (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties (including the relative priorities, rights, and remedies of such parties with respect to the replacement liens, administrative expense claims, and superpriority administrative expense claims granted or the amounts payable by the Debtors under this Interim Order or otherwise), and (iii) shall not be deemed to be amended, altered, or modified by the terms of this Interim Order or the DIP Documents unless expressly set forth herein or therein. The DIP ABL FILO Facility is deemed a "Refinancing" of the Prepetition ABL FILO Facility and shall constitute an "ABL Facility" as each such term is used in the Intercreditor Agreement, and any repayment of the Prepetition ABL FILO Obligations pursuant to this Interim Order shall not be deemed to constitute a "Discharge" of "ABL Obligations" (as each is defined in the Intercreditor Agreement). The DIP

Term Facility is deemed a partial “Refinancing” of the Prepetition Term Facility as such term is used in the Intercreditor Agreement, and any partial repayment of the Prepetition Term Obligations pursuant to this Interim Order through the DIP Term Credit Agreement shall not be deemed to constitute a “Discharge” of “Term Obligations” (as each is defined in the Intercreditor Agreement). To avoid confusion, both the DIP Term Credit Agreement and the Prepetition Term Facility shall remain outstanding following the partial refinancing of the Prepetition Term Obligations as provided hereinabove.

I. **Findings Regarding Postpetition Financing and Use of Cash Collateral.**

(i) *Request for Postpetition Financing and Use of Cash Collateral.* The Debtors seek authority to (a) enter into the DIP Facilities and incur the DIP Obligations on the terms described herein and in the DIP Documents and (b) use Cash Collateral on the terms described herein, in each case, to administer their Chapter 11 Cases and fund their operations. At the Final Hearing, the Debtors will seek final approval of the DIP Facilities and use of Cash Collateral pursuant to a proposed final order (the “**Final Order**”), which shall be in form and substance acceptable to (i) the DIP Term Agent at the direction of the Required Lenders (as defined in the DIP Term Credit Agreement, the “**Required Term Lenders**”), subject to the Required FILO Ad Hoc Group Approval (as defined in the DIP ABL FILO Credit Agreement), and (ii) the DIP ABL FILO Agent at the direction of the Required FILO Ad Hoc Group Members (as defined in the Restructuring Support Agreement, dated as of June 23, 2020, among the DIP Term Borrower, the other Loan Parties party thereto, and the Prepetition Term Lenders and Prepetition ABL FILO Lenders that are “Consenting Creditors” thereunder (the “**RSA**”). Notice of the Final Hearing and the proposed Final Order will be provided in accordance with this Interim Order.

(ii) *Priming of the Prepetition Liens.* The priming of the Prepetition Liens under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Documents and as provided herein, will enable the Debtors to obtain the DIP Facilities and to continue to operate their business during the pendency of the Chapter 11 Cases, to the benefit of their estates and creditors. The Prepetition Secured Parties are entitled to receive adequate protection as set forth in this Interim Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, solely to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral).

(iii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors have a need to use Cash Collateral on an interim basis and to obtain credit in an amount equal to the Interim Amount, plus the ABL FILO Roll-Up Amount, pursuant to the DIP Facilities in order to, among other things, enable the orderly continuation of their operations and to administer and preserve the value of their estates. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise finance their operations requires the availability of working capital from the DIP Term Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, and parties-in-interest. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business prior to the entry of the Final Order without the authorization to use Cash Collateral and to borrow the Interim Amount.

(iv) *No Credit Available on More Favorable Terms.* The DIP Facilities are the best source of debtor-in-possession financing available to the Debtors. Given their current financial condition, financing arrangements, and capital structure, the Debtors have been and

continue to be unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facilities. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis on better terms is not available without granting the DIP Agents, for the benefit of themselves and the DIP Lenders, (1) perfected security interests in and liens on (each as provided herein) the DIP Collateral, with the priorities set forth herein; (2) superpriority claims; and (3) the other protections set forth in this Interim Order.

(v) *Use of Cash Collateral and Proceeds of the DIP Term Facility.* As a condition to entry into the DIP Agreements, the extension of credit under the DIP Facilities and the authorization to use the Prepetition Collateral, including Cash Collateral, the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties require, and the Debtors have agreed, that proceeds of the DIP Term Facility and the Prepetition Secured Parties' Cash Collateral shall be used in a manner consistent with the terms and conditions of this Interim Order and the DIP Documents and in accordance with the budget (as the same may be modified from time to time consistent with the terms of the DIP Term Documents and subject to such variances and exclusions as permitted in the DIP Term Documents, and as set forth in paragraphs 16 and 17 hereof, the "***Budget***"),<sup>5</sup> solely for the purposes set forth in the DIP Documents and this Interim Order, including (a) ongoing working capital and other general corporate purposes of the Debtors;

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<sup>5</sup> A copy of the initial Budget is attached hereto as **Schedule 1**.

(b) permitted payment of costs of administration of the Chapter 11 Cases, including restructuring charges arising on account of the Chapter 11 Cases, including statutory fees of the U.S. Trustee and allowed professional fees and expenses of the Debtor Professionals (as defined herein) and professionals retained by a Committee (if any), subject to the Investigation Budget Amount (as defined herein); (c) payment of such prepetition expenses as consented to by the DIP Term Agent, acting at the direction of the Required Term Lenders or otherwise permitted under the DIP Documents in accordance with the Budget (subject to Permitted Variances (as defined below)); (d) payment of interest, premiums, fees, expenses, and other amounts (including, without limitation, legal and other professionals' fees and expenses of the DIP Agents and the DIP Lenders) owed under the DIP Documents, including those incurred in connection with the preparation, negotiation, documentation, and Court approval of the DIP Facilities whether incurred before or after the Petition Date; (e) payment of certain adequate protection amounts to the Prepetition Secured Parties, as set forth in paragraphs 12-13 hereof; and (f) payment of obligations arising from or related to the Carve-Out.

(vi) *Application of Proceeds of DIP Collateral.* As a condition to entry into the DIP Agreements, the extension of credit under the DIP Facilities, and authorization to use Cash Collateral, the Debtors, the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall utilize the proceeds of the DIP Collateral in accordance with this Interim Order.

(vii) *Repayment of Prepetition ABL Loans.* Upon entry of the Interim Order, the Debtors shall (1) repay the Prepetition ABL Loans, together with any interest or fees due thereunder, in full in cash and cancel the associated commitments, (2) subject to the entry into the LC Cash Collateral Agreement, cash collateralize any outstanding Prepetition Letters of Credit,



and (3) make termination payments in respect of any terminated prepetition hedge agreements, including the Agent Hedge Agreement. The Debtors are authorized (but not directed) to renew any letters of credit cash collateralized under the LC Cash Collateral Agreement.

(viii) *Roll-up Loans.* Without any further action by the Debtors or any other party, (x) subject to the entry of the Final Order and the making of \$100,000,000 of DIP Term Loans, \$100,000,000 of Prepetition Term Loans shall be converted into DIP Term Loans and (y) upon entry of this Interim Order, \$275,000,000 of Prepetition FILO Term Loans, together with all accrued and unpaid interest thereon, shall be converted by amendment and restatement into DIP ABL FILO Loans in accordance with the DIP ABL FILO Credit Agreement. Notwithstanding any other provision of this Interim Order, the DIP Agreements or the Intercreditor Agreement to the contrary, all rights of the Prepetition Secured Parties under the Prepetition Documents shall be fully preserved. The Prepetition ABL FILO Secured Parties would not otherwise consent to the use of their Cash Collateral, the expansion of the borrowing base, the release of reserves or the subordination of their liens to the DIP Liens without the inclusion of the DIP ABL FILO Loans in the DIP Obligations. The conversion (or “roll-up”) shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of certain Prepetition FILO Lenders to, *inter alia*, provide liquidity relief and permit access to Cash Collateral, and the agreement of certain Prepetition Term Lenders to provide new-money liquidity and permit access to Cash Collateral, and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Secured Obligations. The conversion and “roll-up” of Prepetition Term Loans into DIP Term Loans and Prepetition FILO Term Loans into DIP ABL FILO Loans will enable the Debtors to obtain urgently needed financing that will allow them to free up liquidity to fund a reorganization process and emerge from these Chapter 11 Cases as a

going concern. Because the DIP ABL FILO Loans and the DIP Term Loans are subject to the reservation of rights in paragraph 36 below, they will not prejudice the right of any party in interest.

(ix) *DIP Election Procedures.* The procedures to govern the participation of the Prepetition Term Lenders in the DIP Term Facility (the “*DIP Election Procedures*”), as set forth in the DIP Term Credit Agreement, are fair and reasonable.

J. **Adequate Protection.**

(i) Subject to paragraph 12(f), the Prepetition ABL FILO Agent, for the benefit of the Prepetition ABL FILO Secured Parties, is entitled to receive adequate protection solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral, including, without limitation, the Cash Collateral. Pursuant to sections 361, 363 and 507(b) of the Bankruptcy Code, as adequate protection, subject in all respects to the Carve-Out and subject to paragraph 36 of this Interim Order, the Prepetition ABL FILO Secured Parties will receive (a) solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral, ABL FILO Adequate Protection Liens (as defined below) with the relative priorities set forth on **Exhibit B** hereto and ABL FILO 507(b) Claims (as defined below); (b) current payment of reasonable and documented fees and expenses and other disbursements as set forth in paragraph 12 herein; and (c) financial and other reporting, in each case, as set forth in paragraph 12 herein.

(ii) The Prepetition Term Agents, for the benefit of the Prepetition Term Secured Parties, are entitled to receive adequate protection solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral, including, without limitation, the Cash Collateral. Pursuant to sections 361, 363 and 507(b) of the Bankruptcy Code, as adequate protection, subject in all respects to the Carve-Out and subject to paragraph 36 of this Interim Order, the Prepetition Term Secured Parties will receive (a) solely to the extent of any Diminution

in Value of their interests in the Prepetition Collateral, Term Adequate Protection Liens (as defined below) with the relative priorities set forth on **Exhibit B** hereto and Term 507(b) Claims (as defined below); (b) current payment of reasonable and documented fees and expenses and other disbursements as set forth in paragraph 13 herein; and (c) financial and other reporting, in each case, as set forth in paragraph 13 herein.

K. **Sections 506(c) and 552(b).** In light of (i) the DIP Agents' and the DIP Lenders' agreement that their liens and superpriority claims shall be subject to the Carve-Out; (ii) the Prepetition Secured Parties' agreement that their respective liens and claims, including any adequate protection liens and claims, shall be subject to the Carve-Out and in certain respects subordinate to the DIP Liens (as defined below) as set forth herein; and (iii) the DIP Agents', the DIP Lenders', and the Prepetition Secured Parties' agreement to the payment (in accordance with the Budget (subject to the Permitted Variances) and subject to the terms and conditions of this Interim Order and the DIP Documents) of certain expenses of administration of these Chapter 11 Cases, (a) upon entry of a Final Order, the Prepetition Secured Parties are entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code and (b) upon entry of a Final Order, the DIP Agents, the DIP Lenders, and, the Prepetition Secured Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

L. **Good Faith of the DIP Agents and DIP Lenders and the Prepetition Secured Parties.**

(i) Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (i) the extensions of credit under the DIP Facilities are fair and reasonable, are appropriate for secured financing to debtors in possession, are the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent

with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration; (ii) the terms and conditions of the DIP Facilities and the use of the Cash Collateral have been negotiated in good faith and at arm's length among the Debtors, the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties, with the assistance and counsel of their respective advisors; (iii) the use of Cash Collateral, including, without limitation, pursuant to this Interim Order, has been allowed in "good faith" within the meaning of section 364(e) of the Bankruptcy Code; (iv) any actions under the DIP Documents, including credit to be extended, loans to be made, and other financial accommodations to be extended to the Debtors, by the DIP Agents, the DIP Lenders and the Prepetition Secured Parties, including, without limitation, pursuant to this Interim Order, have been allowed, advanced, extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code by the DIP Agents, the DIP Lenders and the Prepetition Secured Parties in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code; and (v) the DIP Facilities, the DIP Liens (as defined below), the DIP Superpriority Claims (as defined below), the Adequate Protection Liens (as defined below), and the 507(b) Claims (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

(ii) Absent an order of this Court and the provision of Adequate Protection Obligations and Adequate Protection Liens (each as defined below), consent of the Prepetition Secured Parties is required for the Debtors' use of Cash Collateral and other Prepetition Collateral. The Prepetition Secured Parties have consented, or are deemed pursuant to the Prepetition Documents to have consented, or have not objected, to the Debtors' use of Cash Collateral and other Prepetition Collateral or to the Debtors' entry into the DIP Documents in

accordance with and subject to the terms and conditions in this Interim Order and the DIP Documents.

M. **Immediate Entry.** Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

N. **Interim Hearing.** Notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier, or hand delivery to certain parties in interest, including the Notice Parties (as defined in the Motion). The Debtors have made reasonable efforts to afford the best notice possible under the circumstances, and no other notice is required in connection with the relief set forth in this Interim Order.

Based upon the foregoing findings and conclusions, the Motion, and the record before the Court with respect to the Motion, and after due consideration and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. **DIP Facilities Approved on Interim Basis.** The Motion is granted on an interim basis as set forth herein. The DIP Term Facility, in an amount equal to the Interim Amount, and the DIP ABL FILO Facility, in an amount equal to the ABL FILO Roll-Up Amount, are each hereby authorized and approved to the extent set forth herein, and the use of Cash Collateral on an interim basis is authorized, in each case subject to the terms and conditions set forth in the DIP Documents and this Interim Order. All objections to this Interim Order, to the extent not withdrawn, waived, settled, or resolved, are hereby denied and overruled. This Interim Order shall become effective immediately upon its entry.

2. Authorization of the DIP Facilities. The DIP Facilities are hereby approved as set forth herein. The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Documents, including, without limitation, to pay the Prepetition ABL Loans in full in cash, cancel the associated commitments, and cash collateralize the Prepetition Letters of Credit and to renew any such Prepetition Letters of Credit so cash collateralized, and to deliver all instruments, certificates, agreements, and documents that may be required or necessary for the performance by the Debtors under the DIP Facilities and the creation and perfection of the DIP Liens (as defined below). The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, premiums, fees, payments, expenses, and other amounts described in the DIP Documents as such amounts become due and payable, without need to obtain further Court approval, whether or not such fees arose before, on, or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, to implement all applicable reserves, and to take any other actions that may be necessary or appropriate, all as provided in this Interim Order or the DIP Documents. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations, or otherwise, will be deposited and applied as required by this Interim Order and the DIP Documents. Upon execution and delivery, the DIP Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms. Upon the Closing Date (as defined in the DIP Term Credit Agreement, the “*Closing Date*”), the Commitment Premium (as defined in the DIP Term Credit Agreement), the Exit Premium (as defined in the DIP Term Credit Agreement), and the “Backstop Premium” as defined and set forth

in the Backstop Commitment Letter, shall be fully earned and non-refundable and shall be payable in accordance with and at the times specified in the DIP Documents. The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, fees, payments, expenses, and other amounts described in the DIP Documents as such amounts become due and without need to obtain further Court approval, including, without limitation, backstop, closing, arrangement or commitment fees (including the Commitment Premium, the Backstop Premium, and all fees and other amounts owed to the DIP Lenders), administrative agent's fees and collateral agent's fees (including all fees and other amounts owed to the DIP Agents), the reasonable fees and disbursements of counsel and other professionals, whether or not such fees arose before, on, and after the Petition Date, in accordance with this Interim Order or the DIP Documents.

3. Authorization to Borrow. To prevent immediate and irreparable harm to the Debtors' estates, from the entry of this Interim Order through and including the earliest to occur of (i) entry of the Final Order or (ii) the DIP Termination Date (as defined below), and subject to the terms, conditions, and limitations on availability set forth in the DIP Documents and this Interim Order, the Debtors are hereby authorized to (a) borrow (in the form of DIP Term Loans) under the DIP Term Facility in an aggregate outstanding principal amount equal to the Interim Amount and (b) convert by amendment and restatement and "roll-up" Prepetition FILO Term Loans into DIP ABL FILO Loans in an amount equal to the ABL FILO Roll-Up Amount.

4. Amendment of the DIP Documents. The DIP Documents may from time to time be amended, modified, or supplemented by the parties thereto without further order of the Court if the amendment, modification, or supplement is (a) non-material and (b) in accordance with the DIP Documents. In the case of a material amendment, modification, or supplement to the

DIP Documents, the Debtors shall (i) provide notice (which may be provided through electronic mail or facsimile) to counsel to any Committee (if appointed), the U.S. Trustee, the DIP Agents, and the Prepetition Agents; (ii) provide notice to the Court; and (iii) obtain approval of the Court.

5. DIP Obligations.

(a) The DIP Documents and this Interim Order shall constitute and evidence the validity and binding effect of the DIP Obligations, which shall be enforceable against the Debtors, their estates and any successors thereto, including, without limitation, any trustee appointed in the Chapter 11 Cases or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the “*Successor Cases*”). Upon entry of this Interim Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Agents or any of the DIP Lenders, in each case, under the DIP Documents or this Interim Order or secured by the DIP Liens (as defined below), including, without limitation, all principal, accrued and unpaid interest, costs, fees, expenses, and other amounts owing under the DIP Documents. The Debtors shall be jointly and severally liable for the DIP Obligations. The DIP Obligations shall be due and payable, and the use of Cash Collateral shall automatically cease, in each case, without notice or demand on the DIP Termination Date, except as provided in paragraph 25 herein and subject to the requirements of the Carve-Out. Subject to paragraph 36, as applicable, no obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents (including any DIP Obligation or DIP Liens (as defined below) but excluding any adequate protection provided to the Prepetition Secured Parties hereunder) shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including,



without limitation, under chapter 5 of the Bankruptcy Code, section 724(a) of the Bankruptcy Code, or any other provision with respect to avoidance actions under the Bankruptcy Code or applicable state law equivalents) or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

(b) Upon the closing of the DIP ABL FILO Facility, all existing cash management obligations constituting “Cash Management Obligations” under the Prepetition ABL FILO Credit Agreement and outstanding on the Petition Date shall be deemed Cash Management Obligations under the DIP ABL FILO Credit Agreement. All existing cash management services constituting “Cash Management Services” under the Prepetition ABL FILO Credit Agreement, which services are being continued by order of the Court entered contemporaneously herewith, shall be deemed Cash Management Services under the DIP ABL FILO Credit Agreement. The payment priorities in respect of the Cash Management Obligations under the DIP ABL FILO Credit Agreement, as set forth in Section 2.21(b) thereof, shall not be modified without the consent of the holders of all Cash Management Obligations, in each case under the DIP ABL FILO Credit Agreement.

6. DIP Liens. As security for the DIP Obligations, effective immediately upon entry of this Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP ABL FILO Agent, for the benefit of itself and the DIP ABL FILO Lenders, and the DIP Term Agent, for the benefit of itself and the DIP Term Lenders, are hereby granted valid, binding, continuing, enforceable, non-avoidable, and automatically and properly perfected security interests and liens on all real and personal property, whether now existing or

hereafter arising and wherever located, tangible or intangible, of each of the Debtors (the “**DIP Collateral**”) including, without limitation (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments (including, without limitation, promissory notes), documents, securities (whether or not marketable) and investment property (including, without limitation, all of the issued and outstanding capital stock of each of Holdings’ subsidiaries, all securities accounts and security entitlements related thereto, and financial assets carried therein, and all commodity accounts and commodity contracts), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, vehicles, franchise rights, trade names, trademarks, service marks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including, without limitation, tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, fee interests in real property owned by the Debtors, books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and other electronic storage media and related data processing software related to the foregoing, and accessions, products, rents, profits and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all owned real property interests and all proceeds of leased real property; (c) actions brought under section 549 of the Bankruptcy Code to recover any post-petition transfer of DIP Collateral; (d) subject to entry of a Final Order, the proceeds of any avoidance actions (such actions, “**Avoidance Actions**”) brought pursuant to chapter 5 of the Bankruptcy Code or section 724(a) of the Bankruptcy Code or any

other avoidance actions under the Bankruptcy Code or applicable state law equivalents (the “*Avoidance Action Proceeds*”); *provided*, that no liens shall attach to Avoidance Actions; (e) subject to entry of the Final Order, the proceeds of any exercise of the Debtors’ rights under section 506(c) and 550 of the Bankruptcy Code; and (f) all assets of the Loan Parties (including, without limitation, all equity in non-U.S. subsidiaries of the Loan Parties) that do not constitute DIP Term Priority Collateral or DIP ABL FILO Priority Collateral (each as defined below) and are not otherwise subject to valid, perfected, enforceable and unavoidable security interests or liens in existence as of the Petition Date or valid liens perfected (but not granted) after the Petition Date (to the extent such perfection in respect of a prepetition claim is expressly permitted under the Bankruptcy Code) (the “*Unencumbered Collateral*”); in each case subject and subordinate to the Carve-Out and the Permitted Prior Liens, as set forth in this Interim Order and in accordance with the priorities set forth in **Exhibit B** hereto (all such liens and security interests granted to the DIP Agents, for their benefit and for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents, the “*DIP Liens*”); *provided*, that, notwithstanding the foregoing, the DIP Collateral shall not include (and the DIP Liens shall not extend to) any “Excluded Assets” (as defined in the applicable DIP Documents).

7. **DIP Lien Priority.** The DIP Liens shall have the priority as set forth below and as illustrated in **Exhibit B** hereto:<sup>6</sup>

(a) pursuant to Section 364(c) of the Bankruptcy Code, the liens securing the DIP Term Facility (the “*DIP Term Liens*”) shall be first-priority liens on all Unencumbered Collateral, other than “Excluded Assets” (as defined in the DIP Documents), senior

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<sup>6</sup> In the event of any conflict between the text of this Interim Order and the illustrative chart contained in **Exhibit B** hereof, the text of the Interim Order shall control.

in priority on such Unencumbered Collateral to the liens securing the DIP ABL FILO Facility (the “**DIP ABL FILO Liens**”) and the Term Adequate Protection Liens, and, subject to paragraph 12(f), the Prepetition ABL FILO Liens and the ABL FILO Adequate Protection Liens; *provided*, that, as to the Avoidance Action Proceeds, the DIP Term Liens shall be senior to the DIP ABL FILO Liens solely to the extent of the aggregate outstanding principal amount of New Money DIP Term Loans, plus unpaid interest on, the New Money DIP Term Loans and all fees, and other expenses related thereto and arising and payable under the DIP Facility (the “**New Money DIP Term Claims**”) and *pari passu* with the DIP ABL FILO Liens to the extent of the aggregate outstanding principal amount of, plus unpaid interest on, the Term Roll-Up Amount, and all fees, and other expenses related thereto and arising and payable under the DIP Facility (the “**Roll-Up DIP Term Claims**”);

(b) pursuant to Section 364(c)(3) of the Bankruptcy Code, the DIP Term Liens shall be immediately junior to any liens on all of each Loan Party’s present and future assets and properties, in each case other than the DIP Term Priority Collateral and the DIP ABL FILO Priority Collateral (each as defined below), that are subject to any validly perfected, enforceable and unavoidable security interest or lien in existence as of the Petition Date (the “**Other Encumbered Collateral**” and such security interests or liens, the “**Other Liens**”), senior in priority on such Other Encumbered Collateral to (x) the Term Adequate Protection Liens, (y) the DIP ABL FILO Liens, and (z) subject to paragraph 12(f), the Prepetition ABL FILO Liens and the ABL FILO Adequate Protection Liens;

(c) pursuant to Section 364(d) of the Bankruptcy Code, (i) the DIP Term Liens shall be priming first-priority liens on DIP Collateral that constitutes or, but for the commencement of the Chapter 11 Cases would have constituted, Prepetition Term Priority Collateral or proceeds or products thereof (the “**DIP Term Priority Collateral**”), in all respects senior in priority to the

Prepetition Term Liens, the Term Adequate Protection Liens, the DIP ABL FILO Liens, and, subject to paragraph 12(f), the Prepetition ABL FILO Liens and the ABL FILO Adequate Protection Liens thereon, and (ii) the DIP ABL FILO Liens shall be priming first-priority liens on DIP Collateral that constitutes, or, but for the commencement of the Chapter 11 Cases would have constituted, Prepetition ABL FILO Priority Collateral or proceeds or products thereof (the “***DIP ABL FILO Priority Collateral***”),<sup>7</sup> in all respects senior in priority to the Prepetition ABL FILO Liens and the ABL FILO Adequate Protection Liens, to the extent such foregoing liens are permitted pursuant to paragraph 12 below, and the DIP Term Liens, the Prepetition Term Liens and the Term Adequate Protection Liens thereon;

(d) pursuant to Bankruptcy Code Section 364(d) or other applicable law, (i) the DIP Term Liens shall be priming second-priority liens upon all DIP ABL FILO Priority Collateral, in each case junior in priority to the DIP ABL FILO Liens, and, subject to paragraph 12(f), the Prepetition ABL FILO Liens and the ABL FILO Adequate Protection Liens, but senior in priority to the Prepetition Term Liens and the Term Adequate Protection Liens and (ii) the DIP ABL FILO Liens shall be priming second-priority liens upon all DIP Term Priority Collateral, in each case junior in priority to the DIP Term Liens, the Prepetition Term Liens, and the Term Adequate Protection Liens, but senior in priority to, subject to paragraph 12(f), the Prepetition ABL FILO Liens and the ABL FILO Adequate Protection Liens; and

(e) other than as set forth herein (including with respect to the Carve-Out) or permitted under the DIP Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any

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<sup>7</sup> For the avoidance of doubt, neither of the Operating Account nor the DIP Funding Account (each as defined in the DIP Term Credit Agreement) shall constitute or may be deemed to constitute DIP ABL FILO Priority Collateral.

Successor Cases and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to any Successor Case, and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to any of sections 510, 549 or 550 of the Bankruptcy Code (subject, as applicable, to the Challenge Deadline (as defined below) and related provisions set forth in paragraph 36 herein). No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

8. Superpriority Claims. Subject and subordinate to the Carve-Out, upon entry of this Interim Order, the DIP Agents, on their own behalf and on behalf of the DIP Lenders, are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in each of the Chapter 11 Cases and any Successor Cases (collectively, the “*DIP Superpriority Claims*”) for all DIP Obligations (a) with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases or any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code or any other provision of the Bankruptcy Code and (b) which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law. Notwithstanding anything contained herein or in any of the DIP Documents to the contrary, the DIP Superpriority Claims granted to (x) the DIP ABL FILO Lenders shall, at all times be in respect of any assets or property that constitute, or, but for the commencement of the Chapter 11 Cases would have constituted, DIP ABL FILO Priority Collateral, senior to the DIP Superpriority Claims

granted to the DIP Term Lenders, and (y) the DIP Term Agent, on their own behalf and on behalf of the DIP Term Lenders shall, at all times be in respect of any assets or property that constitute, or, but for the commencement of the Chapter 11 Cases would have constituted, Prepetition Term Priority Collateral or proceeds or products thereof, senior to the DIP Superpriority Claims granted to the DIP ABL FILO Lenders.

9. No Obligation to Extend Credit. The DIP Lenders shall have no obligation to make any loan or advance or to issue, amend, renew, or extend any letters of credit or bankers' acceptance under the DIP Documents unless (and subject to the occurrence of the Closing Date) all of the conditions precedent to the making of such extension of credit or the issuance, amendment, renewal, or extension of such letter of credit or bankers' acceptance under the applicable DIP Documents and this Interim Order have been satisfied in full or waived by the applicable DIP Agent in accordance with the terms of the applicable DIP Agreement.

10. Use of Proceeds of DIP Facilities.

(a) From and after the Petition Date, the Debtors shall use proceeds of borrowings under the DIP Facilities only for the purposes specifically set forth in this Interim Order and the DIP Documents, and, in each case, in compliance with the Budget (subject to any Permitted Variances (as defined in the DIP Term Credit Agreement, the "*Permitted Variances*")) and the terms and conditions in this Interim Order and the DIP Documents.

(b) The Debtors are authorized to cash collateralize any outstanding Prepetition Letters of Credit issued under the Prepetition ABL FILO Credit Agreement pursuant to the LC Cash Collateral Agreement and in compliance with the Budget (subject to Permitted Variances).

11. Authorization to Use Cash Collateral. Subject to the terms and conditions

of this Interim Order and the DIP Documents, and in accordance with the Budget (subject to the Permitted Variances), the Debtors are authorized to use Cash Collateral until the DIP Termination Date; *provided, however*, that during the Remedies Notice Period (as defined below), the Debtors may use Cash Collateral solely to meet payroll obligations and pay expenses necessary to avoid immediate and irreparable harm to the Debtors' estates, in accordance with the Budget (subject to the Permitted Variances). Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Interim Order (including with respect to the Carve-Out), the DIP Facilities, the DIP Documents, or by an order of the Court, and in accordance with the Budget (subject to the Permitted Variances).

12. Adequate Protection for the Prepetition ABL FILO Secured Parties.

Subject to the Investigation (as defined below) and paragraph 12(f), the Prepetition ABL FILO Secured Parties are entitled, pursuant to sections 361, 362, 363(c)(2), 363(e), and 507 of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral (the "***ABL FILO Adequate Protection Obligations***"). As adequate protection, the Prepetition ABL FILO Secured Parties are hereby granted the following:

(a) ABL FILO Adequate Protection Liens. As security for the payment of the ABL FILO Adequate Protection Obligations, the Prepetition ABL FILO Agent (for itself and for the benefit of the Prepetition FILO Lenders) is hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements, or other agreements) a valid, perfected replacement security interest in and lien on all DIP Collateral, including, upon



entry of the Final Order, the Avoidance Action Proceeds (the “**ABL FILO Adequate Protection Liens**”), subject and subordinate only to (i) the Carve-Out, (ii) the Permitted Prior Liens, (iii) with respect to DIP Collateral that constitutes DIP Term Priority Collateral, the DIP Term Liens, the Prepetition Term Liens, the Term Adequate Protection Liens (as defined below), and the DIP ABL FILO Liens, (iv) with respect to the Unencumbered Collateral and the Other Encumbered Collateral, the DIP Term Liens, the Term Adequate Protection Liens, and the DIP ABL FILO Liens, and (v) with respect to DIP Collateral that constitutes DIP ABL FILO Priority Collateral, the DIP ABL FILO Liens and the Prepetition ABL FILO Liens; *provided*, that, as to the Avoidance Action Proceeds, the ABL FILO Adequate Protection Liens shall be *pari passu* with the Term Adequate Protection Liens.

(b) ABL FILO Section 507(b) Claims. The ABL FILO Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the “**ABL FILO 507(b) Claims**”), with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code, whether incurred in these Chapter 11 Cases or in any Successor Cases, subject and subordinate only to (i) the Carve-Out and (ii) the DIP Superpriority Claims granted in favor of the DIP Obligations and *pari passu* with the Term 507(b) Claims (as defined below). Except to the extent expressly set forth in this Interim Order, the Prepetition ABL FILO Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the ABL FILO 507(b) Claims unless and until the Carve-Out is funded and, other than with regard to the DIP ABL FILO Priority Collateral, all DIP Obligations shall have indefeasibly been paid in full in cash. Notwithstanding their status

as ABL FILO 507(b) Claims, the ABL FILO Adequate Protection Obligations may be satisfied in a plan of reorganization confirmed in the Chapter 11 Cases in any manner set forth in such plan if holders of more than 66-2/3% in amount of the ABL FILO Adequate Protection Obligations consent to such treatment; *provided, however*, that nothing in this Interim Order shall be construed as establishing that the confirmation requirements for a chapter 11 plan have been satisfied, predetermining any provision of a chapter 11 plan, or predetermining how any vote by any insider is counted with respect to a chapter 11 plan.

(c) ABL FILO Adequate Protection Payments. The Debtors are authorized and directed to pay, as adequate protection, in the form of payment in cash, solely to the extent that any Prepetition ABL FILO Obligations remain subject to a Challenge (as defined below) pursuant to paragraph 36 hereof, all accrued and unpaid fees and reasonable and documented disbursements, including professional fees, incurred by the Prepetition ABL FILO Agent and the ad hoc group of holders of the Prepetition FILO Term Loans (the “*Ad Hoc Committee of FILO Lenders*”), whether accrued before, on, or after the Petition Date, including, without limitation, the reasonable and documented fees and expenses of Paul, Weiss, Rifkind, Wharton & Garrison LLP (“*Paul, Weiss*”), as counsel to the Ad Hoc Committee of FILO Lenders, AlixPartners LLP (“*AlixPartners*”), as financial advisor to the Ad Hoc Committee of FILO Lenders, and Landis, Rath & Cobb LLP (“*Landis*” and, together with Paul, Weiss and AlixPartners, the “*Ad Hoc FILO Committee Advisors*”), as Delaware co-counsel (excluding success or transaction fees). The payment of the fees, expenses and disbursements set forth in this paragraph (to the extent incurred after the Petition Date) shall be subject to paragraph 36 and the review process set forth in paragraph 32. To the extent the DIP ABL FILO Loans are subject to a

successful Challenge in accordance with paragraph 36 hereof, interest on the ABL FILO Roll-Up Amount shall be deemed to have accrued pursuant to the Prepetition ABL FILO Documents.

(d) Information. The Debtors shall concurrently deliver to the Prepetition ABL FILO Agent and the legal and financial advisors to the Ad Hoc Committee of FILO Lenders, all information, reports, documents, and other materials that the Debtors provide to the DIP Lenders pursuant to the DIP Documents, this Interim Order, and the Final Order, subject to the confidentiality provisions contained in the Prepetition ABL FILO Credit Agreement.

(e) Nothing in this Interim Order or the DIP Documents shall prejudice the rights, remedies and privileges of the Prepetition ABL FILO Agent, the Prepetition FILO Lenders, and the Prepetition ABL Lenders granted in the Bankruptcy Code or as set forth in the Prepetition ABL FILO Documents to the extent the Prepetition ABL FILO Obligations or the Agent Hedge Agreement, each to be in respect of the Prepetition ABL Loans repaid pursuant to this Interim Order are not so repaid promptly following the entry of this Interim Order, or, after repayment, are required to be disgorged or otherwise avoided or reinstated, and all of the Prepetition ABL FILO Agent's, Prepetition FILO Lenders', and Prepetition ABL Lenders' rights and remedies under the Bankruptcy Code and the Prepetition ABL FILO Documents (including the Intercreditor Agreement) are hereby fully preserved, including their right to seek additional or further adequate protection.

(f) The provisions for adequate protection in this paragraph 12 with respect to the Prepetition ABL FILO Obligations, Prepetition ABL FILO Liens and any ABL FILO Adequate Protection Obligations, including ABL FILO Adequate Protection Liens and ABL FILO 507(b) Claims, shall be deemed satisfied and discharged (and without any further obligation to provide continuing adequate protection thereunder) upon both (x) the repayment in full of the

Prepetition ABL FILO Obligations in cash and/or through the conversion into the DIP ABL FILO Loans as contemplated hereunder and (y) the expiration of the Challenge Deadline without a Challenge in respect of the Prepetition ABL FILO Obligations and/or Prepetition ABL FILO Liens being commenced (or if commenced, upon the dismissal of such Challenge, with prejudice).

13. Adequate Protection for the Prepetition Term Secured Parties. Subject to the Investigation, the Prepetition Term Secured Parties are entitled, pursuant to sections 361, 362, 363(c)(2), 363(e), and 507 of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, solely to the extent of any Diminution in Value of their interests in the Prepetition Collateral (the “*Term Adequate Protection Obligations*”, and, together with the ABL FILO Adequate Protection Obligations, the “*Adequate Protection Obligations*”). As adequate protection, the Prepetition Term Secured Parties are hereby granted the following:

(a) Term Adequate Protection Liens. As security for the payment of the Term Adequate Protection Obligations, the Prepetition Term Collateral Agent (for itself and for the benefit of the Prepetition Term Lenders) is hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements, or other agreements) a valid, perfected replacement security interest in and lien on all of the DIP Collateral, including, subject to entry of the Final Order, Avoidance Action Proceeds (the “*Term Adequate Protection Liens*” and, together with the ABL FILO Adequate Protection Liens, the “*Adequate Protection Liens*”), subject and subordinate only to (i) the Carve-Out, (ii) the Permitted Prior Liens, (iii) as to all DIP Collateral constituting DIP Term Priority Collateral, the DIP Term Liens and the Prepetition Term Liens, (iv) as to all DIP Collateral constituting DIP ABL FILO Priority Collateral, the DIP ABL

FILO Liens, the Prepetition ABL FILO Liens, the ABL FILO Adequate Protection Liens, and the DIP Term Liens, and (v) as to the Unencumbered Collateral and the Other Encumbered Collateral, the DIP Term Liens, and the DIP ABL FILO Liens; provided, that, as to the Avoidance Action Proceeds, the Term Adequate Protection Liens shall be *pari passu* with the ABL FILO Adequate Protection Liens.

(b) Term Section 507(b) Claims. The Term Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the “*Term 507(b) Claims*” and, together with the ABL FILO 507(b) Claims, the “*507(b) Claims*”), with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code, whether incurred in these Chapter 11 Cases or in any Successor Cases, subject and subordinate only to (i) the Carve-Out and (ii) the DIP Superpriority Claims granted in respect of the DIP Obligations, and *pari passu* with the ABL 507(b) Claims. Except to the extent expressly set forth in this Interim Order, the Prepetition Term Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the Term 507(b) Claims unless and until the Carve-Out is funded and all DIP Obligations, ABL FILO Adequate Protection Obligations, and Prepetition ABL FILO Obligations shall have indefeasibly been paid in full in cash. Notwithstanding their status as Term 507(b) Claims, the Term Adequate Protection Obligations may be satisfied in a plan of reorganization confirmed in the Chapter 11 Cases in any manner set forth in such plan if holders of more than 66-2/3% in amount of the Term Adequate Protection Obligations consent to such treatment; *provided, however*, that nothing in this Interim Order shall be construed as establishing that the confirmation requirements for a chapter 11 plan

have been satisfied, predetermining any provision of a chapter 11 plan, or predetermining how any vote by any insider is counted with respect to a chapter 11 plan.

(c) Adequate Protection Payments. The Debtors are authorized and directed to pay, as adequate protection, in the form of payment in cash all accrued and unpaid fees and reasonable and documented disbursements incurred by the Prepetition Term Agents, their advisors, including Dorsey & Whitney LLP, as counsel, and advisors to the ad hoc group of holders of Prepetition Term Loans and Prepetition FILO Term Loans (the “*Ad Hoc Group of Crossover Lenders*” and, together with the Ad Hoc Committee of FILO Lenders, the “*Ad Hoc Committees*”), including Milbank LLP (“*Milbank*”) as counsel, Morris, Nichols, Arsht & Tunnell LLP (“*MNAT*”) as Delaware counsel, Cassels Brock & Blackwell LLP (“*Cassels*”) as Canadian counsel and Houlihan Lokey, Inc. as financial advisor (“*Houlihan*” and, together with MNAT, Cassels and Milbank, the “*Ad Hoc Crossover Group Advisors*” and, together with the Ad Hoc FILO Committee Advisors, the “*Ad Hoc Committee Advisors*”), in each case whether accrued before, on, or after the Petition Date. The payment of the fees, expenses and disbursements set forth in this paragraph (to the extent incurred after the Petition Date) shall be subject to paragraph 36 and the review process set forth in paragraph 32.

(d) Information. The Debtors shall concurrently deliver to the Prepetition Term Agents, their legal advisors, and the legal advisors to the Ad Hoc Group of Crossover Lenders all information, reports, documents, and other material that the Debtors provide to the DIP Lenders pursuant to the DIP Documents, this Interim Order, and the Final Order, subject to the confidentiality provisions contained in the Prepetition Term Credit Agreement.

14. Adequate Protection Reservation. Subject to the Carve-Out, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that

the adequate protection provided to the Prepetition Secured Parties hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. The receipt by the Prepetition Secured Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected. Further, this Interim Order shall not prejudice or limit the rights of the Prepetition Secured Parties to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection, subject in all respects to the terms and limitations of the Intercreditor Agreement.

15. Effect of Order on Adequate Protection. In the event that it is determined by a final order, which order shall not be subject to any appeal, stay, reversal, or vacatur, that (a) no Diminution in Value of any Prepetition Secured Party's respective interests in the Prepetition Collateral has occurred or (b) such Prepetition Secured Party is determined to be undersecured, then a party in interest shall have the right to assert that payments on account of adequate protection pursuant to this Interim Order shall be applied toward repayment of the principal amount due under the Prepetition Secured Facilities as is owing to such Prepetition Secured Party.

16. Budget Maintenance. The Debtors shall use the proceeds of all borrowings under the DIP Facilities and Cash Collateral in accordance with the Budget, subject in all respects to the Permitted Variance. The Budget annexed hereto as Schedule 1 shall constitute the initial Budget. On the first Wednesday that is four (4) full weeks after the Petition Date, and on the Wednesday of each fourth week thereafter, the Debtors shall provide to the DIP Term Agent, their legal advisors, the DIP ABL FILO Agent, and the Ad Hoc Committee Advisors (a) an updated proposed rolling 13-week statement of the Debtors' anticipated cash receipts and disbursements for the subsequent 13-week period (a "**Proposed Budget**"), which Proposed Budget shall modify

and supersede any prior Budget on the Wednesday of the week following the delivery of any Proposed Budget, unless prior to such date the DIP Term Agent, at the direction of the Required Term Lenders or Required Term Lenders notifies the Loan Parties in writing (which may be by email) that such Proposed Budget is not in form and substance satisfactory to the Required Term Lenders. If the DIP Term Agent, at the direction of the Required Term Lenders or Required Term Lenders deliver such notice that such Proposed Budget is not in form and substance satisfactory to the Required Term Lenders, the Budget then in effect shall continue as the then-effective Budget, and the DIP Term Lenders shall have no obligation to fund such Proposed Budget. Each Budget delivered to the DIP Term Agent and the Ad Hoc Committee Advisors shall be accompanied by such supporting documentation as reasonably requested by the Ad Hoc Committee Advisors, and each Budget shall be prepared in good faith based upon assumptions the Debtors believe to be reasonable. A copy of the Budget shall be delivered to the legal and financial advisors to the Committee (if appointed) and the U.S. Trustee following such Budget's approval.

17. Budget and Reporting Compliance. The Debtors shall at all times comply with the Budget, subject to the Permitted Variances, and the Debtors shall provide all reports and other information as required in the DIP Agreements (subject to the grace periods provided therein). The Debtors' failure to comply with the Budget (subject to the Permitted Variance) or to provide the reports and other information required in the DIP Agreements shall constitute an Event of Default (as defined below), following the expiration of any applicable grace period set forth in the applicable DIP Agreement.

18. Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to (a) permit the Debtors to



grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and 507(b) Claims; (b) permit the Debtors to perform such acts as the DIP Agents, the Prepetition ABL FILO Agent, and the Prepetition Term Agents each may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Agents, DIP Lenders, and Prepetition Secured Parties under the DIP Documents, the DIP Facilities, and this Interim Order, as applicable; and (d) authorize the Debtors to pay, and the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of this Interim Order.

19. Perfection of DIP Liens and Adequate Protection Liens. This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens or the Adequate Protection Liens or to entitle the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, each of the DIP Agents, Prepetition ABL FILO Agent, and Prepetition Term Agents are authorized to file or record, as it in its sole discretion deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect its respective liens in accordance with applicable non-bankruptcy law, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be

necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver, promptly upon demand to the DIP Agents, Prepetition ABL FILO Agent, and Prepetition Term Agents, all such financing statements, mortgages, notices, and other documents as the DIP Agents, Prepetition ABL FILO Agent, or Prepetition Term Agents, as applicable, may reasonably request. Each of the DIP Agents, Prepetition ABL FILO Agent, and Prepetition Term Agents, in its discretion, may file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instrument, and all applicable officials are hereby directed to accept a photocopy of this Interim Order for filing or recordation for such purpose. To the extent any of the Prepetition ABL FILO Agent or Prepetition Term Agents are the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements, or any other Prepetition Documents or is listed as loss payee or additional insured under any of the Debtors' insurance policies, the DIP Agents shall also be deemed to be the secured party or the loss payee or additional insured, as applicable, under such documents. The Prepetition ABL FILO Agent and Prepetition Term Agents, as applicable, shall serve as agents for the DIP Agents for purposes of perfecting the DIP Liens on all DIP Collateral that is of a type such that, without giving effect to the Bankruptcy Code and this Interim Order, perfection of a lien thereon may be accomplished only by possession or control by a secured party.

20. Protections of Rights of DIP Agents, DIP Lenders and Prepetition Secured Parties.

- (a) Unless the DIP Agents, the Prepetition ABL FILO Agent, and the

Prepetition Term Agents shall have provided their prior written consent, or all DIP Obligations and all Prepetition Secured Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been indefeasibly paid in full in cash and the lending commitments under the DIP Facilities have terminated, there shall not be entered in any of these Chapter 11 Cases or any Successor Cases any order (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following (unless such order provides for the simultaneous satisfaction of such obligations): (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral or the Prepetition Collateral or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Liens, or the 507(b) Claims, except as expressly set forth in this Interim Order or the DIP Documents; (ii) the use of Cash Collateral for any purpose other than as permitted in the Budget, subject to the Permitted Variances, the DIP Documents, and this Interim Order; or (iii) any modification of any DIP Agent's, any DIP Lender's, or any Prepetition Secured Party's rights under this Interim Order, the DIP Documents, or the Prepetition Documents with respect any DIP Obligations or Prepetition Secured Obligations.

(b) The Debtors (and/or their legal and financial advisors in the case of clauses (ii) through (iv) below) will, whether or not the DIP Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been indefeasibly paid in full in cash, (i) maintain books, records, and accounts to the extent and as required by the DIP Documents and the Prepetition Documents (and subject to the applicable grace periods set forth therein); (ii) reasonably cooperate with, consult with, and provide to the DIP Agents and the

Prepetition Agents all such information and documents that any or all of the Debtors are obligated (including upon reasonable request by any of the DIP Agents or the Prepetition Agents) to provide under the DIP Documents, the Prepetition Documents, or the provisions of this Interim Order; (iii) authorize their independent certified public accountants, financial advisors, investment bankers and consultants, including Evercore Group LLC and FTI Consulting Inc. to cooperate and consult with the DIP Agents (and, so long as an Event of Default has occurred and is continuing, each DIP Lender), the Ad Hoc Committee Advisors, and the Prepetition Agents; (iv) upon reasonable advance notice, permit the DIP Agents, the DIP Lenders, and the Prepetition Agents to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants, and other professional advisors (other than legal counsel) as and to the extent required by the DIP Documents and/or the Prepetition Documents; (v) permit the DIP Agents, the Prepetition Agents and the Ad Hoc Committee Advisors to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations, and assets; and (vi) upon reasonable advance notice, permit the DIP Agents and the Prepetition Agents to conduct, at their discretion and at the Debtors' cost and expense, field audits, collateral examinations, and liquidation valuations at reasonable times in respect of any or all of the DIP Collateral or the Prepetition Collateral, in accordance with the DIP Documents and the Prepetition Documents.

21. Credit Bidding. In connection with any sale process authorized by the Court, whether effectuated through sections 363, 725, or 1123 of the Bankruptcy Code, the DIP Agents, DIP Lenders, and the Prepetition Secured Parties may credit bid up to the full amount of

the outstanding DIP Obligations or the relevant Prepetition Secured Obligations, as applicable, in each case including any accrued and unpaid interest, expenses, fees, and other obligations for their respective priority collateral (each such bid, a “*Credit Bid*”) pursuant to section 363(k) of the Bankruptcy Code, subject in each case to the Intercreditor Agreement and the priorities set forth herein; *provided*, that any Credit Bid includes cash consideration sufficient to pay in full any obligations with senior liens on the collateral that is subject to the Credit Bid.

22. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Cases shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d) of the Bankruptcy Code in violation of the DIP Documents or this Interim Order at any time prior to the indefeasible repayment in full of all DIP Obligations and the termination of the DIP Agents’ and DIP Lenders’ obligation to extend credit under the DIP Facilities, including subsequent to the confirmation of any plan with respect to any or all of the Debtors (if applicable), then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Term Agent or the DIP ABL FILO Agent, as applicable, to be applied in accordance with the Prepetition Intercreditor Agreement, this Interim Order and the DIP Documents.

23. Maintenance of DIP Collateral. Until the indefeasible payment in full of all DIP Obligations, all Prepetition Secured Obligations, and the termination of the DIP Agents’ and the DIP Lenders’ obligation to extend credit under the DIP Facilities, the Debtors shall (a) insure the DIP Collateral as required under the DIP Facilities or the Prepetition Documents, as applicable; (b) maintain the cash management system in effect as of the Petition Date, as modified by any order entered by the Court; and (c)(i) maintain accurate records of all transfers (including

intercompany transactions) within the cash management system so that all postpetition transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, their books and records, to the same extent maintained by the Debtors before the Petition Date, and (ii) provide reasonable access to such records to the DIP Agents and the Ad Hoc Committee Advisors.

24. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business without the prior written consent of the DIP Agents and the Prepetition Agents (and no such consent shall be implied, from any other action, inaction, or acquiescence by the DIP Agents, DIP Lenders, or the Prepetition Secured Parties), except as otherwise provided for in the DIP Documents or as ordered by the Court, and subject in all respects to the Intercreditor Agreement.

25. DIP Termination Date. On the DIP Termination Date (as defined below), which, for the avoidance of doubt, shall include the “Maturity Date” under each DIP Agreement, subject to the Carve-Out, (a) all DIP Obligations shall be immediately due and payable, all commitments to extend credit under the DIP Facilities will terminate, other than as required in paragraph 36 with respect to the Carve-Out; (b) all authority to use Cash Collateral shall cease, other than as required in paragraph 36 with respect to the Carve-Out; *provided, however*, that during the Remedies Notice Period, the Debtors may use Cash Collateral solely to meet payroll obligations and pay expenses necessary to avoid immediate and irreparable harm to the Debtors’ estates, in accordance with the Budget (subject to the Permitted Variances), or as otherwise agreed by the DIP Term Agent at the direction of the Required Term Lenders; and (c) subject to paragraph 28, the DIP Agents and DIP Lenders shall be otherwise entitled to exercise rights and remedies

under the DIP Documents in accordance with this Interim Order.

26. Events of Default. The occurrence of any of the following events, unless waived by the DIP Term Agent, at the direction of the Required Term Lenders, and/or the DIP ABL FILO Agent (as applicable) in writing and in accordance with the terms of the applicable DIP Agreements, shall constitute an event of default (collectively, the “*Events of Default*”) under this Interim Order: (a) the failure of the Debtors to perform or comply with, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order, subject to a three-day cure period (if such failure is capable of being cured); or (b) the occurrence of an “Event of Default” under either of the DIP Agreements. Upon the indefeasible payment in full in cash of the DIP Obligations (a “*DIP Repayment*”), the foregoing Events of Default may be waived by the Prepetition Agents as set forth in the Prepetition Documents.

27. Milestones. As a condition to the DIP Facilities and the use of Cash Collateral, the Debtors shall comply with the “*Milestones*” set forth on Schedule 2 hereto. The failure of the Debtors to comply with any of the Milestones shall (a) constitute an Event of Default under (i) each of the DIP Agreements and (ii) this Interim Order and, (b) subject to the expiration of the Remedies Notice Period, result in the automatic termination of the Debtors’ authority to use Cash Collateral under this Interim Order, and (c) permit the DIP Agents, subject to the terms of paragraph 28, to exercise the rights and remedies provided for in this Interim Order and the DIP Documents.

28. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default or the “Maturity Date” under the applicable DIP Agreement, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order of the Court, but subject to

the terms of this Interim Order, (a) each of the DIP Term Agent and the DIP ABL FILO Agent may declare (i) all outstanding DIP Obligations owing under the respective DIP Documents to be immediately due and payable, (ii) the termination of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the respective DIP Facilities, (iii) termination of the respective DIP Facilities and the respective DIP Documents as to any future liability or obligation of the applicable DIP Agent and the DIP Lenders, without affecting any of the DIP Liens or the DIP Obligations, and (iv) that the application of the Carve-Out has occurred through the delivery of the Carve-Out Trigger Notice (as defined below) to the Debtors; and (b) subject to the provisions in paragraph 25, the Prepetition Agents may declare the termination of the Debtors' ability to use Cash Collateral (any such declaration shall be referred to as a "***DIP Termination Declaration***") and the date on which a DIP Termination Declaration is delivered shall be referred to as the "***DIP Termination Date***"). A DIP Termination Declaration shall be delivered by electronic mail (or other electronic means) to counsel to the Debtors, counsel to a Committee (if appointed), counsel to each of the DIP Agents (or the other DIP Agent, if made by one of the DIP Agents), counsel to each of the Ad Hoc Committees, counsel to each of the Prepetition Agents (or the other Prepetition Agent, if made by one of the Prepetition Agents), and the U.S. Trustee. The automatic stay is hereby modified so that five (5) business days after the date a DIP Termination Declaration is delivered (such five-day period, the "***Remedies Notice Period***"), the DIP Agents and the DIP Lenders shall be entitled to exercise their rights and remedies in accordance with their respective DIP Documents, as applicable, and this Interim Order, subject in all respects to the Carve-Out. During the Remedies Notice Period, the Debtors and/or a Committee (if appointed) shall be entitled to seek an emergency hearing from the Court, and upon and after delivery of the DIP Termination Declaration, each DIP Agent delivering such DIP Termination



Declaration shall be deemed to have consented to such emergency hearing. The Debtors hereby waive their right to and shall not be entitled to invoke section 105 of the Bankruptcy Code in an effort to restrict or preclude the DIP Agents or DIP Lenders from exercising any rights or remedies set forth in this paragraph 28 or elsewhere in the Interim Order or DIP Documents. Unless the Court orders otherwise, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order as to the DIP Agents and the DIP Lenders. Upon the occurrence and during the continuation of an Event of Default, the DIP Agents and any liquidator or other professional will have the right to access and utilize, at no cost or expense, any trade names, trademarks, copyrights, or other intellectual property of the Debtors to the extent necessary or appropriate in order to sell, lease, or otherwise dispose of any of the DIP Collateral, including pursuant to any Court-approved sale process; *provided, however*, that the DIP Agents and the other DIP Lenders may only enter upon a leased premises of the Debtors after a DIP Termination Declaration in accordance with (i) a separate written agreement among the DIP Agents, the other DIP Lenders, and the applicable landlord for the leased premises, (ii) pre-existing rights of the DIP Agents or the other DIP Lenders under applicable non-bankruptcy law, (iii) written consent of the applicable landlord for the leased premises, or (iv) entry of an order by this Court approving such access to the leased premises after notice and an opportunity to be heard for the applicable landlord for the leased premises.

29. Carve-Out.

(a) As used in this Interim Order, the term “*Carve-Out*” means the sum of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest at the statutory rate (without regard to the notice set forth in clause (iv) below); (ii) all reasonable fees and expenses up to \$75,000 incurred by a trustee under section

726(b) of the Bankruptcy Code (without regard to the notice set forth in clause (iv) below); (iii) to the extent allowed at any time, whether by interim or final compensation order, procedural order, or otherwise, all unpaid fees and expenses (including any monthly or success or Transaction Fee (defined below) payable to estate professionals) (the “**Allowed Professional Fees**”) incurred by persons or firms retained by the Loan Parties pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “**Debtor Professionals**”) and the Committee (if any) pursuant to section 328 or 1103 of the Bankruptcy Code (the “**Committee Professionals**” and, together with the Debtor Professionals, the “**Professional Persons**”) at any time before or on the first business day following delivery by the DIP Term Agent or the DIP ABL FILO Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice (as defined below) (the amounts set forth in clauses (i) through (iii), the “**Pre-Carve-Out Trigger Notice Cap**”); and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$2,500,000 incurred after the first business day following the date of delivery by the DIP Term Agent or the DIP ABL FILO Agent of the Carve-Out Trigger Notice (such date, the “**Trigger Date**”), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “**Post-Carve-Out Trigger Notice Cap**” and, together with the Pre-Carve-Out Trigger Notice Cap, the “**Carve-Out Cap**”); *provided*, that under no circumstances shall any success, completion, or similar fees be paid from the Carve-Out following delivery of a Trigger Notice unless such fee was earned and payable prior to the Trigger Date; *provided, further* that nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in the Carve-Out Cap on any other grounds.

(b) For purposes of the foregoing, “**Carve-Out Trigger Notice**” shall

mean a written notice delivered by email (or other electronic means) by the DIP Term Agent or the DIP ABL FILO Agent to each other, the Loan Parties, their lead restructuring counsel (Latham & Watkins LLP), the U.S. Trustee, counsel to the Committee (if any), and counsel to each of the Ad Hoc Committees and the DIP Agents, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined herein) and acceleration of the obligations under either of the DIP Facilities, stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(c) On the day on which a Carve Out Trigger Notice is given by either DIP Agent to the Loan Parties with a copy to counsel to the Committee (if any) (the “**Termination Declaration Date**”), the Carve-Out Trigger Notice shall constitute a demand to the Loan Parties to utilize (i) first, all cash in the DIP Funding Account, and then the Operating Account, notwithstanding anything in the DIP Term Documents to the contrary, including with respect to the existence of a default or an Event of Default, the failure of the Debtors to satisfy any or all of the conditions precedent for the withdrawal of funds from the DIP Funding Account or the Operating Account, including any Milestone or entry of the Final Order, or any termination of the commitments under the DIP Term Facility, and (ii) second, to the extent the cash set forth in clause (i) is insufficient, all cash on hand as of such date and any available cash thereafter generated by the Debtors to deposit in a segregated account at the DIP Term Agent (the “**Escrow Account**”) an amount equal to the Carve-Out Cap and hold in trust to pay such amounts benefiting from the Carve-Out. On or after the Termination Declaration Date, immediately following the consummation of (A) the sale of the business as a going concern, whether in one or a series of transactions, or (B) the consummation of a plan of reorganization (in each case, a “**Consummated Transaction**”), in either case having the support of the Ad Hoc Committees, (1) the Post-Carve-

Out Trigger Notice Cap shall be increased in an amount not to exceed \$4,500,000 by the Restructuring Fee or Sale Fee (as defined in the engagement letter referred to below in this clause (1)), as applicable, payable to Evercore Group L.L.C., as financial advisor of the Loan Parties (any such fee, a “*Transaction Fee*”), in accordance with that certain engagement letter, dated April 16, 2020 between Evercore Group L.L.C., Latham & Watkins LLP and GNC Holdings, Inc. in effect on the date hereof, subject to the approval of the Court, earned as a result of such Consummated Transaction, and (2) an amount equal to any such Transaction Fee, not to exceed \$4,500,000, shall be deposited in the Escrow Account and used to pay any such Transaction Fees to the extent such Transaction Fees are earned and payable and to the extent such Transaction Fees are not paid directly to the applicable Debtor Professional at the consummation of the transaction. Notwithstanding the foregoing, the Post-Carve-Out Trigger Notice Cap shall not be increased in the event of a liquidation of the assets.

(d) The funds on deposit in the Escrow Account shall only be available to satisfy the obligations set forth in the definition of Carve-Out herein, and the DIP Agents, the DIP Lenders and the Prepetition Secured Parties (x) shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of assets) of the Debtors to the extent necessary to fund the Escrow Account as provided above and (y) shall have a security interest only upon any residual amount in the Escrow Account available following satisfaction in cash in full of all obligations benefiting from the Carve-Out as further described in clause (f) below.

(e) All funds in the Escrow Account shall be used first to pay all obligations benefitting from the Pre-Carve-Out Trigger Notice Cap, until paid in full, and then the obligations benefitting from the Post-Carve-Out Trigger Notice Cap. If, after paying all amounts set forth in the definition of Carve-Out, the Escrow Account has not been reduced to zero, all

remaining funds in the Escrow Account that are funded pursuant to paragraph 29(c) (i) out of the proceeds of DIP Term Priority Collateral or the DIP Funding Account, shall be distributed to the DIP Term Agent on account of the DIP Term Loans, and (ii) out of DIP ABL FILO Priority Collateral or proceeds thereof, shall be distributed to the DIP ABL FILO Agent on account of the DIP ABL FILO Loans.

(f) Notwithstanding anything to the contrary in this Interim Order, (i) the failure of the Escrow Account to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out, and (ii) in no way shall the Budget, the Carve-Out, the Escrow Account, or any of the foregoing be construed as a cap or limitation on the amount of Allowed Professional Fees due and payable by the Debtors. None of the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Persons incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Any payment or reimbursement made on or after the occurrence of the Trigger Date in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis.

(g) Proceeds from the DIP Facilities not to exceed the Investigation Budget Amount may be used on account of professional fees and expenses of Committee Professionals in connection with the Investigation, which obligations will benefit from the Carve-Out in an amount not to exceed the Investigation Budget Amount to the extent unpaid as of the

delivery of a Carve-Out Trigger Notice.

(h) For the avoidance of doubt, if a DIP Repayment occurs or the DIP Facilities are otherwise terminated, the Interim Order shall remain in full force and effect, including with respect to the Debtors' use of Cash Collateral, the Carve-Out, and all related provisions in respect thereof, and the Prepetition Agents shall assume any rights and obligations that the DIP Agents previously had with respect to the Carve-Out.

30. Limitations on Use of DIP Proceeds, Cash Collateral, and Carve-Out. No portion of the Carve-Out, the proceeds of any DIP Term Loans, or any Cash Collateral may be used to (or support any other party to) litigate, object to, contest or challenge in any manner or raise any defenses to the debt, collateral position, liens or claims of any of the DIP Lenders, the DIP Agents, or the Prepetition Secured Parties, whether by challenging the validity, extent, amount, perfection, priority or enforceability of the indebtedness under the DIP Facilities, the Prepetition ABL FILO Credit Agreement or the Prepetition Term Credit Agreement, or the validity, extent, perfection, priority or enforceability of any mortgage, security interest or lien with respect thereto or any other rights or interests or replacement liens with respect thereto or any other rights or interests of any of the DIP Lenders, the DIP Agents, or the Prepetition Secured Parties, or by seeking to subordinate or recharacterize the DIP Facilities (or amounts outstanding thereunder), the Prepetition ABL FILO Credit Agreement (or amounts outstanding thereunder) or the Prepetition Term Credit Agreement (or amounts outstanding thereunder), or to disallow or avoid any claim, mortgage, security interest, lien, or replacement lien or by asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against any of the DIP Lenders, the DIP Agents, or the Prepetition Secured Parties, or any of their respective officers, directors, agents, or employees; *provided, however*, that the Carve-Out

and such collateral proceeds and loans under the DIP Documents may be used for allowed fees and expenses, in an amount not to exceed \$75,000 (the “*Investigation Budget Amount*”) incurred solely by a Committee (if appointed), in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority, or extent of the Prepetition Liens (the “*Investigation*”) before the Challenge Deadline (as defined below). In addition, none of the Carve-Out, proceeds of DIP Term Loans, nor any Cash Collateral shall be used in connection with (a) preventing, hindering or delaying any of the DIP Lenders’, the DIP Agents’, or the Prepetition Secured Parties’ enforcement or realization upon the DIP Collateral or the exercise of rights by the DIP Agents or the Prepetition Agents once an Event of Default has occurred and is continuing, (b) using or seeking to use Cash Collateral or selling or otherwise disposing of the DIP Collateral other than as provided herein, (c) using or seeking to use any insurance proceeds related to the DIP Collateral without the consent of the DIP Term Agent, the DIP ABL FILO Agent, the Prepetition ABL FILO Agent or the Prepetition Term Agents, as applicable; or (d) incurring Indebtedness (as defined in the DIP Term Credit Agreement) other than in accordance with the Budget or other than as permitted in the DIP Documents; *provided* that the foregoing limitations shall not prevent the Loan Parties and their professionals from being heard on whether an Event of Default has occurred and is continuing.

31. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court of competent jurisdiction, the DIP Agents, the DIP Lenders, and Prepetition Secured Parties are entitled to the protections provided

in section 364(e) of the Bankruptcy Code. Any such modification, amendment, or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim, or priority authorized or created hereby, unless such authorization and the incurring of such debt, or the granting of such priority or lien, is stayed pending appeal.

32. Payment of Fees and Expenses. The Debtors are authorized and directed to pay all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the DIP Agents and DIP Lenders, including the Ad Hoc Committees, in connection with the DIP Facilities, as provided in the DIP Documents. Any time that professionals of the DIP Agents and the DIP Lenders, including the Ad Hoc Committees, seek payment of fees and expenses from the Debtors, each professional shall provide summary copies of its fee and expense statements or invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work-product doctrine) to the U.S. Trustee and counsel to the Committee (if appointed) contemporaneously with the delivery of such fee and expense statements to the Debtors. The Debtors, any Committee, or the U.S. Trustee may, within ten (10) days of receipt of a statement, dispute the payment of any portion of such invoiced fees and expenses (the “***Disputed Invoiced Fees***”) by notifying the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees (to be followed by the filing with the Court, if necessary, of a motion or other pleading, with at least ten (10) days prior written notice to the submitting party of any hearing on such motion or other pleading). If no objection is timely made to a statement, then the Debtors shall promptly pay in full in cash such invoiced fees and expenses. If an objection is



timely made to a statement, the Debtors shall promptly pay in full in cash all such invoiced fees and expenses other than the Disputed Invoiced Fees. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date all reasonable and documented fees, costs, and out-of-pocket expenses of the DIP Agents and the DIP Lenders incurred on or prior to such date without the need for any professional engaged by either of the DIP Agents or by the DIP Lenders to first deliver a copy of its invoice as provided for herein. No attorney or advisor to either of the DIP Agents or to the DIP Lenders shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to the (i) DIP Agents or DIP Lenders in connection with the DIP Facilities and (ii) Prepetition Secured Parties in connection with the Chapter 11 Cases, are hereby approved in full.

33. Proofs of Claim. The DIP Agents, the DIP Lenders, and the Prepetition Secured Parties will not be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or Successor Cases to the contrary, each of the Prepetition ABL FILO Agent and the Prepetition Term Agents is hereby authorized and entitled, in its sole discretion, to file a master proof of claim on behalf of the Prepetition ABL FILO Secured Parties and the Prepetition Term Secured Parties, as applicable, in each of the Chapter 11 Cases or Successor Cases. Any proof of claim filed by the Prepetition ABL FILO Agent or the Prepetition Term Agents shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition ABL FILO Secured Parties or the Prepetition Term Secured Parties, respectively. The provisions of this paragraph 33 and each master proof of claim are intended solely for the purpose of administrative convenience and shall

not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in these Chapter 11 Cases or to assert that the amount of its claim is different from that set forth on the applicable master proof of claim. The master proofs of claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the applicable Prepetition Secured Party.

34. No Direct Responsibility for Fees or Disbursements. None of the DIP Agents, the DIP Lenders or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases. Nothing in the Interim Order, the Final Order, or otherwise shall be construed to obligate any of the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Loan Parties have sufficient funds to pay such compensation or reimbursement.

35. Payment of Compensation. So long as an unwaived Event of Default has not occurred, the Debtors shall be permitted to pay fees and expenses allowed and payable by final order (that has not been vacated or stayed, unless the stay has been vacated) under sections 328, 330, 331, and 363 of the Bankruptcy Code, as the same may be due and payable, in accordance with the DIP Documents and subject to the Budget.

36. Effect of Stipulations on Third Parties.

(a) *Generally.* The Stipulations shall be binding on the Debtors, any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee for any of the

Loan Parties or any other estate representative appointed in the Chapter 11 Cases or any Successor Cases) in all circumstances and for all purposes. The Stipulations shall also be binding on all creditors and other parties in interest and all of their respective successors and assigns, including, without limitation, a Committee (if appointed) and any other person or entity acting or seeking to act on behalf of the Loan Parties' estates in all circumstances and for all purposes, unless (i) the Committee or a party in interest (in each case, to the extent requisite standing is obtained pursuant to an order of this Court entered prior to the Challenge Deadline) has timely commenced an appropriate proceeding or contested matter required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 36) by the Challenge Deadline challenging any of the Stipulations (each such proceeding or contested matter, a "**Challenge**") and (ii) there is entered a final non-appealable order in favor of the plaintiff in any such timely filed Challenge; *provided* that any pleadings filed in any Challenge (or in any application to extend the Challenge Deadline) shall set forth with specificity the basis for such Challenge (and any Challenges not so specified prior to the Challenge Deadline shall be deemed forever, waived, released and barred). The Court may fashion any appropriate remedy following a successful Challenge.

(b) If any such Challenge is timely and properly filed prior to the Challenge Deadline, the Stipulations shall nonetheless remain binding and preclusive (as provided in paragraph 36(a) hereof) on the Committee (if appointed) and on any other person or entity, the Loan Parties and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Loan Parties in the Chapter 11 Cases or any Successor Cases), except to the extent that such Stipulations were expressly and successfully challenged by

such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. If any such Challenge is timely and properly filed prior to the Challenge Deadline and remains pending and the Chapter 11 Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such Challenge on behalf of the Debtors' estates; *provided* that if the Challenge Deadline has elapsed and no timely and properly filed Challenge has been commenced either before or after conversion of the Chapter 11 Cases to chapter 7 cases, or any Challenge has been resolved prior to the conversion of the Chapter 11 Cases to chapter 7 cases, the chapter 7 trustee shall be bound by the Stipulations or such resolution, as applicable; *provided further* that if a chapter 7 trustee is appointed prior to the expiration of the Challenge Deadline, such trustee shall have until the expiration of the Challenge Deadline to commence a Challenge.

(c) The "**Challenge Deadline**" shall mean the earlier of (i) 60 days from the date of the formation of the Committee (if appointed) and (ii) 75 days following the entry of the Interim Order, as such deadline may be extended (x) in writing prior to the expiration of the Challenge Deadline (which writing may be in the form of email by counsel) from time to time in the sole discretion of the Prepetition ABL FILO Agent (with respect to the Prepetition ABL FILO Liens and Prepetition ABL FILO Obligations or the adequate protection afforded to the Prepetition ABL FILO Secured Parties) and the Prepetition Term Administrative Agent (with respect to the Prepetition Term Liens and Prepetition Term Obligations or the adequate protection afforded to the Prepetition Term Secured Parties) or (y) by this Court for good cause shown upon an application for an extension filed and served by a party in interest, pursuant to an order entered prior to the expiration of the Challenge Deadline; *provided*, that an extension pursuant to the foregoing clause (y) shall only be applicable as to such party in interest and the particular Challenge set forth in such application. Nothing in this Interim Order vests or confers on any

entity (as defined in the Bankruptcy Code), including the Committee (if appointed) or any non-statutory committees appointed or formed in these Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Stipulations, and all rights to object to such standing are expressly reserved.

(d) *Binding Effect.* To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such Challenge does not result in a final and non-appealable judgment or order that is inconsistent with any of the Stipulations, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Stipulations shall, pursuant to this Interim Order, become irrevocably binding on any person, entity, or party in interest in the Chapter 11 Cases, as well as their successors and assigns, and in any Successor Case for all purposes and shall not be subject to further challenge or objection. Notwithstanding anything to the contrary herein, if any Challenge is properly and timely commenced by a party in interest, the Stipulations shall nonetheless remain binding on all other parties in interest. For the avoidance of doubt, initiation of a timely and procedurally proper Challenge shall preserve the Challenge only with respect to the party initiating such Challenge (and such Challenge shall be limited to the Challenge identified with specificity prior to the expiration of the Challenge Deadline). To the extent any Challenge is timely and properly commenced and is unsuccessful, the Prepetition Secured Parties shall be entitled to, as adequate protection, payment of the related costs and expenses, including, but not limited to, reasonable and documented attorneys' fees, incurred in defending themselves against any unsuccessful Challenge.

37. No Third-Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

38. Section 506(c) Claims. Subject to entry of the Final Order, except to the extent of the Carve-Out, no costs or expenses of administration that have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the DIP Agents, the DIP Lenders, the Prepetition ABL FILO Agent, the Prepetition FILO Lenders, the Prepetition Term Agents, the DIP Collateral, or the Prepetition Term Lenders, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Term Agent, the DIP ABL FILO Agent, the Prepetition ABL FILO Agent, or the Prepetition Term Agents, as applicable, and no such consent shall be implied from any action, inaction, or acquiescence by any party.

39. No Marshaling/Applications of Proceeds. Subject to entry of the Final Order, the DIP Agents, the DIP Lenders, the Prepetition ABL FILO Agent, the Prepetition FILO Lenders, the Prepetition Term Agents, and the Prepetition Term Lenders shall at no time be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral.

40. Section 552(b). Subject to entry of the Final Order, the Prepetition ABL FILO Agent, the Prepetition FILO Lenders, the Prepetition Term Agents, and the Prepetition Term Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception thereunder shall not apply to any of them.

41. DIP Released Parties. Subject to entry of the Final Order, the Debtors hereby absolutely and unconditionally release and forever discharge and acquit the DIP Agents,

the DIP Lenders and each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns, each in such capacity (collectively, the “*DIP Released Parties*”) from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type (in each case, arising on or prior to the date of the Final Order), whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, in each case, arising in connection with or relating to the DIP Facilities, the DIP Liens or any of the DIP Documents; *provided*, that nothing herein shall relieve the DIP Released Parties from fulfilling their obligations under the DIP Documents and/or this Interim Order.

42. Limits on Lender Liability. Subject to entry of the Final Order, nothing in this Interim Order, any of the DIP Documents, the Prepetition Documents, or any other documents related thereto, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Chapter 11 Cases or any Successor Cases. The DIP Agents, the DIP Lenders, and the Prepetition Secured Parties shall not, solely by reason of having made loans under

the DIP Facilities, authorizing the use of Cash Collateral or performing any act authorized by the DIP Documents, be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in this Interim Order or the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agents, the DIP Lenders, or any of the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

43. Insurance Proceeds and Policies. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Agents (on behalf of the DIP Lenders), the Prepetition ABL FILO Agent (on behalf of the Prepetition FILO Lenders), and the Prepetition Term Agents (on behalf of the Prepetition Term Lenders), shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

44. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors’ estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP Documents.

45. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, subject to the Prepetition Documents and the Intercreditor Agreement: (a) the DIP Agents’, DIP Lenders’, and Prepetition Secured Parties’ rights to seek any other or supplemental



relief; (b) any of the rights of any of the DIP Agents, DIP Lenders, and/or the Prepetition Secured Parties under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay imposed by section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or Successor Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors', a Committee's (if appointed), or any party in interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Interim Order.

46. No Waiver by Failure to Seek Relief. The failure of the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the DIP Documents, the Prepetition Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties.

47. Binding Effect of Interim Order. Immediately upon entry on the docket of this Court, the terms and provisions of this Interim Order shall become binding upon the Debtors, the DIP Agents, the DIP Lenders, the Prepetition Secured Parties, all other creditors of any of the Debtors, any Committee, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases,

any Successor Cases, or upon dismissal of any Chapter 11 Case or Successor Case.

48. No Modification of Interim Order. Until and unless the DIP Obligations and the Prepetition Secured Obligations (other than contingent obligations with respect to then unasserted claims) have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facilities which survive such discharge by their terms), and all commitments to extend credit under the DIP Facilities have been terminated, the Debtors shall not seek or consent to, directly or indirectly, any modification, stay, vacatur, or amendment to this Interim Order without the prior written consent of the DIP Agents, the Prepetition ABL FILO Agent, and the Prepetition Term Agents, and no such consent shall be implied by any action or inaction of the DIP Agents or the Prepetition Agents.

49. Continuing Effect of Intercreditor Agreement. The Debtors, the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties each shall be bound by, and in all respects of the DIP Facilities shall be governed by, and be subject to all the terms, provisions, and restrictions of the Intercreditor Agreement.

50. Interim Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Documents and this Interim Order, the provisions of this Interim Order shall control.

51. Discharge. The DIP Obligations and the obligations of the Debtors with respect to the adequate protection provided herein shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted), on or before the effective date of such plan of reorganization, or each of

the DIP Term Agent, the DIP ABL FILO Agent, the DIP Lenders, the Prepetition ABL FILO Agent, and the Prepetition Term Agents, as applicable, has otherwise agreed in writing; *provided*, that the DIP Term Loans and the DIP ABL FILO Loans shall convert into a first lien first out exit loans, subject to and in accordance with the DIP Agreements.

52. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or any Successor Cases. The terms and provisions of this Interim Order shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases notwithstanding the entry of any orders described in clauses (a)-(d) above, and all claims, liens, security interests, and other protections granted to the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties pursuant to this Interim Order and/or the DIP Documents shall maintain their validity and priority as provided by this Interim Order until: (i) in respect of the DIP Facilities, all the DIP Obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted); and (ii) in respect of the Prepetition ABL FILO Facility, all of the Prepetition ABL FILO Obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted); and (iii) in respect of the Prepetition Term Facility, all of the Prepetition Term Obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted). The terms and provisions concerning the indemnification of the DIP Agents and the DIP Lenders shall continue in the

Chapter 11 Cases, in any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases, following termination of the DIP Documents and/or the indefeasible repayment of the DIP Obligations.

53. Payments Held in Trust. Except as expressly permitted in this Interim Order or the DIP Agreements, and subject to the Carve-Out, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral, or receives any other payment with respect thereto from any other source prior to all DIP Obligations in accordance with the DIP Agreements, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Agents and the DIP Lenders and shall immediately turn over such proceeds to the DIP Term Agent or the DIP ABL FILO Agent, or as otherwise instructed by this Court, for application in accordance with the DIP Agreements and this Interim Order.

54. Replacement Agent. Notwithstanding the resignation or replacement of any collateral agent or administrative agent, including any of the Prepetition Agents, the Prepetition Liens on the Prepetition Collateral shall remain continuously and properly perfected, notwithstanding the transfer of control, possession, or title of any Prepetition Collateral to a new collateral or administrative agent.

55. Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

56. Final Hearing. The Final Hearing to consider entry of the Final Order and final approval of the DIP Facilities is scheduled for [\_\_\_], 2020, at [\_\_\_]:00 [a.m.] (ET) before the Honorable [\_\_\_], United States Bankruptcy Judge at the United States Bankruptcy Court for the District of Delaware. On or before [\_\_\_], 2020, the Debtors shall serve, by United States mail, first-

class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the “*Final Hearing Notice*”), together with copies of this Interim Order and the Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; (c) counsel for a Committee (if appointed); (d) the Securities and Exchange Commission; and (e) the Internal Revenue Service. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than on [\_\_] 2020, at [\_\_]:00 p.m. (EST), which objections shall be served so as to be received on or before such date by: (i) proposed counsel to the Debtors, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Richard Levy and Caroline Reckler (email: richard.levy@lw.com; caroline.reckler@lw.com), and 885 Third Avenue, New York, New York 10022, Attn: Andrew C. Ambruoso and Jeffrey T. Mispagel (email: andrew.ambruoso@lw.com; jeffrey.mispagel@lw.com); and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (email: mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com) (ii) counsel to the Ad Hoc Group of Crossover Lenders, Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Daniel B. Denny, and Jordan A. Weber (email: mshinderman@milbank.com; ddenny@milbank.com; and jweber@milbank.com); and Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-134, Attn: Robert J. Dehney and Matthew Harvey (email: rdehney@mnat.com and mharvey@mnat.com); (iii) counsel to the DIP Term Agent and the Prepetition Term Agent, Dorsey & Whitney LLP, 51 West 52nd Street | New York, NY 10019-6119, Attn: Erin E. Trigg and Samuel S. Kohn (email: triggerin@dorsey.com and

kohn.sam@dorsey.com) (iv) counsel to the DIP ABL FILO Agent and the Prepetition ABL FILO Agent, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, Attn: Sandy Qusba, Daniel Biller and Jamie J. Fell (email: squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); (v) counsel to the Ad Hoc Committee of FILO Lenders, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10017, Attn: Andrew Rosenberg (email: arosenberg@paulweiss.com) and Jacob Adlerstein (email: jadlerstein@paulweiss.com) and Landis Rath & Cobb, LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 Attn: Richard S. Cobb (email: cobb@lrclaw.com); and (vi) counsel to the Committee (if appointed).

57. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce the terms of, any and all matters arising from or related to the DIP Facilities, and/or this Interim Order.

58. DIP Election Procedures. The DIP Election Procedures are hereby approved. The DIP Agent may, in connection with allocations of the commitments under the DIP Facilities or any other allocations contemplated to be made pursuant to the DIP Agreements, conclusively rely on, and shall have no liability whatsoever with respect to, ownership information with respect to the Prepetition Secured Obligations as set forth on the Register (as defined in the Prepetition ABL FILO Credit Agreement or Prepetition Term Credit Agreement, as applicable) as of the Election Deadline (as defined in the DIP Term Credit Agreement).

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

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United States Bankruptcy Judge

**Exhibit A**

**Guarantors**

GNC Holdings, Inc.  
GNC Parent LLC  
GNC Corporation  
General Nutrition Corporation  
General Nutrition Investment Company  
Lucky Oldco Corporation  
GNC Funding, Inc.  
GNC International Holdings, Inc.  
GNC Canada Holdings, Inc.  
General Nutrition Centres Company  
GNC Government Services, LLC  
GNC China Holdco, LLC  
GNC Headquarters, LLC  
Gustine Sixth Avenue Associates, Ltd.  
GNC Puerto Rico Holdings, Inc.  
GNC Puerto Rico, LLC

**Exhibit B**

**Lien Priority Ranking**

<b>LIEN PRIORITY ON COLLATERAL</b>	<b>DIP Term Priority Collateral</b>	<b>DIP ABL FILO Priority Collateral</b>	<b>Unencumbered Collateral (other than Avoidance Action Proceeds)</b>	<b>Avoidance Action Proceeds</b>	<b>Other Encumbered Collateral (not DIP ABL FILO Priority Collateral nor DIP Term Priority Collateral)</b>
<b>1</b>	Carve-Out	Carve-Out	Carve-Out	Carve-Out	Other Liens
<b>2</b>	DIP Term Liens	DIP ABL FILO Liens	DIP Term Liens	DIP Term Liens (to the extent of New Money DIP Term Claims)	Carve-Out
<b>3</b>	Prepetition Term Liens; Term Adequate Protection Liens	Prepetition ABL FILO Liens; ABL FILO Adequate Protection Liens	Term Adequate Protection Liens	DIP Term Liens (to the extent of Roll-Up DIP Term Claims) DIP ABL FILO Liens	DIP Term Liens
<b>4</b>	DIP ABL FILO Liens	DIP Term Liens	DIP ABL FILO Liens	Term Adequate Protection Liens ABL FILO Adequate Protection Liens	DIP ABL FILO Liens
<b>5</b>	Prepetition ABL FILO Liens; ABL FILO Adequate Protection Liens <sup>1</sup>	Prepetition Term Liens; Term Adequate Protection Liens	ABL FILO Adequate Protection Liens		Term Adequate Protection Liens
<b>6</b>					ABL FILO Adequate Protection Liens

<sup>1</sup> The references herein to the ABL FILO Adequate Protection Liens are in the event the “roll-up” of Prepetition FILO Term Loans is successfully challenged or not effective.



**Schedule 1**  
**Initial DIP Budget**

## **Schedule 2**

### **Milestones<sup>1</sup>**

The “Milestones” shall include each of the following (as any such milestone may be extended in writing by the Required Term Lenders (in their sole and absolute discretion), each a “*Milestone*”, collectively, the “*Milestones*”), in each case on terms and conditions, and subject to documentation (including, in all cases, forms of all applicable orders) in form and substance acceptable to the Debtors, the DIP Term Agent and Required Term Lenders in all respects:

a. as soon as reasonably practicable after the Petition Date, but in no event later than the date that is two (2) Business Days after the Petition Date, the Canadian Court shall have entered the Interim CCAA Order;

b. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after commencement of the “first day” hearing in the Chapter 11 Cases, the Canadian Court shall have entered the Initial Recognition Order and Supplemental Order;

c. as soon as reasonably practicable, but in no event later than the date that is seven (7) calendar days after the Petition Date, the Company shall file with the Bankruptcy Court the Plan and the Disclosure Statement;

d. as soon as reasonably practicable, but in no event later than the date that is ten (10) Business Days after the Petition Date, the Debtors shall file with the Bankruptcy Court the Disclosure Statement Motion;

e. as soon as reasonably practicable, but in no event later than the date that is seven (7) calendar days after the Petition Date, the Company shall have (i) repaid in full the Revolving Loans and (ii) executed and delivered the DIP ABL FILO Credit Agreement;

f. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order;

g. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after the entry of the Interim Order, the Canadian Court shall have entered the Interim DIP Recognition Order;

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<sup>1</sup> Capitalized terms used but not defined in this Schedule 2 clause shall have the meaning provided to such terms in the RSA.

h. as soon as reasonably practicable, but in no event later than the date that is thirty-five (35) calendar days after the Petition Date, the Bankruptcy Court shall have entered the Final Order;

i. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after the entry of the Final DIP Order, the Canadian Court shall have entered the Final DIP Recognition Order;

j. as soon as reasonably practicable, but in no event later than the date that is forty-five (45) calendar days after the Petition Date, the Bankruptcy Court shall have entered a Disclosure Statement Order;

k. as soon as reasonably practicable, but in no event later than the date that is 120 calendar days after the Petition Date, the Bankruptcy Court shall have entered a Confirmation Order;

l. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after the entry of the Confirmation Order, the Canadian Court shall have entered the Confirmation Recognition Order; and

m. as soon as reasonably practicable, but in no event later than the earlier of (i) twenty-one (21) calendar days after the Confirmation Date, and (ii) the date that is one-hundred and forty-one (141) calendar days after the Petition Date, the Effective Date shall occur.

**Exhibit A**

**Guarantors**

GNC Holdings, Inc.  
GNC Parent LLC  
GNC Corporation  
General Nutrition Corporation  
General Nutrition Investment Company  
Lucky Oldco Corporation  
GNC Funding, Inc.  
GNC International Holdings, Inc.  
GNC Canada Holdings, Inc.  
General Nutrition Centres Company  
GNC Government Services, LLC  
GNC China Holdco, LLC  
GNC Headquarters, LLC  
Gustine Sixth Avenue Associates, Ltd.  
GNC Puerto Rico Holdings, Inc.  
GNC Puerto Rico, LLC

**Exhibit B**

**Lien Priority Ranking**

<b>LIEN PRIORITY ON COLLATERAL</b>	<b>DIP Term Priority Collateral</b>	<b>DIP ABL FILO Priority Collateral</b>	<b>Unencumbered Collateral (other than Avoidance Action Proceeds)</b>	<b>Avoidance Action Proceeds</b>	<b>Other Encumbered Collateral (not DIP ABL FILO Priority Collateral nor DIP Term Priority Collateral)</b>
<b>1</b>	Carve-Out	Carve-Out	Carve-Out	Carve-Out	Other Liens
<b>2</b>	DIP Term Liens	DIP ABL FILO Liens	DIP Term Liens	DIP Term Liens (to the extent of New Money DIP Term Claims)	Carve-Out
<b>3</b>	Prepetition Term Liens; Term Adequate Protection Liens	Prepetition ABL FILO Liens; ABL FILO Adequate Protection Liens	Term Adequate Protection Liens	DIP Term Liens (to the extent of Roll-Up DIP Term Claims) DIP ABL FILO Liens	DIP Term Liens
<b>4</b>	DIP ABL FILO Liens	DIP Term Liens	DIP ABL FILO Liens	Term Adequate Protection Liens ABL FILO Adequate Protection Liens	DIP ABL FILO Liens
<b>5</b>	Prepetition ABL FILO Liens; ABL FILO Adequate Protection Liens <sup>1</sup>	Prepetition Term Liens; Term Adequate Protection Liens	ABL FILO Adequate Protection Liens		Term Adequate Protection Liens
<b>6</b>					ABL FILO Adequate Protection Liens

<sup>1</sup> The references herein to the ABL FILO Adequate Protection Liens are in the event the “roll-up” of Prepetition FILO Term Loans is successfully challenged or not effective.

**Schedule 1**  
**Initial DIP Budget**

## GNC

## DIP Forecast

(\$ in 000s)

Forecast Week Week Ended	Filing						Emergence						Forecast Total	
	1 6/27/20	2 7/4/20	3 7/11/20	4 7/18/20	5 7/25/20	6 8/1/20	7 8/8/20	8 8/15/20	9 8/22/20	10 8/29/20	11 9/5/20	12 9/12/20		13 9/19/20
<b>Receipts</b>														
Operating Receipts	\$ 23,617	\$ 20,745	\$ 22,234	\$ 21,764	\$ 24,075	\$ 25,066	\$ 20,631	\$ 20,795	\$ 29,241	\$ 24,268	\$ 25,998	\$ 25,059	\$ 24,144	\$ 307,635
GOB Proceeds	-	6,034	9,051	11,868	6,973	1,879	1,409	1,409	376	376	188	-	-	39,561
<b>Total</b>	<b>\$ 23,617</b>	<b>\$ 26,778</b>	<b>\$ 31,285</b>	<b>\$ 33,633</b>	<b>\$ 31,048</b>	<b>\$ 26,944</b>	<b>\$ 22,039</b>	<b>\$ 22,204</b>	<b>\$ 29,616</b>	<b>\$ 24,644</b>	<b>\$ 26,186</b>	<b>\$ 25,059</b>	<b>\$ 24,144</b>	<b>\$ 347,197</b>
<b>Operating Disbursements</b>														
Inventory Purchases	\$ -	\$ -	\$ (18,589)	\$ (5,430)	\$ (9,110)	\$ (5,451)	\$ (3,452)	\$ (5,252)	\$ (3,012)	\$ (4,974)	\$ (1,431)	\$ (7,183)	\$ (11,528)	\$ (75,412)
Payroll Related	(2,621)	(8,130)	(736)	(8,452)	(740)	(8,221)	(686)	(7,550)	(543)	(7,471)	(534)	(7,433)	(616)	(53,732)
Rent and Occupancy (excl. Utilities)	-	(14,591)	-	(877)	-	(13,922)	-	(795)	-	-	(12,221)	-	(791)	(43,198)
Freight	(1,492)	(1,463)	(1,463)	(1,463)	(1,338)	(1,320)	(1,320)	(1,320)	(1,320)	(1,445)	(1,463)	(1,463)	(1,463)	(18,329)
Liquidating Fees	(581)	(385)	(385)	(385)	(385)	(374)	-	-	-	-	-	-	-	(2,496)
Other Operating	(5,772)	(5,976)	(5,882)	(5,302)	(6,699)	(4,616)	(3,478)	(5,701)	(6,087)	(5,347)	(3,750)	(6,032)	(5,041)	(69,683)
<b>Total</b>	<b>\$ (10,466)</b>	<b>\$ (30,544)</b>	<b>\$ (27,055)</b>	<b>\$ (21,909)</b>	<b>\$ (18,272)</b>	<b>\$ (33,904)</b>	<b>\$ (8,935)</b>	<b>\$ (20,618)</b>	<b>\$ (10,961)</b>	<b>\$ (19,238)</b>	<b>\$ (19,400)</b>	<b>\$ (22,110)</b>	<b>\$ (19,438)</b>	<b>\$ (262,850)</b>
<b>Non-Operating Disbursements</b>														
Capital Expenditures	\$ -	\$ (255)	\$ (255)	\$ (255)	\$ (255)	\$ (255)	\$ (229)	\$ (229)	\$ (229)	\$ (229)	\$ (216)	\$ (216)	\$ (216)	\$ (2,837)
Debt Service	(526)	(3,204)	-	-	-	(2,962)	-	-	-	-	(2,962)	-	-	(9,655)
Other Non-Operating	(14,942)	-	-	-	-	-	-	-	-	-	-	-	-	(14,942)
<b>Total</b>	<b>\$ (15,467)</b>	<b>\$ (3,459)</b>	<b>\$ (255)</b>	<b>\$ (255)</b>	<b>\$ (255)</b>	<b>\$ (3,217)</b>	<b>\$ (229)</b>	<b>\$ (229)</b>	<b>\$ (229)</b>	<b>\$ (229)</b>	<b>\$ (3,179)</b>	<b>\$ (216)</b>	<b>\$ (216)</b>	<b>\$ (27,434)</b>
<b>Restructuring Related Disbursements</b>														
Professional Fees	\$ -	\$ (175)	\$ -	\$ -	\$ (878)	\$ (175)	\$ -	\$ (1,749)	\$ (2,925)	\$ -	\$ (111)	\$ (7,199)	\$ -	\$ (13,211)
Utility Deposit	-	-	(950)	-	-	-	-	-	-	-	-	-	-	(950)
Credit Card Fee Deposit	-	-	(400)	-	-	-	-	-	-	-	-	-	-	(400)
Critical Vendors	-	-	(3,000)	(2,000)	(3,000)	(2,000)	(5,000)	(5,000)	(6,000)	(5,000)	(9,000)	-	-	(40,000)
UST Fee	-	-	-	-	-	-	-	-	-	-	-	-	(250)	(250)
Exit Costs	-	-	-	-	-	-	-	-	-	-	-	-	(59,695)	(59,695)
DIP Fees	(7,200)	-	-	-	-	(2,800)	-	-	-	-	-	-	(3,000)	(13,000)
DIP Interest	-	(121)	-	-	-	(550)	-	-	-	(2,148)	-	-	(1,611)	(4,430)
<b>Total</b>	<b>\$ (7,200)</b>	<b>\$ (296)</b>	<b>\$ (4,350)</b>	<b>\$ (2,000)</b>	<b>\$ (3,878)</b>	<b>\$ (5,525)</b>	<b>\$ (5,000)</b>	<b>\$ (6,749)</b>	<b>\$ (8,925)</b>	<b>\$ (7,148)</b>	<b>\$ (9,111)</b>	<b>\$ (7,199)</b>	<b>\$ (64,556)</b>	<b>\$ (131,936)</b>
<b>Net Cash Flow</b>	<b>\$ (9,516)</b>	<b>\$ (7,521)</b>	<b>\$ (375)</b>	<b>\$ 9,469</b>	<b>\$ 8,643</b>	<b>\$ (15,703)</b>	<b>\$ 7,876</b>	<b>\$ (5,391)</b>	<b>\$ 9,502</b>	<b>\$ (1,970)</b>	<b>\$ (5,503)</b>	<b>\$ (4,466)</b>	<b>\$ (60,067)</b>	<b>\$ (75,024)</b>
Beginning Book Cash	\$ 93,920	\$ 30,000	\$ 30,000	\$ 30,000	\$ 39,469	\$ 48,112	\$ 32,409	\$ 40,284	\$ 34,893	\$ 44,395	\$ 42,425	\$ 36,921	\$ 32,455	\$ 93,920
Net Cash Flow	(9,516)	(7,521)	(375)	9,469	8,643	(15,703)	7,876	(5,391)	9,502	(1,970)	(5,503)	(4,466)	(60,067)	(75,024)
ABL Draw / (Repayment)	(60,000)	-	-	-	-	-	-	-	-	-	-	-	-	(60,000)
DIP Withdrawal	5,597	7,521	375	-	-	-	-	-	-	-	-	-	57,611	71,104
<b>Ending Book Cash</b>	<b>\$ 30,000</b>	<b>\$ 30,000</b>	<b>\$ 30,000</b>	<b>\$ 39,469</b>	<b>\$ 48,112</b>	<b>\$ 32,409</b>	<b>\$ 40,284</b>	<b>\$ 34,893</b>	<b>\$ 44,395</b>	<b>\$ 42,425</b>	<b>\$ 36,921</b>	<b>\$ 32,455</b>	<b>\$ 30,000</b>	<b>\$ 30,000</b>
Beginning ABL	\$ 60,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 60,000
Revolver Draw / (Repayment)	(60,000)	-	-	-	-	-	-	-	-	-	-	-	-	(60,000)
<b>Ending Prepetition Revolver</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
Beginning DIP Balance	\$ -	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ -
DIP Draw / (Repayment)	30,000	-	-	-	-	70,000	-	-	-	-	-	-	-	100,000
<b>Ending DIP</b>	<b>\$ 30,000</b>	<b>\$ 30,000</b>	<b>\$ 30,000</b>	<b>\$ 30,000</b>	<b>\$ 30,000</b>	<b>\$ 100,000</b>	<b>\$ 100,000</b>	<b>\$ 100,000</b>	<b>\$ 100,000</b>	<b>\$ 100,000</b>	<b>\$ 100,000</b>	<b>\$ 100,000</b>	<b>\$ 100,000</b>	<b>\$ 100,000</b>
Beginning DIP Escrow	\$ -	\$ 24,403	\$ 16,883	\$ 16,507	\$ 16,507	\$ 16,507	\$ 86,507	\$ 86,507	\$ 86,507	\$ 86,507	\$ 86,507	\$ 86,507	\$ 86,507	\$ -
Plus: DIP Revolver Draw	30,000	-	-	-	-	70,000	-	-	-	-	-	-	-	100,000
Less: Withdrawal	(5,597)	(7,521)	(375)	-	-	-	-	-	-	-	-	-	(57,611)	(71,104)
<b>Ending DIP Escrow</b>	<b>\$ 24,403</b>	<b>\$ 16,883</b>	<b>\$ 16,507</b>	<b>\$ 16,507</b>	<b>\$ 16,507</b>	<b>\$ 86,507</b>	<b>\$ 86,507</b>	<b>\$ 86,507</b>	<b>\$ 86,507</b>	<b>\$ 86,507</b>	<b>\$ 86,507</b>	<b>\$ 86,507</b>	<b>\$ 28,896</b>	<b>\$ 28,896</b>
<b>Liquidity</b>														
Ending Book Cash	\$ 30,000	\$ 30,000	\$ 30,000	\$ 39,469	\$ 48,112	\$ 32,409	\$ 40,284	\$ 34,893	\$ 44,395	\$ 42,425	\$ 36,921	\$ 32,455	\$ 30,000	\$ 30,000
Less: Cash Pledged	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Amendment Defined Liquidity</b>	<b>\$ 30,000</b>	<b>\$ 30,000</b>	<b>\$ 30,000</b>	<b>\$ 39,469</b>	<b>\$ 48,112</b>	<b>\$ 32,409</b>	<b>\$ 40,284</b>	<b>\$ 34,893</b>	<b>\$ 44,395</b>	<b>\$ 42,425</b>	<b>\$ 36,921</b>	<b>\$ 32,455</b>	<b>\$ 30,000</b>	<b>\$ 30,000</b>

## **Schedule 2**

### **Milestones<sup>1</sup>**

The “Milestones” shall include each of the following (as any such milestone may be extended in writing by the Required Term Lenders (in their sole and absolute discretion), each a “*Milestone*”, collectively, the “*Milestones*”), in each case on terms and conditions, and subject to documentation (including, in all cases, forms of all applicable orders) in form and substance acceptable to the Debtors, the DIP Term Agent and Required Term Lenders in all respects:

a. as soon as reasonably practicable after the Petition Date, but in no event later than the date that is two (2) Business Days after the Petition Date, the Canadian Court shall have entered the Interim CCAA Order;

b. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after commencement of the “first day” hearing in the Chapter 11 Cases, the Canadian Court shall have entered the Initial Recognition Order and Supplemental Order;

c. as soon as reasonably practicable, but in no event later than the date that is seven (7) calendar days after the Petition Date, the Company shall file with the Bankruptcy Court the Plan and the Disclosure Statement;

d. as soon as reasonably practicable, but in no event later than the date that is ten (10) Business Days after the Petition Date, the Debtors shall file with the Bankruptcy Court the Disclosure Statement Motion;

e. as soon as reasonably practicable, but in no event later than the date that is seven (7) calendar days after the Petition Date, the Company shall have (i) repaid in full the Revolving Loans and (ii) executed and delivered the DIP ABL FILO Credit Agreement;

f. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order;

g. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after the entry of the Interim Order, the Canadian Court shall have entered the Interim DIP Recognition Order;

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<sup>1</sup> Capitalized terms used but not defined in this Schedule 2 clause shall have the meaning provided to such terms in the RSA.



h. as soon as reasonably practicable, but in no event later than the date that is thirty-five (35) calendar days after the Petition Date, the Bankruptcy Court shall have entered the Final Order;

i. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after the entry of the Final DIP Order, the Canadian Court shall have entered the Final DIP Recognition Order;

j. as soon as reasonably practicable, but in no event later than the date that is forty-five (45) calendar days after the Petition Date, the Bankruptcy Court shall have entered a Disclosure Statement Order;

k. as soon as reasonably practicable, but in no event later than the date that is 120 calendar days after the Petition Date, the Bankruptcy Court shall have entered a Confirmation Order;

l. as soon as reasonably practicable, but in no event later than the date that is three (3) Business Days after the entry of the Confirmation Order, the Canadian Court shall have entered the Confirmation Recognition Order; and

m. as soon as reasonably practicable, but in no event later than the earlier of (i) twenty-one (21) calendar days after the Confirmation Date, and (ii) the date that is one-hundred and forty-one (141) calendar days after the Petition Date, the Effective Date shall occur.

**Exhibit 2**

**DIP Term Credit Agreement**

**DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT**

**dated as of June [●], 2020**

**among**

**GNC CORPORATION,**

**as Parent,**

**GENERAL NUTRITION CENTERS, INC.,**

**as Borrower,**

**The Several Lenders  
from Time to Time Parties Hereto,**

**GLAS TRUST COMPANY LLC  
as Collateral Agent**

**and**

**GLAS TRUST COMPANY LLC  
as Administrative Agent**

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DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT, dated as of June [●], 2020, among GNC CORPORATION, a Delaware corporation (“Parent”), GENERAL NUTRITION CENTERS, INC., a Delaware corporation (the “Borrower”), GNC Holdings, Inc., a Delaware corporation (“Holdings”), GNC Parent LLC, a Delaware limited liability company (“GNC Parent LLC”), the several banks and other financial institutions or entities from time to time parties to this Agreement (the “Lenders”), GLAS TRUST COMPANY LLC, as administrative agent (together with its successors in such capacity, the “Administrative Agent”) and GLAS TRUST COMPANY LLC, as collateral agent (together with its successors in such capacity, the “Collateral Agent”).

## PRELIMINARY STATEMENTS

**WHEREAS**, the Loan Parties have commenced voluntary cases (the “Chapter 11 Cases”) under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), and the Loan Parties continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

**WHEREAS**, GNC Holdings, Inc., in its capacity as foreign representative on behalf of the Loan Parties, commenced a recognition proceeding under Part IV of the *Companies’ Creditors Arrangement Act* (the “CCAA”) in the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”) to recognize in Canada the Chapter 11 Cases as “foreign main proceedings” (the “Recognition Proceedings”);

**WHEREAS**, in connection with the filing of the Chapter 11 Cases and the occurrence of the Interim DIP Order Entry Date, the Borrower, in its role as “ABL Administrative Borrower” under the Prepetition ABL Agreement, has terminated the “Revolving Credit Commitments” (as defined in the Prepetition ABL Agreement), repaid all Prepetition Revolving Loans, and cash collateralized the outstanding “Letters of Credit” (as defined in the Prepetition ABL Agreement) (such termination, repayment and cash collateralization, the “Revolver Termination”);

**WHEREAS**, the Borrower has requested that the Lenders extend post-petition loans and advances to the Borrower in the form of term loans in an aggregate principal amount of \$200,000,000. The Lenders have severally, and not jointly, agreed to extend such credit to the Borrower subject to the terms and conditions hereinafter set forth; and

**WHEREAS**, to provide security for the repayment of the Loans, and the payment of the other Obligations of the Loan Parties hereunder and under the other Loan Documents, the Loan Parties will grant to the Collateral Agent, for its benefit and the benefit of the Lenders, certain security interests, liens, and other rights and protections pursuant to the terms hereof and pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, and super-priority administrative expense claims pursuant to Section 364(c)(1) of the Bankruptcy Code, all as more fully described herein.

The Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## SECTION 1. DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

“ABL Priority Collateral”: the “ABL Priority Collateral” (under and as defined in the Prepetition Intercreditor Agreement).

“ABR”: when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Ad Hoc Group of Crossover Lenders”: the group of ad hoc holders of the Prepetition Term Loans and Prepetition FILO Loans represented by Milbank LLP, Cassels Brock & Blackwell LLP and Houlihan Lokey, Inc.

“Ad Hoc Group Advisors”: Milbank LLP, Cassels Brock & Blackwell LLP and Houlihan Lokey, Inc.

“Adjusted LIBO Rate”: with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the greater of (a)(i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate or (b) with respect to Eurodollar Loans, 1.00%.

“Administrative Agent”: as defined in the preamble hereto.

“Administrative Questionnaire”: an administrative questionnaire in a form supplied by the Administrative Agent.

“Affiliate”: as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Affiliated Lender”: any Affiliate of Parent other than (i) Parent or any Subsidiary of Parent and (ii) any natural Person.

“Agents”: the collective reference to the Administrative Agent and the Collateral Agent.

“Aggregate Exposure”: with respect to any Lender at any time, an amount equal to the aggregate then unpaid principal amount of such Lender’s Term Loans.

“Aggregate Exposure Percentage”: with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

“Agreement”: this Credit Agreement, as amended, amended and restated, supplemented or otherwise modified from time to time.

“Alternate Base Rate”: for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1%, (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1% and (d) with respect to ABR Loans, 2.00%; provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the Screen Rate (or if the Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.17 hereof, then the Alternate Base Rate shall be the greatest of clauses (a), (b) and (d) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Alternative Transaction” means any dissolution, winding up, liquidation, reorganization, recapitalization, assignment for the benefit of creditors, merger, transaction, consolidation, business combination, joint venture, partnership, sale of assets, financing (debt or equity), restructuring, repurchase, refinancing, extension or repayment of a material portion of the Borrower’s funded debt or similar transaction of or by any of the Loan Parties, other than the transactions contemplated by and in accordance with the Restructuring Support Agreement.

“Anti-Corruption Laws”: all laws, rules and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Margin”: (i) 13.00% per annum for Eurodollar Loans and (ii) 12.00% per annum for ABR Loans.

“Approved Fund”: any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit as its primary activity and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Approved Plan of Reorganization”: a Chapter 11 plan of reorganization, having the terms set forth in the Restructuring Support Agreement and otherwise in form and substance reasonably satisfactory to the Borrower and the Required Lenders, and filed by the Loan Parties with the Bankruptcy Court in connection with the Chapter 11 Cases, as may be amended, supplemented or otherwise modified from time to time.

“Assignment and Assumption”: an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.4),

and accepted by the Administrative Agent, in the form of Exhibit C or any other form approved by the Administrative Agent and the Borrower.

“Attributable Indebtedness”: when used with respect to any Sale and Leaseback Transaction, as at the time of determination, the present value (discounted at a rate equivalent to the Borrower’s then-current weighted average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such Sale and Leaseback Transaction.

“Avoidance Actions”: all causes of action arising under Chapter 5 of the Bankruptcy Code and similar statutes of the relevant states.

“Backup Withholding Tax”: United States federal withholding Taxes imposed pursuant to Section 3406 of the Code, as in effect on the date of this Agreement, or any successor provision that is substantially the equivalent thereof, and any regulations or official interpretations thereof (including any revenue ruling, revenue procedure, notice or similar guidance issued by the Internal Revenue Service thereunder as a precondition to relief or exemption from Taxes under such provisions).

“Backstop Commitment Letter”: the DIP Backstop Commitment Letter dated June [●], 2020 among the Borrower, each of the other Loan Parties party thereto and the Backstop Lenders party thereto.

“Backstop Lenders”: certain members of the Ad Hoc Group of Crossover Lenders that have (on a several, but not joint, basis) backstopped the full aggregate amount of the Facility by providing the commitments to participate in the Facility that are not assumed by the other Prepetition Term Loan Lenders.

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

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

“Bankruptcy Code”: Title 11 of the United States Code, as amended from time to time.

“Bankruptcy Court”: as defined in the recitals hereto.

“Bankruptcy Court DIP Order”: the Interim DIP Order or the Final DIP Order, as applicable.

“Bankruptcy Event”: with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, interim receiver, monitor, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or

similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Board”: the Board of Governors of the Federal Reserve System of the United States of America (or any successor).

“Borrower”: as defined in the preamble hereto.

“Borrower Materials”: as defined in Section 5.2.

“Borrowing”: Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Borrowing Request”: a request by the Borrower for a Borrowing substantially in the form of Exhibit F.

“Budget”: the 13-week statement of the Loan Parties’ anticipated cash receipts and Budget Disbursements for the first 13 weeks of the Chapter 11 Cases, set forth on a weekly basis, including the anticipated uses of the proceeds from the Facility for such period and attached hereto as Exhibit H, as updated pursuant to Section 5.1(B)(a) from time to time.

“Budget Disbursements”: in any period, the Loan Parties’ operating disbursements and Capital Expenditures (excluding Professional Fees and restructuring charges arising on account of the Chapter 11 Cases (including U.S. Trustee fees and professional fees and expenses incurred by any official committee appointed in the Chapter 11 Cases or the Agents, the Lenders and/or the Loan Parties or paid by the Loan Parties as adequate protection)).

“Budgeted Disbursements Test”: as defined in the definition of “Budget Event”.

“Budgeted Receipts Test”: as defined in the definition of “Budget Event”.

“Budget Event”: shall mean any of the following:

(a) the aggregate amount of actual receipts during any Budget Testing Period shall be less than the aggregate receipts in the Budget for such Budget Testing Period by an amount greater than the Permitted Variance (this clause (a), the “Budgeted Receipts Test”); or

(b) the aggregate amount of actual Budget Disbursements shall exceed the projected aggregate Budget Disbursements in the Budget for such Budget Testing Period by more than the Permitted Variance (this clause (b), the “Budgeted Disbursements Test”).

“Budget Testing Date” means (a) in the case of the Budgeted Receipts Test, the Wednesday of each week after the Petition Date, commencing with Wednesday, July 22, 2020, and (b) in the case of the Budgeted Disbursements Test, the Wednesday of each week after the Petition Date, commencing with Wednesday, July 8, 2020.

“Budget Testing Period” shall mean:

(a) for the Budgeted Receipts Test, (i) with respect to the first Budget Testing Date, the period beginning on Saturday, June 20, 2020 and ending on the Friday prior to such first Budget Testing Date and (ii) with respect to each Budget Testing Date thereafter, the period beginning on the fifth prior Saturday to such Budget Testing Date and ending on the Friday prior to such Budget Testing Date; and

(b) for the Budgeted Disbursements Test, (i) with respect to the first Budget Testing Date, the period beginning on Saturday, June 20, 2020 and ending on the Friday prior to such first Budget Testing Date, (ii) with respect to the second Budget Testing Date, the period beginning on Saturday, June 20, 2020 and ending on the Friday prior to such second Budget Testing Date, (iii) with respect to the third Budget Testing Date, the period beginning on Saturday, June 20, 2020 and ending on the Friday prior to such third Budget Testing Date, and (iv) with respect to each Budget Testing Date thereafter, the period beginning on the fifth prior Saturday to such Budget Testing Date and ending on the Friday prior to such Budget Testing Date.

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

“Canadian Anti-Corruption Laws”: the *Corruption of Foreign Public Officials Act* (Canada), *Special Economic Measures Act* (Canada), *the Freezing Assets of Corrupt Foreign Officials Act* (Canada), Part of the *Criminal Code* (Canada) and the *Export and Import Permits Act* (Canada), and any related regulations.

“Canadian Anti-Money Laundering Legislation”: the *Criminal Code* (Canada), *the Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and the *United Nations Act* (Canada), and any regulations thereunder.

“Canadian Defined Benefit Plan”: a Canadian Pension Plan which contains a “defined benefit provision,” as defined in subsection 147.1(1) of the *Income Tax Act* (Canada).

“Canadian Court”: as defined in the recitals hereto.

“Canadian Court DIP Recognition Order”: the Interim DIP Recognition Order and the Final DIP Recognition Order, as applicable.

“Canadian Dollars” and “C\$”: lawful currency of Canada.

“Canadian Guarantee and Collateral Agreement”: the Canadian Guarantee and Collateral Agreement, dated as of the Closing Date, executed and delivered by the Canadian Guarantor, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Canadian Guarantor”: General Nutrition Centres Company, an unlimited liability company organized under the laws of Nova Scotia.

“Canadian Pension Plan”: any pension plan maintained or sponsored by the Canadian Guarantor that is subject to the funding requirements of the Pension Benefits Act (Ontario), the *Income Tax Act* (Canada) or applicable pension benefits legislation in any other Canadian jurisdiction and is applicable to employees resident in Canada and to which the Canadian Guarantor is making or accruing an obligation to make contributions or has within the preceding five years made or accrued such contributions.

“Canadian Pension Termination Event”: (a) the withdrawal of the Canadian Guarantor from a Canadian Defined Benefit Plan which is “multi-employer pension plan”, as defined under applicable pension standards legislation, during a plan year, or (b) the filing of a notice of interest to terminate in whole or in part a Canadian Defined Benefit Plan or the filing of an amendment with the applicable Governmental Authority which terminates a Canadian Defined Benefit Plan, in whole or in part, or the treatment of an amendment as a termination or partial termination of a Canadian Defined Benefit Plan, (c) the institution of proceedings by any Governmental Authority to terminate a Canadian Defined Benefit Plan in whole or in part or have a replacement administrator or trustee appointed to administer a Canadian Defined Benefit Plan or (d) any other event or condition or declaration or application which might constitute grounds for the termination or winding up of a Canadian Defined Benefit Plan, in whole or in part, or the appointment by any Governmental Authority of a replacement administrator or trustee to administer a Canadian Defined Benefit Plan.

“Canadian Welfare Plan”: any medical, health, hospitalization, insurance or other employee benefit or welfare plan or arrangement of the Canadian Guarantor applicable to employees resident in Canada.

“Capital Expenditures”: for any period, with respect to any Person, the aggregate of all expenditures by such Person for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that are required to be capitalized under GAAP on a balance sheet of such Person, it being understood that Capital Expenditures do not include amounts expended to purchase assets constituting an on-going business.

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

“Capital Stock”: any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing, including convertible securities but excluding debt securities convertible or exchangeable into any of the foregoing.

“Carve Out” has the meaning specified in the Bankruptcy Court DIP Order.

“Cash Equivalents”: (a) United States and Canadian dollars; (b) in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business and not for speculation; (c) securities and other obligations issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (provided that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than one year from the date of acquisition; (d) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, demand deposits, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any Lender or with any domestic or foreign bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia or any U.S. branch of a foreign bank having, capital and surplus of not less than \$500,000,000; (e) repurchase obligations for underlying securities of the types described in clauses (c) and (d) above or clause (g) below entered into with any financial institution meeting the qualifications specified in clause (d) above; (f) commercial paper rated at least P-2 by Moody’s Investor Service, Inc. or at least A-2 by Standard & Poor’s Rating Services (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) and, in each case, maturing within one year after the date of acquisition; (g) marketable short-term money market and similar highly liquid funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency); (h) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an investment grade rating from either Moody’s or S&P (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) with maturities of one year or less from the date of acquisition; (i) Investments with average maturities of one year or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody’s (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency); (j) short-term obligations of, or fully guaranteed by, the government of Canada, (k) short-term obligations of, or fully guaranteed by, the government of a Province of Canada, in each case having a rating of "A-" (or the then equivalent grade) or better by a nationally recognized rating agency and (l) investment funds investing substantially all of their assets in Cash Equivalents of the kinds described in clauses (a) through (k) of this definition.

In the case of Investments by the Canadian Guarantor or by any Foreign Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a)



through (l) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by the Canadian Guarantor or by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (l) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents shall also include amounts denominated in currencies other than those set forth in clause (a) above, provided that such amounts are converted into Dollars as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

“Cash Management Order”: as defined in Section 4.1(k).

“Cash Management Services”: any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so-called “procurement cards” or “P-cards”), debit card, credit card, cash management and similar services and any automated clearing house transfer of funds.

“CCAA”: as defined in the recitals hereto.

“CFC”: a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change in Law”: (a) the adoption of any law, rule or regulation after the date of this Agreement or, if later, the date on which the applicable Lender becomes a Lender hereunder (a “Later Date”), (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or, if later, the date on which the applicable Lender becomes a Lender hereunder, or (c) compliance by any Lender (or, for purposes of Section 2.18(b), by any lending office of such Lender or by such Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement or, if later, the date on which the applicable Lender becomes a Lender hereunder. Notwithstanding anything herein to the contrary (i) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by United States or foreign regulatory authorities, in each case pursuant to Basel III, and (ii) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a Change in Law, regardless of the date enacted, adopted, issued or implemented.

“Change of Control”: the occurrence of any of the following events: (a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of Holdings or any of its Subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) shall become the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act),

directly or indirectly, of Capital Stock representing more than 51% of the ordinary voting power for the election of directors of Holdings (determined on a fully diluted basis but not giving effect to contingent voting rights which have not vested); (b) Parent shall cease to own and control, of record and beneficially, directly, 100% of each class of outstanding Capital Stock of the Borrower free and clear of all Liens (except Permitted Liens); or (c) Holdings shall cease to beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly) and control, directly or indirectly, 100% of each class of outstanding Capital Stock of the Parent.

“Chapter 11 Cases”: the meaning specified in the recitals hereto.

“Closing Date”: the first date all the conditions in Section 4.1 have been satisfied or waived which shall not be later than three Business Days after the Interim DIP Order Entry Date.

“Code”: the Internal Revenue Code of 1986, as amended from time to time.

“Collateral”: all Property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement and the “DIP Collateral” as defined in the Bankruptcy Court DIP Orders. The term “Collateral” shall not include any Excluded Assets.

“Collateral Agent”: as defined in the preamble hereto.

“Commitment”: with respect to any Lender, such Lender’s New Money Commitment and/or such Lender’s Roll-up Loans Commitment.

“Commonly Controlled Entity”: an entity, whether or not incorporated, that is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a group that includes the Borrower and that is treated as a single employer under Sections 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“Company Intellectual Property”: as defined in Section 3.9.

“Confirmation Date”: the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

“Confirmation Order”: an order of the Bankruptcy Court, in form and substance acceptable to the Required Lenders, confirming the Approved Plan of Reorganization.

“Contractual Obligation”: with respect to any Person, any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

“Credit Party”: the Administrative Agent, the Collateral Agent or any Lender.

“Debtor Relief Laws”: the Bankruptcy Code of the United States, the Bankruptcy and Insolvency Act (Canada), the Companies’ Creditors Arrangement Act (Canada), the Winding Up and Restructuring Act (Canada), and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States, Canada or other applicable jurisdictions from time to time in effect.

“Default”: any of the events specified in Section 7, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Defaulting Lender”: any Lender that (a) has failed, within three Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or the Administrative Agent in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after written request by the Administrative Agent, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans (unless such Lender indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan under this Agreement cannot be satisfied) under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the Administrative Agent’s receipt of such certification in form and substance reasonably satisfactory to the Administrative Agent, or (d) has become the subject of a Bankruptcy Event or Bail-in Action. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

“DIP Funding Account”: the account in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent in which the proceeds of the New Money Loans shall be deposited and held.

“DIP Superpriority Claim”: allowed superpriority administrative expense claims granted by the Bankruptcy Court DIP Order to the Administrative Agent, on behalf of itself and

the Lenders, pursuant to Bankruptcy Code sections 364(c)(1), as set forth in the Bankruptcy Court DIP Order (a) with priority over any and all administrative expense claims and unsecured claims against the Loan Parties or their estates in any of the Chapter 11 Cases or in any other proceedings superseding or related to any of the foregoing, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code or any other provision of the Bankruptcy Code and (b) which shall at all times be senior to the rights of the Loan Parties and their estates, and any successor trustee or other estate representative to the extent permitted by law.

“Disposition”: with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof (excluding Liens); and the terms “Dispose” and “Disposed of” shall have correlative meanings.

“Disqualified Capital Stock”: any Capital Stock which, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Capital Stock which is not otherwise Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Capital Stock which is not otherwise Disqualified Capital Stock), in whole or in part, (iii) provides for the scheduled payments or dividends in cash, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the date that is 91 days after the Maturity Date at the time of issuance, except, in the case of clauses (i) and (ii), if as a result of a change of control event or asset sale or other Disposition or casualty event, so long as any rights of the holders thereof to require the redemption thereof upon the occurrence of such a change of control event or asset sale or other Disposition or casualty event are subject to the prior payment in full of the Obligations; provided that if such Capital Stock is issued pursuant to a plan for the benefit of employees of Parent, the Borrower or any of its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by Parent, the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Disqualified Institution”:

- (1) any Person that is or controls a competitor of the Borrower or any of its Subsidiaries and is identified by the Borrower in writing to the Administrative Agent from time to time prior to, on or after the Closing Date; or
- (2) any Affiliate of any of the foregoing Persons that is (i) reasonably identifiable solely on the basis of the similarity of such Affiliate’s name (but excluding any such Affiliate that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and

with respect to which such foregoing Person does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such Affiliate) or (ii) identified by the Borrower to the Administrative Agent in writing from time to time prior to, on or after the Closing Date.

“Dollars” and “\$”: lawful currency of the United States of America.

“Domestic Subsidiary”: a Restricted Subsidiary that is incorporated, organized or otherwise formed under the laws of the United States, any State thereof or the District of Columbia.

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

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

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

“Election Deadline”: 5:00 pm eastern time on the date that is ten (10) Business Days following the entry of the Interim DIP Order.

“Eligible Assignee”: (i) any Lender, any Affiliate of a Lender and any Approved Fund, (ii) any commercial bank, insurance company, investment or mutual fund or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933) and which extends credit or buys loans in the ordinary course, and (iii) solely for the purpose of Section 10.6, any Loan Party that is a Wholly Owned Subsidiary and a Domestic Subsidiary and a disregarded entity for tax purposes.

“Environmental Laws”: any and all laws, rules, orders, regulations, statutes, ordinances, enforceable guidelines, codes, decrees, or other legally enforceable requirements of any international authority, foreign government, the United States or Canada, or any state, provincial, territorial, local, municipal or other governmental authority, regulating, relating to or imposing liability or standards of conduct for protection of the environment or of human health, or employee health and safety (as it relates to exposure to Hazardous Materials).

“Environmental Liability”: any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Restricted Subsidiary resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or

threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permits”: any and all permits, licenses, approvals, registrations, and other authorizations of a Governmental Authority required under any Environmental Law.

“ERISA”: the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Event” means (i) a Reportable Event with respect to any Single Employer Plan (excluding those for which the provision for 30 day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Single Employer Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Single Employer Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Single Employer Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by any Borrower or Commonly Controlled Entity from any Single Employer Plan with two or more contributing sponsors or the termination of any such Single Employer Plan resulting in liability to any Borrower or Commonly Controlled Entity pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Single Employer Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Single Employer Plan; (vi) the imposition of liability on any Borrower or Commonly Controlled Entity pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of any Borrower or Commonly Controlled Entity in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by any Borrower or Commonly Controlled Entity of notice from any Multiemployer Plan that it is in Insolvency, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or Section 4068 of ERISA upon the property and rights to property belonging to any Borrower or Commonly Controlled Entity; or (ix) a Canadian Pension Termination Event.

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

“Eurodollar”: when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default”: any of the events specified in Section 7, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Exchange Act”: the Securities Exchange Act of 1934, as amended.

“Excluded Assets”: the collective reference to:

(1) any licenses, franchises, charters and authorizations of a Governmental Authority to the extent a security interest therein under the Loan Documents is prohibited by or would require the consent, license or approval of any Governmental Authority (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition);

(2) any asset if the granting of a security interest under the Loan Documents in such asset would be prohibited by any (x) law, treaty, rule or regulation (including all applicable regulations and laws regarding assignments of and security interests in, government receivables) or a court or other Governmental Authority or would require the consent, license or approval of any Governmental Authority (other than proceeds thereof, to the extent the assignment of such proceeds is effective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition and the assignment of such proceeds is not prohibited by applicable law and does not require the consent, license or approval of any Governmental Authority) or (y) contractual obligation (only to the extent such restriction is binding on such asset (i) on the Closing Date or (ii) on the date of the acquisition thereof and not entered into in contemplation thereof) (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition);

(3) any lease, license or other agreement to the extent that a grant of a security interest therein under the Loan Documents would violate or invalidate such lease, license or agreement (except any such lease, license or agreement among Holdings and its Wholly-Owned Subsidiaries and except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition);

(4) Capital Stock (i) in any Person that is not a Wholly-Owned Subsidiary to the extent the pledge or other granting of a security interest under the Loan Documents in such Capital Stock would be prohibited by, or require a consent or approval under, organizational or governance documents or shareholders’ or similar agreements of or with respect to such Person (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order, or other applicable law notwithstanding such prohibition) and (ii) in Unrestricted Subsidiaries, broker-dealer Subsidiaries, not-for-profit Subsidiaries and captive insurance Subsidiaries;

(5) any assets subject to a Lien permitted by Section 6.3(j) or 6.3(q) to the extent the documents governing such Lien prohibit, or require a consent or approval in order for, such assets to be subject to the Liens created by the Loan Documents (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP order or other applicable law notwithstanding such prohibition);

(6) any United States (or Canadian) intent-to-use application for registration of a trademark or service mark prior to the acceptance by the United States Patent and Trademark Office (or the Canadian Intellectual Property Office) of a statement of use or an amendment to allege use, to the extent and for so long as the grant of a security interest therein would impair the validity or enforceability of, or render void or voidable or result in the cancellation of, a Loan Party's right, title or interest therein or any trademark or service mark registration issued therefrom;

(7) assets sold or otherwise disposed of to a Person who is not a Loan Party in compliance with Section 6.5;

(8) "margin stock" within the meaning of Regulation U;

(9) segregated trust fund accounts, payroll accounts, accounts used solely for making payments in respect of withholding taxes and employee benefits, trust accounts, escrow accounts for the benefit of unaffiliated third parties, and the cash collateral account established pursuant to the LC Cash Collateral Agreement (collectively, the "Excluded Accounts");

(10) assets of broker-dealer Subsidiaries, not-for-profit Subsidiaries and captive insurance Subsidiaries;

(11) "consumer goods" (as defined in the PPSA);

(12) any Receivables for which the account debtor is incorporated or located in Iran; and

(13) any Avoidance Actions (other than the proceeds thereof);

provided that (a) in the case of clauses 2(y), (3) and (5), such exclusion shall not apply (i) to the extent the prohibition or restriction is ineffective under Section 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code, the Bankruptcy Code or other applicable law or (ii) to proceeds of the assets referred to in such clause, the assignment of which is expressly deemed effective under Section 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code, the Bankruptcy Code or other applicable law and (b) assets described above shall no longer be "Excluded Assets" upon termination of the applicable prohibition or restriction described above that caused such assets to be treated as "Excluded Assets".

"Excluded Domestic Subsidiaries": GNC Intermediate IP Holdings, LLC, GNC Intellectual Property Holdings, LLC, Nutra Insurance Company, GNC Newco Parent LLC and GNC Supply Purchaser, LLC.

"Excluded Subsidiary": (a) [reserved], (b) [reserved], (c) [reserved], (d) [reserved], (e) the Excluded Domestic Subsidiaries, (f) any Restricted Subsidiary which is a limited partnership of which the Borrower or a Guarantor does not constitute the general partner, (g) [reserved], (h) any Subsidiary to the extent such Subsidiary's guaranteeing any of the Obligations or otherwise becoming a Loan Party is prohibited or restricted by any Requirement of Law or requires the consent, approval, license or authorization of any Governmental Authority (unless such consent, approval, license or authorization has been obtained (it being agreed that



the Borrower shall be under no obligation to seek the same)), (i) not-for-profit Subsidiaries, (j) any Subsidiary which is not a Wholly-Owned Subsidiary of Parent, (k) captive insurance Subsidiaries, (l) broker-dealer Subsidiaries, (m) special purpose receivables Subsidiaries, (n) [reserved], and (o) any Subsidiary with respect to which (i) the Administrative Agent and the Borrower reasonably agree that the cost or other consequences of providing a guarantee or granting Liens to secure the Obligations are likely to be excessive in relation to the value to be afforded thereby or (ii) in the case of any Person that becomes a Subsidiary after the Closing Date, providing such a guarantee or granting such Liens would reasonably be expected to result in material adverse tax consequences as determined in good faith by the Borrower and consented to by the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed); provided that any Subsidiary described above shall be deemed not to be an Excluded Subsidiary if the Borrower has notified the Administrative Agent in writing that such Subsidiary should not be treated as an Excluded Subsidiary (and solely for purposes of Section 5.10(c) and the Security Documents, such Subsidiary shall be deemed to have been acquired at the time such notice is received by the Administrative Agent).

“Excluded Taxes”: with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Loan Parties hereunder, (a) Taxes imposed on (or measured by) its overall net income (however denominated), franchise or similar Taxes imposed on it (in each case, in lieu of net income Taxes) and Backup Withholding Taxes imposed on it by (i) the United States of America, (ii) the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office or the office to which its interests, rights and obligations under this Agreement are assigned is located or (iii) any other jurisdictions (or any political subdivision thereof) as a result of a present or former connection between the Administrative Agent, such Lender or other recipient and such jurisdiction imposing such Tax other than a connection arising as a result of the execution or delivery of, receipt of any payments, exercise of any rights or performance of any obligations under, enforcement of or any transaction or other activities related to any Loan Document, (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction in which the Borrower is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.22(b)), any United States federal withholding Tax that is in effect and would apply to amounts payable (including, for the avoidance of doubt, commitment fees and other consent, amendment and similar fees) to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 2.20(a), (d) any Taxes that are attributable to a Foreign Lender’s failure to comply with Section 2.20(e)(i), and (e) any Taxes imposed under, or as a result of the failure of such recipient to satisfy the applicable requirements under, FATCA.

“Existing Letters of Credit”: the letters of credit set forth on Schedule 1.1(a).

“Exit Conversion”: the meaning specified in Section 2.23(a).

2.23(b)(i). “Exit Term Loan Facility Credit Agreement”: the meaning specified in Section

I. “Exit Term Loan Facility Term Sheet”: the Term Sheet attached hereto as Exhibit

“Facility”: the Loans and Commitments made available to the Borrower under this Agreement.

“FATCA”: Sections 1471 through 1474 of the Code, as in effect on the date of this Agreement or any successor provision that is substantially the equivalent thereof, any current or future regulations or official interpretations thereof (including any revenue ruling, revenue procedure, notice or similar guidance issued by the Internal Revenue Service thereunder as a precondition to relief or exemption from Taxes under such provisions and including any agreements entered into pursuant to Section 1471(b)(1) of the Code) and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

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

“Final DIP Recognition Order”: an order of the Canadian Court in the Recognition Proceedings, in form and substance satisfactory to the Required Lenders in their sole discretion, recognizing and enforcing the Final DIP Order in Canada.

“Final DIP Order”: the final order of the Bankruptcy Court, approving the Facility on a final basis, in form and substance satisfactory to the Required Lenders, as the same may be amended, modified or supplemented from time to time with the express written consent of the Required Lenders.

“Final DIP Order Entry Date”: the date on which the Final DIP Order is entered on the docket of the Bankruptcy Court.

“Final Loan”: the Loan made on or after the Final DIP Order Entry Date.

“First-Lien First Out Loans”: as defined in the Exit Term Loan Facility Term Sheet.

“First-Lien Second Out Loans”: as defined in the Exit Term Loan Facility Term Sheet.

“Flood Insurance Laws”: collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute

thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Lender”: any Lender that is organized under the laws of a jurisdiction other than that of the United States of America. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary”: any Subsidiary of the Borrower (other than the Canadian Guarantor and other than GNC Puerto Rico LLC) that is not a Domestic Subsidiary.

“GAAP”: generally accepted accounting principles in the United States of America as in effect from time to time.

“GNC Parent LLC”: as defined in the preamble hereto.

“Governmental Authority”: any nation or government, any state, province, territory or other political subdivision thereof and any other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government.

“Guarantee and Collateral Agreement”: the Guarantee and Collateral Agreement, dated as of the Closing Date, executed and delivered by Parent, the Borrower and each Subsidiary Guarantor (other than the Canadian Guarantor), as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Guarantee Obligation”: with respect to any Person (the “guaranteeing person”), any obligation of the guaranteeing person guaranteeing or having the economic effect of guaranteeing any Indebtedness, lease payments, dividend payments or other economic obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security for such primary obligation, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, in each case, so as to enable the primary obligor to pay such primary obligation, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation (or portion thereof) in respect of

which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

“Guarantors”: the collective reference to Holdings, GNC Parent LLC, Parent, the Canadian Guarantor and the Subsidiary Guarantors.

“Hazardous Materials”: (i) petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and explosive or radioactive substances or (ii) any chemical, material, waste, substance or pollutant that is prohibited, limited or regulated pursuant to any Environmental Law.

“Hedge Agreements”: all interest rate or currency swaps, caps or collar agreements, foreign exchange agreements, commodity contracts or similar arrangements entered into by the Borrower or its Restricted Subsidiaries providing for protection against fluctuations in interest rates, currency exchange rates, commodity prices or the exchange of nominal interest obligations, either generally or under specific contingencies.

“Holdings”: as defined in the preamble hereto.

“Impacted Interest Period”: as defined in the definition of “LIBO Rate”.

“Indebtedness”: of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of Property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out obligation unless such obligation is not paid after becoming due and payable or appears as a liability on the balance sheet of such Person and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property), but limited to the lesser of the fair market value of such Property and the principal amount of such Indebtedness if recourse is solely to such Property, (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under bankers' acceptances, letters of credit, surety bonds and similar instruments (except unsecured and unmatured reimbursement obligations in respect thereof obtained in the ordinary course of business to secure the performance of obligations that are not Indebtedness pursuant to another clause of this definition), (g) the liquidation value of all Disqualified Capital Stock of such Person, to the extent mandatorily redeemable in cash prior to the date which is the 91<sup>st</sup> day after the Maturity Date (other than in connection with change of control events and asset sales and other Disposition and casualty events to the extent that the terms of such Capital Stock provide that such Person may not redeem any such Capital Stock in connection with such change of control

event or asset sale or other Disposition or casualty event unless such redemption is subject to the prior payment in full of the Obligations), (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above; (i) all obligations of the kind referred to in clauses (a) through (h) above secured by any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligations (but limited to the lesser of the fair market value of such Property and the principal amount of such obligations) and (j) the net obligations of such Person in respect of Hedge Agreements solely for the purposes of Section 6.2 and Section 7.

“Indemnified Taxes”: Taxes other than Excluded Taxes.

“Information Officer”: FTI Consulting Canada Inc., in its capacity as court-appointed information officer in connection with the Recognition Proceedings.

“Initial Recognition Order” means an order of the Canadian Court, in form and substance acceptable to the Required Lenders in their sole discretion, among other things, recognizing the Chapter 11 Cases as foreign main proceedings under Part IV of the CCAA.

“Insolvency”: with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

“Insolvent”: pertaining to a condition of Insolvency.

“Intellectual Property”: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, Canadian, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, service marks, technology, know-how and processes, recipes, formulas, trade secrets, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Intercreditor Agreements”: the Prepetition Intercreditor Agreement and any other intercreditor agreement entered into by or among any Representatives and the Loan Parties, in each case as in effect from time to time.

“Interest Election Request”: a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.10.

“Interest Payment Date”: (a) with respect to any ABR Loan, the last day of each month, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and the Maturity Date of the Facility.

“Interest Period”: with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two or three months thereafter, provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next

succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim DIP Order”: the order of the Bankruptcy Court, approving the Facility on an interim basis, substantially in the form of Exhibit J hereto.

“Interim DIP Order Entry Date”: the date on which the Interim DIP Order is entered on the docket of the Bankruptcy Court.

“Interim DIP Recognition Order”: the order issued by the Canadian Court in form and substance acceptable to the Required Lenders in their sole discretion, which shall have been issued by the Canadian Court no later than three (3) Business Days after the entry of the Interim DIP Order and shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of the Required Lenders. For the avoidance of doubt the Interim DIP Recognition Order may be part of the Supplemental Order.

“Interim CCAA Order”: the order issued by the Canadian Court in form and substance acceptable to the Required Lenders in their sole discretion, which provides, among other things, an interim stay against the Loan Parties in Canada and which order shall have been entered by the Canadian Court as soon as practicable after the filing of the Chapter 11 Cases and before the “first day” hearing before the Bankruptcy Court.

“Interpolated Rate”: as defined in the definition of “LIBO Rate”.

“Investments”: as defined in Section 6.8.

“IRS”: the United States Internal Revenue Service.

“LC Cash Collateral Agreement”: the Cash Collateral Agreement, dated as of [●], 2020, between General Nutrition Centers, Inc. and JPMorgan Chase Bank, N.A.

“Lender Parties”: as defined in Section 9.16.

“Lenders”: the Persons listed on Schedule 2.1 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“LIBO Rate”: with respect to any Eurodollar Borrowing for any Interest Period, the London interbank offered rate as administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for Dollars for a period equal in

length to such Interest Period as displayed on page LIBOR01 or LIBOR02 of the Reuters Screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; in each case, the “Screen Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the Screen Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement; provided, further, that, if the Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”) with respect to Dollars, then the LIBO Rate shall be the Interpolated Rate at such time. “Interpolated Rate” means, at any time, the rate per annum (rounded to the same number of decimal places as the Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the Screen Rate for the longest period (for which that Screen Rate is available in Dollars) that is shorter than the Impacted Interest Period and (b) the Screen Rate for the shortest period (for which that Screen Rate is available for Dollars) that exceeds the Impacted Interest Period, in each case, at such time.

“Lien”: any mortgage, pledge, hypothecation, security assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing); provided that in no event shall an operating lease in and of itself constitute a Lien.

“Loan”: any loan made by any Lender pursuant to this Agreement.

“Loan Documents”: this Agreement, the Security Documents, the Prepetition Intercreditor Agreement, the Bankruptcy Court DIP Order, the Notes and any other agreement, instrument, report and other document evidencing or securing any Obligation.

“Loan Parties”: the Borrower and the Guarantors.

“Material Adverse Effect”: (a) a material adverse effect on the business, assets, liabilities, financial condition or results of operations of the Loan Parties and their Restricted Subsidiaries, taken as a whole, (b) a material and adverse effect on the rights and remedies of the Administrative Agent, the Collateral Agent and Lenders, taken as a whole, under the Loan Documents or (c) a material and adverse effect on the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents; provided that none of the following shall constitute a Material Adverse Effect under clause (a) hereof: (i) the COVID-19 pandemic and the direct and indirect effects of the COVID-19 pandemic on the Loan Parties (provided that the exception in this clause (i) shall not apply to the extent that such pandemic and the direct and indirect effects thereof are disproportionately adverse to the Loan Parties, taken as whole, as compared to other companies in similar lines of business that the Loan Parties operate), (ii) the Chapter 11 Cases, Recognition Proceedings and/or the events and conditions related and/or leading up to or following the commencement of the Chapter 11 Cases and Recognition Proceedings, (iii) any defaults under agreements that are stayed under the

Bankruptcy Code or CCAA, as applicable, as a result of the Chapter 11 Cases or Recognition Proceedings, (iv) reduction in payment terms by suppliers, reclamation claims, and any “going concern” or other qualification, exception or explanatory note in the Loan Parties’ audited financial statements, (v) any matters publicly disclosed prior to the Closing Date, (vi) any matters disclosed in the “first day orders” and “second day orders” entered by the Bankruptcy Court at the time of the commencement of the Chapter 11 Cases, and (vii) any matters disclosed in the Schedules hereto.

“Material Debt”: Indebtedness (other than Indebtedness constituting Obligations), or obligations in respect of one or more Hedge Agreements (other than to the extent constituting Obligations), of any one or more of Parent, the Borrower or any Restricted Subsidiary in an aggregate principal amount exceeding \$2,000,000. For purposes of determining Material Debt, the “obligations” of Parent, the Borrower or any Restricted Subsidiary in respect of any Hedge Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Parent, the Borrower or such Restricted Subsidiary would be required to pay if such Hedge Agreement were terminated at such time.

“Maturity Date”: the earliest to occur of (i) [●]<sup>1</sup>, (ii) the date that is 35 days (or such later date as the Required Lenders may agree) after the Petition Date if the Final DIP Order has not been entered prior to the expiration of such 35-day period, (iii) the date the Bankruptcy Court orders the conversion of the Chapter 11 Cases to a Chapter 7 liquidation or the dismissal of the Chapter 11 Cases, (iv) the acceleration of the Loans and the termination of the Commitment under the Facility, (v) the sale of all or substantially all of the Loan Parties’ assets and (vi) the consummation of a Chapter 11 plan of reorganization for the Loan Parties; provided that if the Exit Conversion occurs, the Loans shall not be paid in cash and shall convert in accordance with the terms and conditions set forth in Section 2.23.

“Maximum Rate”: as defined in Section 9.17.

“Milestones”: the “DIP Term Milestones” as defined in the Bankruptcy Court DIP Order (which Milestones may be extended in writing by the Required Lenders).

“Moody’s”: Moody’s Investor Services, Inc.

“Multiemployer Plan”: a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower or any Commonly Controlled Entity contributes or has an obligation to contribute or with respect to which the Borrower or any Commonly Controlled Entity has any liability (including if such liability was imposed pursuant to Section 4212(c) of ERISA).

“Net Cash Proceeds”: (a) in connection with any Recovery Event, the proceeds thereof received by the Loan Parties in the form of cash and Cash Equivalents of such Recovery Event, net of the sum of (i) out-of-pocket attorneys’ fees, accountants’ fees and investment banking and advisory fees incurred by the Loan Parties in connection with such Recovery Event, (ii) principal, premium or penalty, interest and other amounts required to be paid in respect of Indebtedness secured by the asset subject to such Recovery Event and that is required to be

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<sup>1</sup> To be date that is 6 months from Petition Date.



repaid in connection with such Recovery Event (other than Indebtedness under the Loan Documents), (iii) other out-of-pocket fees and expenses actually incurred in connection therewith, (iv) taxes (and the amount of any distributions made pursuant to Section 6.6 to permit Parent or any direct or indirect parent company of the Parent to pay taxes) (including, without limitation, sales, transfer, deed or mortgage recording taxes) paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (v) in the case of any Recovery Event by a Restricted Subsidiary that is not a Wholly Owned Subsidiary, the pro-rata portion of the Net Cash Proceeds thereof (calculated without regard to this clause (v)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a Restricted Subsidiary that is a Wholly Owned Subsidiary as a result thereof and (vi) any reserve established in accordance with GAAP; provided that such reserved amounts shall be Net Cash Proceeds to the extent and at the time of any reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any such reserve, and (b) in connection with any issuance or incurrence of any Indebtedness or Capital Stock, the cash proceeds received by the Loan Parties from such issuance or incurrence, net of attorneys' fees, investment banking and advisory fees, accountants' fees, underwriting discounts and commissions and other customary fees, costs and expenses actually incurred in connection therewith, any swap breakage costs and other termination costs related to Hedge Agreements and any other fees and expenses actually incurred in connection therewith), in each case as determined reasonably and in good faith by a Responsible Officer of the Borrower.

"New Money Commitment" means as to each Lender, its obligation to make a New Money Loan to Borrower hereunder, expressed as an amount representing the maximum principal amount of New Money Loans to be made by such Lender under this Agreement, as such commitment may be reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to an Assignment and Assumption or an election joinder in the form of Exhibit G. The amount of each Lender's New Money Commitment is set forth on Schedule 2.1 under the caption "New Money Loans" or, otherwise, in the Assignment and Assumption or election joinder pursuant to which such Lender shall have assumed its New Money Commitment, as the case may be. The aggregate amount of the New Money Commitments on the Closing Date is \$100,000,000.

"New Money Loans": the Loans made pursuant to Section 2.1 under the New Money Commitment.

"Non-Consenting Lender": as defined Section 2.22(c).

"Nonpublic Information": information which has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD.

"Note": any promissory note evidencing any Loan substantially in the form of Exhibit D hereto.

"NYFRB": the Federal Reserve Bank of New York.

“NYFRB Rate”: for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement; provided, further, that the NYFRB Rate shall in no event be determined for any day to be lower than the Federal Funds Effective Rate for such day (to the extent that the Federal Funds Effective Rate is published for such day or for the immediately preceding Business Day).

“Obligations”: the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans and all other obligations and liabilities of the Loan Parties to the Administrative Agent, the Collateral Agent or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement or any other Loan Document, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to the Administrative Agent, to the Collateral Agent or to any Lender that are required to be paid by the Borrower pursuant hereto).

“Operating Account”: the deposit account established by the Borrower for the purpose of receipt of the Withdrawals and proceeds of Collateral.

“Organizational Documents”: with respect to any Person, (i) in the case of any corporation, the certificate of incorporation or articles of incorporation and by-laws (or similar constitutive documents) of such Person, (ii) in the case of any limited liability company, the certificate or articles of formation or organization and operating agreement (or similar constitutive documents) of such Person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar constitutive documents) of such Person, (iv) in the case of any general partnership, the partnership agreement (or similar constitutive document) of such Person, (v) in the case of any unlimited liability company, the memorandum of association, and (vi) in any other case, the functional equivalent of the foregoing.

“Other Taxes”: any and all present or future recording, stamp or documentary or any other excise or property Taxes, charges or similar levies imposed by any Governmental Authority arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Overnight Bank Funding Rate”: for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.-managed banking offices

of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Parent”: as defined in the preamble hereto.

“Participant”: as defined in Section 9.4(c).

“PBGC”: the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

“Permitted Liens”: Liens permitted by Section 6.3.

“Permitted Variance”: for purposes of testing whether a Budget Event has occurred, during any Budget Testing Period, a variance of, (a) with respect to the Budgeted Receipts Test, 15% and (b) with respect to the Budgeted Disbursements Test, 15% for the first two Budget Testing Periods and 10% for each subsequent Budget Testing Period.

“Person”: an individual, partnership, corporation, limited liability company, unlimited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Petition Date”: June [●], 2020.

“Plan”: at a particular time, any employee benefit plan that is covered by ERISA and in respect of which the Borrower or a Commonly Controlled Entity is (or, if such Plan were terminated at such time, would under Section 4062 or Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Platform”: as defined in Section 5.2.

“Pledged Capital Stock”: as defined in the Guarantee and Collateral Agreement.

“PPSA”: the Personal Property Security Act (Ontario) or the equivalent legislation (including the *Civil Code* (Quebec)) in any other applicable province or territory of Canada.

“Prepetition ABL Agent”: JPMorgan Chase Bank, N.A., in its capacity as administrative agent under any of the Prepetition ABL Loan Documents or any successor administrative agent.

“Prepetition ABL Agreement”: that certain ABL Credit Agreement, dated as of February 28, 2018 (the “Prepetition Credit Closing Date”) (as amended by that certain First Amendment, dated as of March 20, 2018, that certain Second Amendment, dated as of May 15, 2020, and that certain Third Amendment, dated as of June 12, 2020), among Parent, the Borrower, the Subsidiaries party thereto as borrowers, the several banks and other financial institutions or entities from time to time party thereto as lenders and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

“Prepetition ABL Loan Documents”: the Prepetition ABL Agreement and the other “Loan Documents” under and as defined in the Prepetition ABL Agreement.

“Prepetition ABL Loan Indebtedness”: Indebtedness of Parent, the Borrower or any Guarantor outstanding, or secured, under the Prepetition ABL Loan Documents.

“Prepetition ABL/FILO Amendment and Restatement”: an amendment and restatement to the Prepetition ABL Agreement in form and substance satisfactory to the Required Lenders and providing for the rolling up of the Prepetition FILO Loans.

“Prepetition Agents”: the Prepetition Term Loan Agent and the Prepetition ABL Agent.

“Prepetition Convertible Notes Documents”: the Prepetition Convertible Notes Indenture and the other documents evidencing Indebtedness for borrowed money executed in connection therewith.

“Prepetition Convertible Notes Indenture”: as defined in the definition of “Prepetition Convertible Senior Notes”.

“Prepetition Convertible Senior Notes”: the 1.50% Convertible Senior Notes due August 15, 2020 issued under that certain indenture dated as of August 10, 2015, among Holdings, Parent, the Borrower and the other subsidiaries party thereto, and Bank of New York Mellon Trust Company, N.A., as trustee (such indenture, the “Prepetition Convertible Notes Indenture”).

“Prepetition Convertible Senior Note Indebtedness”: Indebtedness of Holdings, the Borrower or any Guarantor under the Prepetition Convertible Notes Documents.

“Prepetition Credit Closing Date”: as defined in the definition of “Prepetition ABL Agreement”.

“Prepetition FILO Lenders”: the lenders of the Prepetition FILO Loans.

“Prepetition FILO Loans”: the “FILO Term Loans” under and as defined in the Prepetition ABL Agreement.

“Prepetition Intercreditor Agreement”: the Intercreditor Agreement, dated as of February 28, 2018, by and among the Prepetition Term Loan Agent, the Prepetition Term Loan Collateral Agent, the Prepetition ABL Agent, Parent, the Borrower and its Restricted Subsidiaries parties thereto, as amended, restated, supplemented or otherwise modified from time to time.

“Prepetition Lenders”: the Prepetition Term Loan Lenders, the Prepetition FILO Lenders and the Prepetition Revolving Lenders.

“Prepetition Loan Documents”: the Prepetition ABL Loan Documents, the Prepetition Term Loan Documents and the Prepetition Convertible Notes Documents.

“Prepetition Obligations”: the Prepetition Term Loan Obligations, the Prepetition ABL Loan Indebtedness and the Prepetition Convertible Senior Note Indebtedness.

“Prepetition Revolving Lenders”: the lenders of the Prepetition Revolving Loans.

“Prepetition Revolving Loans”: the “Revolving Credit Loans” under and as defined in the Prepetition ABL Agreement.

“Prepetition Term Loan Agent”: JPMorgan Chase Bank, N.A., in its capacity as administrative agent under the Prepetition Term Loan Documents or any other successor administrative agent.

“Prepetition Term Loan Agreement”: that certain Amended and Restated Term Loan Credit Agreement, dated as of February 28, 2018 (as amended by that certain First Amendment, dated as of May 15, 2020, and that certain Second Amendment, dated as of June 12, 2020, and as may be further amended, amended and restated, supplemented or otherwise modified from time to time), among Parent, the Borrower, the several banks and other financial institutions or entities from time to time party thereto as lenders, the Prepetition Term Loan Collateral Agent and the Prepetition Term Loan Agent.

“Prepetition Term Loan Collateral Agent”: GLAS Trust Company LLC, in its capacity as collateral agent under any of the Prepetition Term Loan Documents or any successor collateral agent.

“Prepetition Term Loan Documents”: the “Loan Documents” as defined in the Prepetition Term Loan Agreement.

“Prepetition Term Loan Lenders”: the lenders of the Prepetition Term Loans.

“Prepetition Term Loan Obligations”: the “Obligations” under and as defined in the Prepetition Term Loan Agreement.

“Prepetition Term Loans”: the “Loans” under and as defined in the Prepetition Term Loan Agreement.

“Primary Related Parties”: as defined in Section 9.3(b).

“Prime Rate”: the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent in its reasonable discretion) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent in its reasonable discretion). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Professional Fees”: to the extent allowed at any time, whether by interim or final compensation order, all unpaid fees and expenses incurred by persons or firms retained by the Loan Parties pursuant to sections 327, 328, or 363 of the Bankruptcy Code.

“Property”: any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

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

“Qualified Capital Stock”: Capital Stock that is not Disqualified Capital Stock.

“Receivable”: as defined in the Guarantee and Collateral Agreement.

“Recognition Proceedings” has the meaning specified in the recitals hereto.

“Recovery Event”: any settlement of, or payment in respect of, any property or casualty insurance claim or any condemnation proceeding relating to any asset of the Borrower or any of its Restricted Subsidiaries (other than assets consisting of ABL Priority Collateral or otherwise subject to a Permitted Lien).

“Register”: as defined in Section 9.4(b)(iv).

“Regulation FD”: Regulation FD as promulgated by the US Securities and Exchange Commission under the Securities Act and Exchange Act as in effect from time to time.

“Regulation U”: Regulation U of the Board as in effect from time to time.

“Reinvestment Deferred Amount”: with respect to any Reinvestment Event, the aggregate amount of Net Cash Proceeds received by the Borrower or any of its Restricted Subsidiaries in connection therewith that are not applied to prepay the Term Loans pursuant to Section 2.15(b) as a result of the delivery of a Reinvestment Notice.

“Reinvestment Event”: any Recovery Event in respect of which the Borrower has delivered a Reinvestment Notice.

“Reinvestment Notice”: a written notice executed by a Responsible Officer stating that the Borrower (or a Restricted Subsidiary) intends and expects to use all or a portion of the amount of Net Cash Proceeds of a Recovery Event to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets useful in its or such Restricted Subsidiary’s business.

“Reinvestment Prepayment Amount”: with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets useful in the Borrower’s or a Restricted Subsidiary’s business.

“Reinvestment Prepayment Date”: with respect to any Reinvestment Event, the earlier of (a) the date occurring six months after such Reinvestment Event and (b) the date on which the Borrower shall have determined not to, or shall have otherwise ceased to, restore, rebuild, repair, construct, improve, replace or otherwise acquire assets useful in the Borrower’s or the applicable Restricted Subsidiary’s business with all or any portion of the relevant Reinvestment Deferred Amount.

“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.

“Replacement Liens”: with respect to any Lien, any modification, replacement, renewal or extension of such Lien; provided that (i) such modification, replacement, renewal or extension of such Lien does not extend to any additional property other than (A) after-acquired property (to the extent such after-acquired property would have been subject to such Lien prior to such modification, replacement, renewal or extension) and (B) proceeds and products thereof, and (ii) any Indebtedness secured by such Liens is permitted by Section 6.2.

“Reportable Event”: any of the “reportable events” set forth in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Single Employer Plan, other than those events as to which notice is waived pursuant to PBGC Regulation § 4043 as in effect on the Closing Date (no matter how such notice requirement may be changed in the future).

“Representative”: with respect to Indebtedness permitted to be incurred pursuant to Section 6.2 (and permitted to be secured by all or any portion of the Collateral pursuant to Section 6.3), the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“Required Lenders”: at any time, the holders of more than 50% of the aggregate unpaid principal amount of the Loans then outstanding.

“Requirement of Law”: as to any Person, the Certificate of Incorporation and By Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Requirement of Tax Law”: as to any Person, any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority relating to Taxes, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Resignation Effective Date”: as defined in Section 8.9.

“Responsible Officer”: as to any Person, the chief executive officer, president, chief financial officer, chief accounting officer, comptroller, treasury manager, treasurer or assistant treasurer of such Person, but in any event, with respect to financial matters, the chief

financial officer, chief accounting officer, comptroller, treasurer or assistant treasurer of such Person. Unless otherwise qualified, all references to a “Responsible Officer” shall refer to a Responsible Officer of the Borrower.

“Restricted Payments”: as defined in Section 6.6.

“Restricted Subsidiary”: any Subsidiary other than an Unrestricted Subsidiary.

“Restructuring Support Agreement”: that certain Restructuring Support Agreement dated as of June [●], 2020 among the Borrower, the other Loan Parties party thereto, and the Prepetition Term Loan Lenders and Prepetition FILO Lenders that are “Consenting Creditors” thereunder.

“Returns”: with respect to any Investment, any dividends, distributions, return of capital and other amounts received or realized in respect of such Investment.

“Revolver Termination”: as defined in the recitals hereto.

“Roll-up Lenders”: the Lenders with a Roll-up Loan Commitment as set forth on Schedule 2.1.

“Roll-up Loans”: the loans deemed made pursuant to Section 2.2 under the Roll-up Loans Commitment.

“Roll-up Loan Aggregate Commitment” means \$100,000,000, which amount shall be (i) comprised of a roll-up and refinancing of the Prepetition Term Loans on the Final DIP Order Entry Date approved pursuant to the Final DIP Order and (ii) deemed funded on the Final DIP Order Entry Date approved pursuant to the Bankruptcy Court DIP Order as set forth in Section 2.2.

“Roll-up Loans Commitment” means, as to each Roll-up Lender, its obligation to be deemed to make a Roll-up Loan to the Borrower pursuant to Section 2.2 in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Schedule 2.1 under the caption “Roll-up Loans Commitment” or in the election joinder, as applicable.

“Sale and Leaseback Transaction”: as defined in Section 6.12.

“Sales Report”: as defined in Section 5.1(B)(c).

“Sanctioned Country”: at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, for purposes of Sanctions imposed, administered or enforced by the U.S. government, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person”: at any time, (a) any Person listed in any Sanctions-related list of “designated Persons” maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United



Kingdom, (b) any Person listed in any Sanctions- related list of “designated Persons” maintained by the federal government of Canada, (c) any Person operating, organized or resident in a Sanctioned Country or (d) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a), (b) or (c).

“Sanctions”: economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government or the Canadian government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom.

“S&P”: Standard & Poor’s Ratings Group, a division of The McGraw Hill Corporation.

“Screen Rate”: as defined in the definition of “LIBO Rate”.

“SEC”: the Securities and Exchange Commission (or successors thereto or an analogous Governmental Authority).

“Secured Parties”: collectively, the Administrative Agent, the Collateral Agent, the Lenders, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to this Agreement.

“Security Documents”: the collective reference to the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement.

“Single Employer Plan”: any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

“Statutory Reserve Rate”: a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subsidiary”: as to any Person, a corporation, partnership, limited liability company, unlimited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time

owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantor”: as of the Closing Date, each Subsidiary of the Borrower listed on Schedule 1.1(b), together with each Subsidiary of the Borrower that becomes a Subsidiary Guarantor after the Closing Date pursuant to Section 5.10(c).

“Supplemental Order” means an order of the Canadian Court, in form and substance acceptable to the Required Lenders in their sole discretion, among other things, granting customary additional relief in the Recognition Proceedings.

“Taxes”: any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Loans”: means, collectively, the New Money Loans and the Roll-up Loans.

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

“UCC” or “Uniform Commercial Code”: the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“Unrestricted Subsidiary”: each of GNC Intermediate IP Holdings, LLC, a Delaware limited liability company and GNC Intellectual Property Holdings, LLC, a Delaware limited liability company.

“Variance Report”: as defined in Section 5.1(B)(b).

“Variance Statement Period”: (I) with respect to the Variance Report delivered on July 1, 2020, the period beginning on Saturday, June 20, 2020 and ending on Friday, June 26, 2020, (II) with respect to the Variance Report delivered on July 8, 2020, the period beginning on Saturday, June 20, 2020 and ending on Friday, July 3, 2020, (III) with respect to the Variance Report delivered on July 15, 2020, the period beginning on Saturday, June 20, 2020 and ending on Friday, July 10, 2020, (IV) with respect to each Variance Report delivered thereafter, the period beginning on the fifth prior Saturday to the required date of delivery of such Variance Report and ending on the Friday prior to the required date of delivery of such Variance Report.

“Withdrawal”: a disbursement of funds from the DIP Funding Account, “Withdraw” and “Withdrawn” shall have correlative meanings thereto.

“Withdrawal Amount”: the amount set forth in the Budget in the line item entitled “Withdrawal” for such week.

“Withdrawal Date”: the date of a Withdrawal.

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

“Withdrawal Request”: a request by the Borrower for a Withdrawal substantially in the form of Exhibit K.

“Withdrawal Cap”: (i) for the first four weeks after the Closing Date, an amount equal to the aggregate Withdrawal Amount for such 4-week period, (ii) for each week thereafter prior to adoption of a new Budget, the aggregate of the Withdrawal Amount for such week plus any unused amounts from previous weeks and (iii) upon a Proposed Budget becoming the new Budget as described in Section 5.1(B)(a) hereof, (a) for the first four weeks after the adoption of such new Budget, an amount equal to the aggregate Withdrawal Amount for such 4-week period and (b) for each week thereafter prior to adoption of a new Budget, the aggregate of the Withdrawal Amount for such week plus any unused amounts from previous weeks.

“Withholding Agent”: any Loan Party or the Administrative Agent, as applicable.

“Wholly Owned Subsidiary”: as to any Person, any other Person all of the Capital Stock of which (other than (a) directors’ qualifying shares and (b) nominal shares issued to foreign nationals to the extent required by any applicable Requirement of Law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

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

## 1.2 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, unless otherwise specified herein or in such other Loan Document:

(i) the words “hereof”, “herein” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Documents as a whole and not to any particular provision of thereof;

(ii) Section, Schedule and Exhibit references refer to (A) the appropriate Section, Schedule or Exhibit in this Agreement or (B) to the extent such

references are not present in this Agreement, to the Loan Document in which such reference appears;

(iii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;

(iv) the word “will” shall be construed to have the same meaning and effect as the word “shall”;

(v) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings);

(vi) unless the context requires otherwise, the word “or” shall be construed to mean “and/or”;

(vii) unless the context requires otherwise, (A) any reference to any Person shall be construed to include such Person’s legal successors and permitted assigns, (B) any reference to any law or regulation shall refer to such law or regulation as amended, modified or supplemented from time to time, and any successor law or regulation, (C) the words “asset” and “property” shall be construed to have the same meaning and effect, and (D) references to agreements (including this Agreement) or other Contractual Obligations shall be deemed to refer to such agreements or Contractual Obligations as amended, restated, amended and restated, supplemented or otherwise modified from time to time;

(viii) references to any direct or indirect parent company of the Parent shall refer to Holdings and any of its Wholly Owned Subsidiaries which are parent companies of the Parent; and

(ix) 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 Québec, (q) “personal property” shall be deemed to include “movable property”, (r) “real property” shall be deemed to include “immovable property”, (s) “tangible property” shall be deemed to include “corporeal property”, (t) “intangible property” shall be deemed to include “incorporeal property”, (u) “security interest” and “mortgage” shall be deemed to include a “hypothec”, (v) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication under the Civil Code of Québec, (w) all references to “perfection” of or “perfected” Liens shall be deemed to include a reference to the “opposability” of such Liens to third parties, (x) any “right of offset”, “right of setoff” or similar expression shall be deemed to include a “right of compensation”, (y) “goods” shall be deemed to include “corporeal movable property” other than chattel paper, documents of title, instruments, money and securities, and (z) an “agent” shall be deemed to include a “mandatary”.

(c) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including”.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) The expressions “payment in full,” “paid in full” and any other similar terms or phrases when used herein with respect to the Obligations shall mean the payment in full, in immediately available funds, of all of the Obligations (excluding contingent reimbursement and indemnification obligations that are not then due and payable).

1.3 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Eurodollar Loan”) and as either New Money Loans or Roll-up Loans.

1.4 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time (provided that, notwithstanding anything to the contrary herein, (i) all accounting or financial terms used herein shall be construed, and all financial computations pursuant hereto shall be made, without giving effect to any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Holdings or any Subsidiary at “fair value”, as defined therein, (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein shall be disregarded, and such Indebtedness shall at all times be valued at the full stated principal amount thereof), (iii) [reserved] and (iv) notwithstanding anything to the contrary herein, only those leases that would result or would have resulted in Capital Lease Obligations or Capital Expenditures under GAAP as in effect on the Prepetition Credit Closing Date (assuming for purposes hereof such leases were in existence on the Prepetition Credit Closing Date) will be considered capital leases and all calculations under this Agreement will be made in accordance therewith. In the event that any “Accounting Change” as defined below shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then upon the written request of the Borrower or the Administrative Agent, the Borrower, the Administrative Agent and the Lenders shall enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrower’s financial condition shall be the same after such Accounting Change as if such Accounting Change had not occurred; provided that provisions of this Agreement in effect prior to the date of such Accounting Change shall remain in effect until the effective date of such amendment. “Accounting Change” refers to any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants.

1.5 Agent Determinations. Any references in this Agreement to actions, determinations or decisions (but not calculations of interest, principal, fees or expenses) being made at the discretion (whether implied or expressly so stated) of (but not “sole” discretion of), or matters, calculations or documentation being satisfactory to, (or, in each case, any like or similar term) any Agent shall, unless otherwise expressly set forth in this Agreement, mean (or be deemed to mean) such Agent, as applicable, acting at the written direction, or with the written consent, of the Required Lenders or the Ad Hoc Group of Crossover Lenders (which written direction or consent may be provided via email).

1.6 Classification of Permitted Items For purposes of determining compliance at any time with Sections 6.2, 6.3, 6.5, 6.6, 6.8, 6.9, 6.14 or 6.15, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, Contractual Obligation, encumbrance or restriction or payment, prepayment, repurchase, redemption, defeasance or amendment, modification or other change in respect of Indebtedness meets the criteria of more than one of the categories of transactions permitted pursuant to any clause of such Sections 6.2, 6.3, 6.5, 6.6, 6.8, 6.9, 6.14 or 6.15, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower in its sole discretion at such time of determination. For the avoidance of doubt, the Borrower may at any time classify and reclassify Indebtedness (or any portion thereof) incurred under Section 6.2 and Liens (or any portion thereof) incurred under Section 6.3 among applicable exceptions to such covenants.

1.7 Rounding Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.8 Currency Equivalents Generally.

(a) For purposes of determining compliance with Sections 6.2, 6.3, 6.8 and 6.9 with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder).

## SECTION 2. AMOUNT AND TERMS OF COMMITMENTS

2.1 New Money Loans. Subject to the terms and conditions set forth herein and in the Bankruptcy Court DIP Order, each Lender severally agrees to make loans to the Borrower denominated in Dollars on the applicable borrowing date in an amount equal to such Lender’s New Money Commitment, if any. The Borrower may make only two borrowings on the New Money Commitments, the first of which will occur on the Closing Date in an aggregate principal amount of \$30,000,000 and the second of which will constitute the Final Loan and will occur on or following the Final DIP Order Entry Date, as requested by the Borrower pursuant to Section 2.6, in an aggregate principal amount of \$70,000,000. Amounts borrowed under this

Section 2.1 and repaid or prepaid may not be reborrowed. Proceeds of the New Money Loans shall be deposited in the DIP Funding Account and used as permitted herein.

2.2 Roll-up Loans. Subject to the terms and conditions set forth herein and in the Bankruptcy Court DIP Order, each Roll-up Lender severally and not jointly agrees to make Roll-up Loans on account of its Roll-up Loans Commitment to the Borrower, which loans in the aggregate shall equal and be made in accordance with the terms of the Roll-up Loan Aggregate Commitment. Only one Roll-up Loan shall be deemed made. The Roll-up Loans shall be deemed made following the Final DIP Order Entry Date in an aggregate principal amount of \$100,000,000.

2.3 Election Option. Each Lender and the Borrower, hereby acknowledge and agree that each Prepetition Term Loan Lender that is not a Backstop Lender that is or becomes a party to the Restructuring Support Agreement may participate in providing both New Money Loans and Roll-up Loans in an amount equal to its pro rata proportion (determined on the basis of the principal amount of Prepetition Term Loans held by such Prepetition Term Loan Lender as compared to the principal amount of Prepetition Term Loans held by all Prepetition Term Loan Lenders under the Prepetition Term Loan Agreement on the Election Deadline) by executing an election joinder in the form of Exhibit G no later than the Election Deadline. Thereafter, (x) each such Person shall become a Lender on the next business day after the Election Deadline and (y) each existing Lender's unused Commitment shall be reduced proportionally on such date.

2.4 [Reserved].

2.5 Loans and Borrowings. (a) The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder.

(b) Subject to Section 2.17, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the applicable Lender to make such Loan and the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. At the time each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of five (5) Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the applicable Maturity Date for such Borrowing.

2.6 Request for Borrowing. To request a Borrowing of Term Loans, the Borrower shall (a) notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 11:00 A.M., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or electronic transmission to the Administrative Agent of a written Borrowing Request signed by the Borrower. Such Borrowing Request shall specify the following information in compliance with Section 2.5:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and
- (iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period”.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender’s Loan to be made as part of the requested Borrowing.

2.7 [Reserved].

2.8 Funding of Borrowings.

(a) Each Lender shall make each New Money Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the DIP Funding Account.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender’s share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may (but shall not be required to), in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with



banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

2.9 Withdrawal. Subject to Section 4.2, the Borrower may request disbursements from the DIP Funding Account by delivering to the Administrative Agent (with a copy to the Ad Hoc Group Advisors) a Withdrawal Request, not later than 12:00 p.m., New York City time, one Business Day before (or such shorter time as agreed by the Required Lenders) the proposed date of the applicable Withdrawal; *provided* that the amount that may be Withdrawn shall not exceed the Withdrawal Cap without the consent of the Required Lenders; provided further that the Borrower shall not withdraw amounts in excess of its expected upcoming needs for the upcoming week. Promptly upon the receipt of a Withdrawal Request and the satisfaction or waiver of the conditions set forth in Section 4.2, the Administrative Agent shall disburse funds from the DIP Funding Account to the Operating Account in an aggregate principal amount equal to the amount specified in such Withdrawal Request. All proceeds of the New Money Loans shall be held in the DIP Funding Account at all times until such proceeds are disbursed in accordance with this Section 2.9. Notwithstanding anything herein to the contrary, the Administrative Agent shall have no obligation to disburse any amount in excess of the amounts then held in the DIP Funding Account.

2.10 Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(a) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.6 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or electronic transmission to the Administrative Agent of a written Interest Election Request signed by the Borrower.

(b) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.5:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(c) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(d) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

2.11 [Reserved].

2.12 Repayment of Loans; Evidence of Debt. (a) Except as otherwise set forth in Section 2.23 hereof, the Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan of such Lender in cash on the Maturity Date.

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

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

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

(d) Any Lender may request through the Administrative Agent that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns and in the form of Exhibit D hereto. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.4) be represented by one or more promissory notes in such form payable to such payee and its registered assigns.

2.13 Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to voluntarily prepay any Borrowing in whole but not in part, without premium or penalty (but subject to Section 2.19) subject to prior notice in accordance with paragraph (c) of this Section.

(a) Each prepayment of Term Loans pursuant to Section 2.13(a) shall be applied ratably to the Loans then outstanding.

(b) The Borrower shall notify the Administrative Agent by telephone (confirmed by written notice (which may be by email)) of any voluntary prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Borrowing, not later than 10:00 a.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date; provided that any notice of prepayment of Term Loans may be conditioned upon the effectiveness of other credit facilities or any other financing or a sale transaction, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.16. Each repayment of a Borrowing shall be applied ratably to the Loans included in the repaid Borrowing.

2.14 Premiums and Fees.

(a) The Borrower and each Lender agrees that on the date of each Borrowing, the Borrower shall receive proceeds from the New Money Loans based on a purchase price of 96% of the principal amount thereof.

(b) On the date of the Exit Conversion, the Borrower shall pay to the Lenders an exit premium in the amount of 3.00% of the New Money Loans, payable upon the Exit Conversion.

(c) The Borrower shall pay to the Backstop Lenders the amounts and at the times agreed in the Backstop Commitment Letter.

(d) The Borrower agrees to pay to the Administrative Agent and to the Collateral Agent, for their own account, fees payable in the amounts and at the times separately agreed upon in the fee proposal dated June 7, 2020 between the Borrower and GLAS Trust Company LLC, as Administrative Agent and Collateral Agent.

2.15 Mandatory Prepayments. (a) If Indebtedness is incurred by a Loan Party (other than Indebtedness permitted under Section 6.2), then no later than two Business Days after the date of such issuance or incurrence, an amount equal to 100% of the Net Cash Proceeds thereof shall be applied to the prepayment of the Term Loans as set forth in Section 2.15(d) together with accrued and unpaid interest thereon. The provisions of this Section do not constitute a consent to the incurrence of any Indebtedness by any Loan Party.

(a) If on any date a Loan Party shall receive Net Cash Proceeds from any Recovery Event then, unless a Reinvestment Notice shall be delivered in respect thereof, no later than three Business Days (or, if a Default or Event of Default has occurred and is continuing, one Business Day) after the date of receipt by such Loan Party of such Net Cash Proceeds, an amount equal to 100% of such Net Cash Proceeds shall be applied to the prepayment of the Term Loans as set forth in Section 2.15(d) together with accrued and unpaid interest thereon; provided that (i) notwithstanding the foregoing, on each Reinvestment Prepayment Date an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event shall be applied to the prepayment of the Term Loans (together with accrued interest thereon), and (ii) if the Net Cash Proceeds from any Recovery Event exceed \$1,000,000, then no Reinvestment Notice with respect thereto may be delivered without the consent of the Required Lenders; provided further that to the extent that the Net Cash Proceeds of any such Recovery Event result from any settlement of, or payment in respect of, any property or casualty insurance claim or any condemnation proceeding relating to ABL Priority Collateral, such Net Cash Proceeds shall first be applied as required pursuant to Section 2.15(b) of the Prepetition ABL/FILO Amendment and Restatement before being applied to the mandatory prepayment of the Term Loans pursuant to this Section 2.15(b).

(b) [Reserved].

(c) Amounts to be applied pursuant to this Section 2.15 shall be applied first to prepay outstanding ABR Loans and then to prepay Eurodollar Loans, and shall be applied ratably to the Loans then outstanding.

2.16 Interest. (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Margin.

(a) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(b) Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default pursuant to Section 7.1(a), any overdue amount payable by the Borrower hereunder shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of or interest on any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other overdue amount, 2% plus the rate applicable to Term Loans that are ABR Loans as provided in paragraph (a) of this Section prior to giving effect to any increase in such rate pursuant to this paragraph (c).

(c) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(d) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error. Notwithstanding the forgoing, solely for the purposes of the Interest Act (Canada) and disclosure under such Act, whenever interest to be paid under this Agreement is to be calculated on the basis of a year of 365 days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by either 365 or such other period of time, as the case may be.

(e) Notwithstanding anything to the contrary herein, interest shall not accrue on the Roll-up Loans until the day they are deemed made pursuant to Section 2.2 hereof.

2.17 Alternate Rate of Interest. (a) If prior to the commencement of any Interest Period for a Eurodollar Borrowing the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period, then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or electronic transmission as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (B) if any

Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

(a) If at any time the Administrative Agent (in consultation with the Required Lenders and the Borrower) determines (which determination shall be conclusive absent manifest error) that either (i) the circumstances set forth in clause (a)(i) of this Section 2.17 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i) of this Section 2.17 have not arisen but the supervisor for the administrator of the Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Screen Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent (in consultation with the Required Lenders) and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Margin); provided that, if such alternate rate of interest as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 9.2, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this clause (b) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 2.17(b), only to the extent the Screen Rate for such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (y) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

2.18 Increased Costs. (a) If any Change in Law shall:

(i) subject the Administrative Agent or any Lender to any Taxes (other than (A) Indemnified Taxes covered under Section 2.20, (B) Excluded Taxes or (C) Other Taxes) on its Loans, Commitments or other obligations hereunder, or its deposits, reserves or other liabilities or capital attributable thereto;

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

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (excluding any condition relating to Taxes) affecting this Agreement or Eurodollar Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender (or in the case of clause (i), to the Administrative Agent or such Lender) of making, converting to, continuing or maintaining any Eurodollar Loan (or in the case of clause (i), any Loan) (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by the Administrative Agent or such Lender hereunder (whether of principal, interest or otherwise), then, upon request of such Lender, the Borrower will pay to the Administrative Agent or such Lender, as the case may be, such additional amount or amounts as will compensate the Administrative Agent or such Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital or liquidity requirements or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital or liquidity requirements (whether or not having the force of law) from any Governmental Authority made subsequent to the Closing Date has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth in reasonable detail the matters giving rise to a claim under this Section 2.18 by such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) If any Lender reasonably determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Eurodollar Loans, or to determine or charge interest rates based upon the Adjusted LIBO Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the

Borrower may at its option revoke any pending request for a borrowing of, conversion to or continuation of Eurodollar Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

2.19 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.13(c) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.22(c), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event (other than loss of profit). Such loss, cost or expense to any Lender shall consist of an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. Absent manifest error in the determination of such amount, the Borrower shall pay such Lender the amount shown as due on any such certificate within 15 days after receipt thereof.

2.20 Taxes. (a) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the applicable Withholding Agent shall be required by Requirement of Tax Law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased by the applicable Loan Party as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.20(a)) the Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable Withholding Agent shall make or cause to be made such deductions and (iii) the applicable Withholding Agent shall pay or cause to be paid the full amount deducted to the relevant Governmental Authority in accordance with Requirement of Tax Law.



(a) In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with Requirement of Tax Law.

(b) The Loan Parties shall indemnify the Administrative Agent and each Lender within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of any Loan Party hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto; provided that the Loan Parties shall not be obligated to make payment to the Administrative Agent or any Lender pursuant to this Section in respect of penalties, interest and other liabilities attributable to any Indemnified Taxes or Other Taxes if (i) written demand therefor has not been made by the Administrative Agent or such Lender within 30 days from the date on which the Administrative Agent or such Lender knew of the imposition of such Indemnified Taxes or Other Taxes by the relevant Governmental Authority, (ii) such penalties, interest and other liabilities have accrued after the Loan Parties have indemnified or paid any additional amount pursuant to this Section or (iii) such penalties, interest and other liabilities are attributable to the gross negligence, bad faith or willful misconduct of the Administrative Agent or such Lender as determined by a court of competent jurisdiction by final and non-appealable judgment. A certificate setting forth in reasonable detail the basis for such claim and the calculation of the amount of any such payment or liability shall be delivered to the Borrower by a Lender or by the Administrative Agent on its own behalf or on behalf of a Lender, and shall be conclusive absent manifest error.

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

(d) (i) Each Lender other than a Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly executed copies of IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal withholding tax. Each Foreign Lender shall deliver to the Borrower and the Administrative Agent (i) two properly completed and duly executed copies of IRS Form W-8BEN or Form W-8BEN-E, Form W-8ECI or, to the extent a Foreign Lender is not the beneficial owner, Form W-8IMY (together with any applicable underlying IRS forms), or any subsequent versions thereof or successors thereto, (ii) in the case of a Foreign Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of “portfolio interest,” a certificate in the form attached hereto as Exhibit E-1, E-2, E-3 or E-4, as applicable, and two properly completed and duly executed copies of the applicable IRS Form W-8BEN or Form W-8BEN-E, or any subsequent versions thereof or successors thereto, or (iii) any other form prescribed by applicable requirements of U.S. federal income tax law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable requirements of law to permit the Borrower and the Administrative Agent to determine the deduction required to be made, in

each case, certifying such Foreign Lender's entitlement to an exemption from or a reduction in U.S. federal withholding tax with respect to payments of interest to be made hereunder or under any other Loan Documents. Such forms shall be delivered by each Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation) and from time to time thereafter upon the request of the Borrower or the Administrative Agent. In addition, each Lender shall promptly deliver such forms upon the obsolescence or invalidity of any form previously delivered by such Lender. Each Lender shall promptly notify the Borrower and the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the United States taxing authorities for such purpose). Any Lender, if requested by the Administrative Agent or the Borrower, shall deliver such other documentation prescribed by or reasonably requested by the Administrative Agent or the Borrower as will enable the Administrative Agent or the Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(i) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed pursuant to FATCA if such Lender fails to comply with any requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the applicable Withholding Agent, on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation) and from time to time thereafter upon the request of the applicable Withholding Agent, such documentation prescribed by Requirement of Tax Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the applicable Withholding Agent as may be necessary for the applicable Withholding Agent to comply with its obligations under FATCA, to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and to determine the amount to deduct and withhold from such payment. To the extent that the relevant documentation provided pursuant to this paragraph is rendered obsolete or inaccurate in any material respect as a result of changes in circumstances with respect to the status of a Lender, such Lender shall, to the extent permitted by Requirement of Tax Law, deliver to the applicable Withholding Agent revised and/or updated documentation sufficient for the applicable Withholding Agent to confirm as to whether such Lender has complied with its respective obligations under FATCA. Solely for purposes of this clause (e)(ii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding any other provision of this Section 2.20, a Lender shall not be required to deliver any form pursuant to this Section 2.20 that such Lender is not legally able to deliver.

(e) Each Lender shall indemnify the Administrative Agent for the full amount of any Taxes imposed by any Governmental Authority that are attributable to such Lender and that are payable or paid by the Administrative Agent, together with all interest, penalties, reasonable costs and expenses arising therefrom or with respect thereto, as determined by the Administrative Agent in good faith. Should the applicable Withholding Agent not deduct or

withhold any Taxes imposed by FATCA from a payment under any Loan Document based on the documentation provided by a Lender pursuant to Section 2.20(e)(ii), any amounts subsequently determined by a Governmental Authority to be subject to U.S. federal withholding Tax imposed pursuant to FATCA (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) shall be indemnified by such Lender. A certificate as to the amount of such payment or liability delivered to any Lender by the Withholding Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent under this paragraph (f).

(f) Solely for purposes of determining withholding Taxes imposed under FATCA, from and after the Closing Date, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Loans as not qualifying as a “grandfathered obligation” within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(g) If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section 2.20, it shall pay over such refund to the applicable Loan Party within a reasonable period (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.20 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party pursuant to this Section 2.20(h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the Administrative Agent or any Lender be required to pay any amount to a Loan Party pursuant to this paragraph (h) the payment of which would place the Administrative Agent or any Lender in a less favorable net after-Tax position than the such party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.20(h) shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

(h) Each party’s obligations under this Section 2.20 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

2.21 Payments Generally; Pro rata Treatment; Sharing of Set-offs. (a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or amounts payable under Section 2.18, 2.19 or 2.20 or otherwise) prior to the time

expressly required hereunder for such payment (or if no such time is expressly required, prior to 2:00 p.m. New York City time), on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 3 Second Street, Suite 206, Jersey City, NJ 07311, except that payments pursuant to Sections 2.18, 2.19, 2.20 or 9.3 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under any Loan Document shall be made in Dollars. Any Term Loans paid or prepaid may not be reborrowed.

(a) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

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

(c) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the

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

(d) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.8(b), 2.21(d) or 8.7, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

2.22 Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.18, or if the Borrower is required to pay any amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.20, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.18 or 2.20, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(a) If any Lender (or any Participant in the Loans held by such Lender) requests compensation under Section 2.18, or if the Borrower is required to pay any amount to any Lender (or its Participant) or any Governmental Authority for the account of any Lender pursuant to Section 2.20, or if any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.4 (provided that, if the required Assignment and Assumption is not executed and delivered by such Lender, such Lender will be unconditionally and irrevocably deemed to have executed and delivered such Assignment and Assumption as of the date such Lender receives payment in full of the amounts set forth in clause (i) below)), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (but, for the avoidance of doubt, not any amounts in respect of contingent reimbursement and indemnification obligations which are not due and payable), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (ii) in the case of any such assignment resulting from a claim for compensation under Section 2.18 or payments required to be made pursuant to

Section 2.20, such assignment will result in a reduction in such compensation or payments in the future. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

(b) If any Lender (such Lender, a “Non-Consenting Lender”) has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.2 requires the consent of all of the Lenders or all affected Lenders, then the Borrower may (unless such Non-Consenting Lender grants such consent), at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, replace such Non-Consenting Lender by requiring such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.4 (provided that, if the required Assignment and Assumption is not executed and delivered by such Non-Consenting Lender, such Non-Consenting Lender will be unconditionally and irrevocably deemed to have executed and delivered such Assignment and Assumption as of the date such Non-Consenting Lender receives payment in full of the amounts set forth in clause (i) below)), all of its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (but, for the avoidance of doubt, not any amounts in respect of contingent reimbursement and indemnification obligations which are not due and payable), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (ii) the replacement Lender shall grant its consent with respect to the applicable proposed amendment, waiver, discharge or termination.

## 2.23 Conversion of Loans.

(a) Upon the consummation of an Approved Plan of Reorganization, subject to the satisfaction, or waiver, of the conditions set forth in the Exit Term Loan Facility Term Sheet and otherwise substantially in accordance with the terms set forth in the Exit Term Loan Facility Credit Agreement, the Borrower may exercise an option to continue or convert the Loans into an exit term facility financing on the effective date of such Approved Plan of Reorganization (the “Exit Conversion”).

(b) If the Borrower elects to exercise the Exit Conversion, subject to the satisfaction or waiver by the Required Lenders of the conditions contained in the Exit Term Loan Facility Term Sheet:

(i) each Lender, severally and not jointly, hereby agrees to continue its Loans hereunder outstanding on the effective date of the Approved Plan of Reorganization as set forth in the Exit Term Loan Facility Term Sheet under, and subject entirely and exclusively to the terms and provisions of, the definitive documentation to be mutually agreed (including a credit agreement governing the continuation and conversion of the Loans, the “Exit Term Loan Facility Credit Agreement”) and related documentation which documentation shall be substantially consistent with the Exit Term

Loan Facility Term Sheet and is otherwise in form and substance reasonably satisfactory to the Required Lenders; and

(ii) subject to Section 2.23(a), the Administrative Agent, the Lenders and the Loan Parties agree that, upon the effectiveness of the Exit Term Loan Facility Credit Agreement:

(A) the Borrower, in its capacity as reorganized Borrower, and each Guarantor that is a guarantor under the Prepetition Term Loan Agreement (subject to the Approved Plan of Reorganization), in its capacity as a reorganized Guarantor, shall assume all the Obligations hereunder with respect to the Loans and all other obligations in respect thereof in the manner set forth in the Exit Term Loan Facility Credit Agreement and related loan documents;

(B) the New Money Loans hereunder shall be continued as or converted to, as the case may be, First-Lien First Out Loans under the Exit Term Loan Facility Credit Agreement;

(C) each Lender hereunder shall be a lender under the Exit Term Loan Facility Credit Agreement in respect of its New Money Loans continued as, or converted to, as the case may be, First-Lien First Out Loans;

(D) the Roll-up Loans hereunder shall be continued as or converted to, as the case may be, First-Lien Second Out Loans under the Exit Term Loan Facility Credit Agreement;

(E) each Lender hereunder shall be a lender under the Exit Term Loan Facility Credit Agreement in respect of its Roll-up Loans continued as, or converted to, as the case may be, First-Lien Second Out Loans;

(F) unless the Borrower or the Required Lenders otherwise elect, GLAS Trust Company LLC shall be the administrative agent and collateral agent under the Exit Term Loan Facility Credit Agreement; and

(G) with respect to the Loans, this Agreement and all Obligations hereunder with respect thereto shall terminate and be superseded and replaced by the Exit Term Loan Facility Credit Agreement.

### SECTION 3. REPRESENTATIONS AND WARRANTIES

To induce the Agents and the Lenders to enter into this Agreement and to make the Loans Parent and the Borrower hereby jointly and severally represent and warrant to each Agent and each Lender on the Closing Date, on the date of each Borrowing and each Withdrawal Date that:

3.1 Financial Condition. The audited consolidated balance sheets of Holdings as at December 31, 2019, and the related consolidated statements of income and of cash flows for the fiscal years ended on such dates, reported on by and accompanied by an unqualified report from PricewaterhouseCoopers, present fairly in all material respects the consolidated

financial condition of Holdings as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal years then ended. The unaudited consolidated balance sheet of Holdings as at March 31, 2020, and the related unaudited consolidated statements of income and cash flows for the three-month period ended on such date, present fairly in all material respects the consolidated financial condition of Holdings as at such date and the consolidated results of its operations and its consolidated cash flows for the three-month period then ended (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP (unless otherwise noted therein) applied consistently throughout the periods involved (except as disclosed therein).

3.2 No Change. Since the Petition Date there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

3.3 Corporate Existence; Compliance with Law. As of the Petition Date, each of the Loan Parties (a) is duly organized, validly existing and in good standing or in full force and effect under the laws of the jurisdiction of its organization (to the extent such concepts exist in such jurisdictions), (b) subject to the entry and terms of the Bankruptcy Court DIP Order and other orders of the Bankruptcy Court, as applicable, has the organizational power and authority, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign organization and in good standing or in full force and effect under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification and (d) unless stayed by the Chapter 11 Cases, is in compliance with all Requirements of Law, except, in the case of the foregoing clauses (a) (solely with respect to Subsidiaries), (b), (c) and (d), as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.4 Organizational Power; Authorization; Enforceable Obligations. Subject to the entry and terms of the Bankruptcy Court DIP Order, each Loan Party has the corporate or other organizational power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to borrow hereunder. Each Loan Party has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party. Other than the Bankruptcy Court DIP Order, no material consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement or any of the other Loan Documents, except (i) consents, authorizations, filings and notices that have been obtained or made and are in full force and effect, (ii) the consents, authorizations, filings and notices described in Schedule 3.4, (iii) the filings referred to in Section 3.18, (iv) filings necessary to create or perfect Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (v) those consents, authorizations, filings and notices the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each Loan Document has been duly executed and delivered on behalf of each Loan Party that is a party thereto. Subject to the entry and the terms of the Bankruptcy Court DIP Orders, this Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each



Loan Party that is a party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

3.5 No Legal Bar. Subject to the entry and terms of the Bankruptcy Court DIP Order, the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law applicable to, or any Contractual Obligation of, Parent, the Borrower or any of its Restricted Subsidiaries, except, in each case, as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any such Requirement of Law or any such Contractual Obligation (other than Permitted Liens).

3.6 No Material Litigation. As of the Petition Date, except as set forth on Schedule 3.6 and except for the Chapter 11 Cases (or matters arising therefrom) and Recognition Proceedings (or matters arising therefrom), no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of Parent or the Borrower, threatened in writing against any Loan Party or against any of their respective properties or revenues (a) with respect to this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that would reasonably be expected to have a Material Adverse Effect (after giving effect to indemnification from certain manufacturers and applicable insurance).

3.7 No Default. None of the Loan Parties is in default under or with respect to any of its post-petition material Contractual Obligations in any respect that would reasonably be expected to have a Material Adverse Effect.

3.8 Ownership of Property; Liens. As of the Petition Date, each of the Loan Parties has good title to, or a valid leasehold interest in, all real property and other Property material to the conduct of its business except where the failure to have such title or interests would not reasonably be expected to have a Material Adverse Effect. None of the Pledged Capital Stock is subject to any Lien except for Permitted Liens.

3.9 Intellectual Property. As of the Petition Date, except as would not reasonably be expected to result in a Material Adverse Effect, to the knowledge of Parent and the Borrower, (i) each of the Loan Parties owns, or has a valid license to use, all Intellectual Property necessary for the conduct of its business as currently conducted ("Company Intellectual Property"); (ii) no claim has been asserted in writing and is pending by any Person challenging or questioning the use of any Company Intellectual Property or the validity or effectiveness of any Company Intellectual Property, nor does Parent or the Borrower know of any valid basis for any such claim; and (iii) the use of Company Intellectual Property by the Loan Parties does not infringe on the Intellectual Property rights of any Person.

3.10 Taxes. As of the Petition Date , each of the Loan Parties has filed or caused to be filed all income and all other material tax returns that are required to be filed and has paid all income and all other material Taxes, assessments, fees and other governmental charges levied or imposed upon it or its properties, income or assets due and payable by it (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the applicable Loan Party, as the case may be) except, in each case, where the failure to do so would not reasonably be expected to have a Material Adverse Effect. To the knowledge of Parent and the Borrower, no material written claim has been asserted with respect to any Taxes (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the applicable Loan Party, as the case may be, or the payment of which are stayed by the Chapter 11 Cases). No Loan Party is a party to any tax sharing, tax allocation or other similar agreement relating to taxes. No Loan Party has made an election pursuant to Section 965(h) of the Code.

3.11 Federal Regulations. No part of the proceeds of any Loans will be used by any Loan Party for “purchasing” or “carrying” any “margin stock” within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect or for any purpose that violates the provisions of the Regulations of the Board. On the Closing Date, no Loan Party owns any “margin stock”.

3.12 ERISA. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) no ERISA Event has occurred, and (ii) the present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Single Employer Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Single Employer Plan allocable to such accrued benefits by a material amount.

3.13 Investment Company Act. No Loan Party is an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

3.14 Subsidiaries. (a) The Subsidiaries listed on Schedule 3.14(a) constitute all the direct and indirect Subsidiaries of Holdings as of the Closing Date. Schedule 3.14(a) sets forth as of the Closing Date the exact legal name (as reflected on the certificate of incorporation (or formation)) and jurisdiction of incorporation (or formation) of each Subsidiary of Parent and, as to each such Subsidiary, the percentage and number of each class of Capital Stock of such Subsidiary owned by Parent and its Subsidiaries.

(a) As of the Closing Date, except as set forth on Schedule 3.14(b), there are no outstanding subscriptions, options, warrants, calls or similar rights (other than stock options granted to employees, directors, managers and consultants and directors’ qualifying shares) relating to any Capital Stock of any Loan Party.

3.15 Purpose of Loans. The proceeds of the Loans will be used in accordance in all material respects with the terms of the Bankruptcy Court DIP Order, the Loan Documents and the Budget (subject to the Permitted Variance), including, without limitation: (i) to pay

Professional Fees and amounts due to the Ad Hoc Group Advisors and the Agents hereunder and professional fees and expenses (including legal, financial advisor, appraisal and valuation-related fees and expenses) incurred by the Ad Hoc Group Advisors and the Agents, including those incurred in connection with the preparation, negotiation, documentation and court approval of the transactions contemplated hereby and (ii) to provide working capital, and for other general corporate purposes of the Loan Parties, to fund intercompany advances to Excluded Subsidiaries to the extent permitted hereunder, and to pay administration costs of the Chapter 11 Cases and claims or amounts approved by the Bankruptcy Court.

3.16 Environmental Matters. Other than exceptions to any of the following that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) the Loan Parties (i) are in compliance with all applicable Environmental Laws; (ii) hold all Environmental Permits required for any of their current operations or for any property owned, leased, or otherwise operated by any of them; and (iii) are in compliance with all of their Environmental Permits;

(b) to the knowledge of any Loan Party, Hazardous Materials are not present at, on, under or in any real property now or formerly owned, leased or operated by any Loan Party, or, to the knowledge of any Loan Party, at any other location (including, without limitation, any location to which Hazardous Materials have been sent by any Loan Party for re-use or recycling or for treatment, storage, or disposal) which would reasonably be expected to (i) give rise to the imposition of Environmental Liabilities on any Loan Party, (ii) materially interfere with any Loan Party's continued operations, or (iii) materially impair the fair saleable value of any real property owned or leased by any Loan Party;

(c) there is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) pursuant to any Environmental Law to which any Loan Party is named as a party that is pending or, to the knowledge of any Loan Party, threatened in writing;

(d) none of the Loan Parties has received any written request for information, or been notified in writing that it is a potentially responsible party under or relating to the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law;

(e) no Loan Party has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with Environmental Law or Environmental Liability; and

(f) no Loan Party has assumed or retained by contract any Environmental Liability.

3.17 Accuracy of Information, etc. No written statement or written information (other than projections and other forward-looking information and information of a general economic nature or general industry nature) contained in this Agreement, any other Loan Document or any other document, certificate or written statement furnished to the Agents or the

Lenders or any of them, by or at the direction and on behalf of any Loan Party for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, taken as a whole with all such other written statements, written information, documents and certificates, contained as of the date such written statement, written information, document or certificate was so dated or certified, any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were delivered, contained herein or therein not materially misleading (after giving effect to all written updates thereto delivered by or on behalf of any Loan Party).

3.18 Security. The provisions of the Interim DIP Order, the Final DIP Order and the Canadian Court DIP Recognition Order, as applicable, are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest (subject, in the case of any Collateral, to Liens permitted by Section 6.3) on all right, title and interest of the respective Loan Parties in the Collateral described therein (with such priority as provided for in the Bankruptcy Court DIP Order or, with respect to the Canadian Guarantor, in the Canadian Court DIP Recognition Order). Except for the Interim DIP Order, the Final DIP Order and the Canadian Court DIP Recognition Order, as applicable, no filing or other action will be necessary to perfect the Liens on any Collateral under the Laws of the United States of America.

3.19 Budget and Financial Plan. The Budget was prepared in good faith based on assumptions believed by the Loan Parties to be reasonable at the time made and upon information believed by the management of the Borrower to have been accurate based upon the information available to the management of the Borrower at the time such Budget was furnished to the Administrative Agent. On and after the delivery of any Variance Report in accordance with this Agreement, such Variance Report shall be complete and correct in all material respects and fairly represent in all material respects the matters set forth therein for the period covered thereby.

3.20 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) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the “Act”).

3.21 Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance in all material respects by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, and the Borrower and its Subsidiaries, and to the knowledge of the Borrower, its directors, officers, employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower or any of its Subsidiaries or (b) to the knowledge of the Borrower, any director, officer, employee or agent of the Borrower or any of its Subsidiaries that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

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

3.23 Canadian Welfare and Pension Plans. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) each Loan Party has adopted all Canadian Welfare Plans required pursuant to applicable Requirements of Law and each of such plans has been maintained and each Loan Party is in compliance with such laws in all material respects including, without limitation, all requirements relating to employee participation, funding, investment of funds, benefits and transactions with the Loan Parties and persons related to them, (ii) no Loan Party has a material contingent liability with respect to any post-retirement benefit under a Canadian Welfare Plan, (iii) with respect to Canadian Pension Plans: (a) no Canadian Pension Termination Event has occurred and no steps have been taken to terminate any Canadian Pension Plan (wholly or in part) which could result in any Loan Party being required to make a material additional contribution to any Canadian Pension Plan, (b) no contribution failure has occurred with respect to any Canadian Pension Plan sufficient to give rise to a lien or charge under any applicable pension benefits laws of any other jurisdiction (for certainty, not including payments in respect of contributions payable but not yet due), and (c) no condition exists and no event or transaction has occurred with respect to any Canadian Pension Plan which is reasonably likely to result in any Loan Party incurring any material liability, fine or penalty, (iv) each Canadian Pension Plan is in compliance (other than immaterial non-compliance) with all applicable pension benefits and tax laws, (v) all contributions (other than immaterial amounts) (including employee contributions made by authorized payroll deductions or other withholdings) required to be made to the appropriate funding agency in accordance with all applicable Requirements of Law (other than immaterial non-compliance) and the terms of each such Canadian Pension Plan have been made in accordance with all applicable Requirements of Law (other than immaterial non-compliance) and the terms of such Canadian Pension Plan (other than immaterial non-compliance), (vi) all liabilities under each Canadian Pension Plan are funded in accordance with the terms of the respective Canadian Pension Plans, the requirements of applicable pension benefits laws and of applicable regulatory authorities (other than immaterial non-compliance), (vii) no event has occurred and no conditions exist with respect to any Canadian Pension Plan that has resulted or could reasonably be expected to result in any such Canadian Pension Plan having its registration revoked or refused by any administration of any relevant pension benefits regulatory authority or being required to pay any taxes (other than taxes the amounts of which are immaterial) or penalties under any applicable pension benefits or tax laws and (viii) no Loan Party contributes to, sponsors or maintains, or has in the past 5 years contributed to, sponsored or maintained, a Canadian Defined Benefit Pension Plan.

3.24 Canadian Anti-Corruption and Canadian Anti-Money Laundering. The Canadian Guarantor has adopted and maintains adequate procedures designed to ensure that it is in compliance in all material respects with all Canadian Anti-Money Laundering Legislation and Canadian Anti-Corruption Laws.

## SECTION 4. CONDITIONS PRECEDENT

4.1 Conditions to Closing Date and the Initial Extension of Credit. The obligations of each Lender to make Loans hereunder on the Closing Date are subject to the satisfaction of the following conditions on the Closing Date:

(a) Loan Documents. The Administrative Agent shall have received (i) this Agreement, executed and delivered by a duly authorized officer of Parent and the Borrower, (ii) an executed signature page from each Lender party to this Agreement on the Closing Date and (iii) executed copies of the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement;

(b) Closing Certificate. The Administrative Agent shall have received a certificate of each Loan Party, dated the Closing Date, substantially in the form of Exhibit B hereto, with appropriate insertions and attachments;

(c) Other Certifications. The Administrative Agent shall have received the following:

(i) a copy of the charter or other similar organizational document of each Loan Party and each amendment thereto, certified (as of a date reasonably near the date of the initial extension of credit) as being a true and correct copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized (or, with respect to the Canadian Guarantor, by a Responsible Officer) (other than with respect to General Nutrition Investment Company and GNC Canada Holdings, Inc.);

(ii) a copy of a certificate of the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized, dated reasonably near the date of the initial extension of credit, listing the charter or other similar organizational document of such Loan Party and each amendment thereto on file in such office and, if available, certifying that (A) such amendments are the only amendments to such Person's charter on file in such office and (B) such Person is duly organized and (to the extent such certificate exists in the relevant jurisdiction) in good standing or full force and effect under the laws of such jurisdiction (other than with respect to General Nutrition Investment Company, GNC Canada Holdings, Inc. and the Canadian Guarantor); and

(iii) a certificate of a duly authorized officer or director of each Loan Party, certifying (i) that the 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 the Loan Documents; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents;

(d) Filings, Registrations, Recordings and Searches. Each UCC and PPSA financing statement required by the Security Documents or under law to be filed, registered or recorded in order to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Permitted Liens), shall have been filed, registered or recorded

or shall have been delivered to the Administrative Agent in proper form for filing, registration or recordation;

(e) “Know-Your-Customer”. The Loan Parties shall have provided or caused to be provided the documentation and other information to the Administrative Agent required by United States and Canadian regulatory authorities under applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and Canadian Anti-Money Laundering Legislation, in each case, at least two Business Days prior to the Closing Date, to the extent reasonably requested in writing at least five Business Days prior to the Closing Date;

(f) Budget. The Administrative Agent shall have received the initial Budget, a monthly forecast for the period through the Maturity Date and an opening pro forma balance sheet for the Loan Parties;

(g) Commencement of Chapter 11 Cases. The Chapter 11 Cases shall have been commenced and all of the pleadings related to the “first day orders” and “second day orders” entered by the Bankruptcy Court at the time of the commencement of the Chapter 11 Cases and prior to the Interim DIP Order shall be in form and substance reasonably satisfactory to the Required Lenders;

(h) Commencement of Recognition Proceedings. The Recognition Proceedings shall have been commenced;

(i) Restructuring Support Agreement. Receipt of a Restructuring Support Agreement;

(j) Interim DIP Order. The Interim DIP Order, substantially in the form of Exhibit J hereto, shall have been entered by the Bankruptcy Court within three (3) Business Days after the Petition Date and the Administrative Agent shall have received a true and complete copy of such order, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Lenders and such order shall not be subject to a stay pending appeal or motion for leave to appeal or other proceeding to set aside any such order or the challenge to the relief provided for in such order, except as consented to by the Required Lenders;

(k) Cash Management Order. An order entered by the Bankruptcy Court pertaining to the Loan Parties’ cash management system (“Cash Management Order”) and all motions and other documents filed with the Bankruptcy Court prior to the Closing Date in connection therewith, shall be in form and substance reasonably satisfactory to the Required Lenders;

(l) No Appointment of Trustee. No trustee or other disinterested person with expanded powers pursuant to Section 1104(c) of the Bankruptcy Code shall have been appointed or designated in any of the Chapter 11 Cases, and no motion shall be pending in the Bankruptcy Court seeking any such relief;

(m) Adequate Protection. The Prepetition Term Loan Agent and the Prepetition Term Loan Lenders shall have each received adequate protection in respect of the Liens securing the Prepetition Term Loan Obligations as set forth in the Interim DIP Order;

(n) DIP Financing Protections. The Collateral Agent, for its benefit and the benefit of each Lender, shall have been granted a perfected, valid, enforceable Lien on, and security interest in, the Collateral, in addition to the DIP Superpriority Claim, on the terms and conditions set forth herein and in the Interim DIP Order;

(o) Prepetition ABL/FILO Amendment and Restatement. The Administrative Agent shall have received an executed copy of the Prepetition ABL/FILO Amendment and Restatement.

For purposes of determining whether the conditions specified in this Section 4.1 have been satisfied on the Closing Date, by executing this Agreement and/or funding any Loans hereunder, the Administrative Agent and each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Administrative Agent or such Lender, as the case may be.

4.2 Conditions to Each Extension of Credit and each Withdrawal Date. (x) The agreement of each Lender to make any extension of credit requested to be made by it hereunder on any date (including, without limitation, its initial extension of credit) (other than a conversion of Loans to the other Type, or a continuation of Eurodollar Loans) and (y) the Borrower's right to make a Withdrawal on any Withdrawal Date is subject to the satisfaction of, with respect to clause (x) above, all of the following conditions precedent, and with respect to clause (y) above, the conditions precedent in clauses (a) through (f) below:

(a) Representations and Warranties. Each of the representations and warranties made by any Loan Party in the Loan Documents shall be true and correct in all material respects on and as of such date as if made on and as of such date, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date (provided that, in each case, such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified by materiality or Material Adverse Effect).

(b) No Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the extensions of credit requested to be made on such date or the Withdrawal of proceeds on such date, as applicable.

(c) Borrowing Request. The Administrative Agent shall have received a Borrowing Request or a Withdrawal Request, as applicable.

(d) Compliance with Budget. The Administrative Agent and Ad Hoc Group Advisors shall have received all periodic updates required under the Budget pursuant to Section 5.1(B)(a) and any Variance Reports pursuant to Section 5.1(B)(b), in each case required to be



delivered pursuant to such applicable Section prior to the delivery of the applicable Borrowing Request or Withdrawal Request.

(e) [Reserved].

(f) Final DIP Order. With respect to the Final Loans, the Final DIP Order shall have been entered by the Bankruptcy Court and (i) the Administrative Agent shall have received a true and complete copy of such order, (ii) such order shall be in form and substance satisfactory to the Required Lenders in their sole discretion and (iii) such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated in a manner inconsistent with the terms of this Agreement absent the prior written consent of the Required Lenders.

(g) Costs and Expenses. All reasonable and documented out-of-pocket costs, fees, expenses (including, without limitation, reasonable and documented legal fees and expenses) set forth in the Loan Documents or otherwise required pursuant to Section 2.14 to be paid to the Agents and the Lenders (and to counsel of the Agents and the Ad Hoc Group Advisors) on or before such date shall have been paid; provided that, legal fees shall be limited to the reasonable and documented fees and disbursements of one counsel for the Administrative Agent (which shall be Dorsey & Whitney LLP) and one lead U.S. counsel for the Ad Hoc Group of Crossover Lenders (which shall be Milbank LLP), one lead Canadian counsel for the Ad Hoc Group of Crossover Lenders (which shall be Cassels Brock & Blackwell LLP) and, in addition, one local counsel in each appropriate jurisdiction), including reasonable and documented out-of-pocket costs and expenses of (a) the Agents administering the Facility and (b) preparing all documents and enforcing any and all obligations relating to the Facility.

Each Borrowing Request and each Withdrawal Request submitted by the Borrower shall be deemed to be a representation and warranty that the applicable conditions specified in Section 4.2 have been satisfied on and as of the date of the applicable Borrowing or Withdrawal Date, as applicable.

## SECTION 5. AFFIRMATIVE COVENANTS

Holdings, GNC Parent LLC, Parent and the Borrower each hereby jointly and severally agree that, so long as any Loan or other amount (excluding contingent reimbursement and indemnification obligations which are not due and payable) is owing to any Lender or any Agent hereunder, it shall and shall cause each of the Loan Parties that are Subsidiary Guarantors to:

5.1 Financial Statements, Budget.

(A) Financial Statements.

Furnish to the Administrative Agent for further delivery to each Lender:

(b) within 90 days after the end of each fiscal year of the Borrower, a copy of the audited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such year and the related audited consolidated statements of income and of cash flows for such year, setting forth in each case in comparative form the figures as of the end of and for

the previous year, all in reasonable detail and prepared in accordance with GAAP, by PricewaterhouseCoopers or other independent certified public accountants of nationally recognized standing;

(c) within 45 days after the end of each of the first three quarterly periods of each fiscal year of the Borrower, the unaudited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures as of the end of and for the corresponding period in the previous year, all in reasonable detail and certified by a Responsible Officer as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its consolidated Subsidiaries in accordance with GAAP (subject to normal year end audit adjustments and the absence of footnotes); and

(d) within 30 days after the end of each month (other than the third fiscal month of any fiscal quarter), a copy of the unaudited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such month and the related unaudited consolidated statements of income and of cash flows for such month.

(B) Budget and Other Information.

Furnish to the Administrative Agent for further delivery to each Lender:

(a) no later than Wednesday, July 22, 2020, and no later than the Wednesday of each fourth week thereafter, an updated 13-week statement of the Loan Parties' anticipated cash receipts and Budget Disbursements for the subsequent 13-week period (a "Proposed Budget"). Unless the Administrative Agent or Required Lenders notifies the Loan Parties in writing (which may be by email) on or before the Wednesday of the week following the delivery of any Proposed Budget that such Proposed Budget is not in form and substance reasonably satisfactory to the Required Lenders, such Proposed Budget shall on such Wednesday become the "Budget" for all purposes. If the Administrative Agent or Required Lenders deliver such notice that such Proposed Budget is not in form and substance reasonably satisfactory to the Required Lenders, the Budget then in effect shall continue as the then-effective Budget;

(b) on each Wednesday following the Petition Date, commencing on July 1, 2020, (prior to 11:59 p.m.) (x) a report (each, a "Variance Report") in form acceptable to the Required Lenders setting forth in reasonable detail the Borrower's actual aggregate cash receipts and aggregate cash Budget Disbursements for the relevant Variance Statement Period as compared to the projected, aggregate cash receipts and Budget Disbursements provided by the then-current Budget for the same period and setting forth (a) the actual cash receipts and Budget Disbursements for the relevant Variance Statement Period and available cash on hand as of the end of such period, (b) the variance in dollar amounts of the actual aggregate receipts and aggregate cash Budget Disbursements for the relevant Variance Statement Period from those reflected for the corresponding period in the Budget and (c) a description of the nature of any material positive or negative variance in certain line items to be reasonably agreed and (y) a statement by a Responsible Officer of Holdings as to whether or not a Budget Event shall have occurred for the relevant Budget Testing Period, if applicable;

(c) on Wednesday of each week (commencing after the first full week after the Petition Date), provide to the Administrative Agent and the Ad Hoc Group Advisors a report with respect to the immediately prior week setting forth sales and same-store sales (in Dollar amounts) broken down by (i) retail (domestic and franchise), (ii) e-commerce, (iii) U.S. retail segment, (iv) wholesale segment and (v) international segment (the “Sales Report”);

(d) within seven days after the start of each month commencing after the Petition Date, provide to the Administrative Agent and Ad Hoc Group Advisors the Sales Report with respect to the immediately prior month, accompanied by an analysis comparing the results in the Sales Report with the forecasted results that appeared in the Budget covering the corresponding period of time, for each month commencing June 2020;

(e) on Wednesday of each week (commencing after the first full week after the Petition Date), provide to the Administrative Agent and Ad Hoc Group Advisors a report setting forth, in Dollar amounts, sale proceeds and product margin achieved in the going-out-of-business sale with respect to the immediately prior week; and

(f) on Wednesday of each week (commencing after the first full week after the Petition Date), provide to the Administrative Agent and the Ad Hoc Group Advisors a report containing an update on negotiations with landlords, including a written summary of lease modifications and related savings.

The Borrower shall, to the extent requested by the Ad Hoc Group Advisors, weekly, at a time mutually agreed with the Administrative Agent that is promptly after the delivery of the information required pursuant to clause (B)(b) above, participate in a conference call for the Ad Hoc Group Advisors to discuss the financial condition and results of operations of the Loan Parties and the Budget and Variance Report. The Agents and the Lenders acknowledge that the content of such calls will include Nonpublic Information.

Notwithstanding the foregoing, the obligations in paragraphs (A)(a) and (A)(b) of this Section 5.1 may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any direct or indirect parent company of the Borrower that directly or indirectly owns all of the Capital Stock of the Borrower or (B) the Borrower’s (or any direct or indirect parent company thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; provided that, with respect to each of clauses (A) and (B), (i) to the extent such information relates to a parent of the Borrower and if requested by the Administrative Agent, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to the Borrower (or such parent), on the one hand, and the information relating to the Borrower and the Subsidiaries on a standalone basis, on the other hand (which consolidating information shall be certified by a Responsible Officer of the Borrower as fairly presenting such information unless such consolidating information is contained in the financial statements included in a Form 10-K or 10-Q filed with the SEC), and (ii) to the extent such information is in lieu of information required to be provided under Section 5.1(A)(a), the consolidated financial statements included in the materials provided pursuant to the foregoing clause (A) or (B) are accompanied by a report of PricewaterhouseCoopers or other independent public accountants of recognized national standing.

5.2 Certificates; Other Information. Furnish to the Administrative Agent in each case (other than in the case of clauses (c) and (h) below) for further delivery to each Lender or, in the case of clause (g) below, to the relevant Lender:

(a) [reserved];

(b) concurrently with the delivery of any financial statements pursuant to Sections 5.1(A)(a), 5.1(A)(b) and 5.1(A)(c), a certificate of a Responsible Officer stating that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate;

(c) [reserved];

(d) to the extent that the Borrower (or a direct or indirect parent company of Borrower) is not otherwise required to file reports on form 10-K or 10-Q with the SEC, within 45 days after the end of each of the first three fiscal quarters of the Borrower in each fiscal year, or within 90 days after the fourth fiscal quarter of the Borrower in each fiscal year, a narrative discussion and analysis of the financial condition and results of operations of the Borrower and its Subsidiaries for such fiscal quarter and for the period from the beginning of the then current fiscal year to the end of such fiscal quarter, as compared to the comparable periods of the previous year;

(e) promptly after the furnishing thereof, copies of any material notices received by any Loan Party from, or material statement or material report furnished to, any holder (which is not an Affiliate of Parent) of Material Debt and not otherwise required to be furnished to the Administrative Agent or the Lenders pursuant to any other clause of this Section 5.2 (other than any such notices, statements or reports of an administrative or ministerial nature including, for the avoidance of doubt, with respect to any “Borrowing Base Certificate” (as defined in the Prepetition ABL/FILO Amendment and Restatement) and other notices with respect to the calculation of the “Borrowing Base” (as defined in the Prepetition ABL/FILO Amendment and Restatement));

(f) within ten days after the same are sent, copies of all reports that Parent or the Borrower or any of its Restricted Subsidiaries sends to the holders of (x) any Material Debt (other than any such reports of an administrative or ministerial nature including, for the avoidance of doubt, any “Borrowing Base Certificate” (as defined in the Prepetition ABL/FILO Amendment and Restatement) and other reports with respect to the calculation of the “Borrowing Base” (as defined in the ABL Credit Agreement)) or (y) any class of its public equity securities and, within ten days after the same are filed, copies of all reports that Parent or the Borrower or any of its Restricted Subsidiaries may make to, or file with, the SEC (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be furnished to the Administrative Agent or the Lenders pursuant to any other clause of this Section 5.2; in each case only to the extent such reports are of a type customarily delivered by borrowers to lenders in syndicated loan financings;

(g) promptly, such additional financial and other information regarding the business, legal, financial or corporate affairs of any Loan Party or any Restricted Subsidiary as the Administrative Agent may from time to time reasonably request (on its own behalf or on behalf of any Lender); and

(h) promptly after the same are available and to the extent feasible and reasonably practicable not later than three (3) days prior to the filing thereof with the Bankruptcy Court or the Canadian Court by or on behalf of the Loan Parties, proposed forms of the Bankruptcy Court DIP Order, all other proposed orders and pleadings related to the Facility, any plan of reorganization or liquidation, and any disclosure statement related to such plan.

Concurrently with the delivery of any document or notice required to be delivered pursuant to this Section 5.2 (collectively, the “Borrower Materials”), the Borrower shall indicate in writing whether such document or notice contains Nonpublic Information (which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof if such Borrower Materials may be distributed to “public-side” Lenders). Parent and the Borrower and each Lender acknowledge that certain of the Lenders may be “public- side” Lenders (Lenders that do not wish to receive material non-public information with respect to Holdings, Parent, the Borrower, its Subsidiaries or their securities) and, if documents or notices required to be delivered pursuant to this Section 5.2 or otherwise are being distributed through IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform (the “Platform”), any document or notice that the Borrower has indicated contains Nonpublic Information shall not be posted on that portion of the Platform designated for such public-side Lenders. All Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “public side”. If the Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.2 contains Nonpublic Information, the Administrative Agent shall post such document or notice solely on that portion of the Platform designated for Lenders who do not wish to receive material nonpublic information with respect to Parent, the Borrower, its Subsidiaries and their securities.

5.3 Payment of Obligations. Subject to the Bankruptcy Court DIP Order, pay, discharge or otherwise satisfy before they become delinquent, as the case may be, all its material tax obligations, except (a) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of Parent, the Borrower or its Restricted Subsidiaries, as the case may be or (b) where the failure to pay, discharge or otherwise satisfy the same would not reasonably be expected to have a Material Adverse Effect.

5.4 Conduct of Business and Maintenance of Existence, etc. (a) (i) Preserve, renew and keep in full force and effect its corporate or other organizational existence and (ii) take all reasonable action to maintain all rights, privileges, franchises, permits and licenses necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by Section 6.4 and except (other than in the case of the preservation of existence of Parent and the Borrower) to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect; (b) to the extent not in conflict with this Agreement or the other Loan Documents, comply with all applicable Requirements of Law, except to the extent that failure to comply therewith would not, in the aggregate, reasonably be expected to have a

Material Adverse Effect; and (c) maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws.

5.5 Maintenance of Property; Insurance. (a) Except as would not reasonably be expected to have a Material Adverse Effect, keep all Property and systems necessary in its business (in the good faith belief of the Borrower) in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance (or, with respect to inventory and equipment at the retail store level, a program of self-insurance) on all its Property meeting the requirements of Section 5.3 of the Guarantee and Collateral Agreement and in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same geographic regions by companies of similar size engaged in the same or a similar business and as would be carried under similar circumstances; provided that such insurance shall not be required to cover ephedra products or other products for which insurance is not available or is not available on commercially reasonable terms.

5.6 Inspection of Property; Books and Records; Discussions. (a) Keep proper books of records in conformity with GAAP and all material applicable Requirements of Law of all material dealings and transactions in relation to its business activities and (b) permit representatives of the Administrative Agent, at reasonable business times and upon reasonable prior notice, to visit and inspect any of its properties and examine and, at the Borrower's expense, and make abstracts from any of its books and records as often as may reasonably be desired (subject to the immediately succeeding sentence) and to discuss the business, operations, properties and financial and other condition of Parent, the Borrower and its Restricted Subsidiaries with officers and employees of Parent, the Borrower and its Restricted Subsidiaries and with their respective independent certified public accountants (subject to such accountants' policies and procedures). Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing (in which case there shall be no limits on such visits, inspections and examinations) such visits, inspections and examinations shall be limited to two per fiscal year (and, (x) so long as no Event of Default has occurred and is continuing, only one time at the Borrower's expense and (y) following the occurrence and during the continuance of an Event of Default, not more than two times at the Borrower's expense); provided, however, that unless an Event of Default exists, (i) such inspections for environmental matters shall be limited to no more than once per fiscal year and (ii) at all times such inspections for environmental matters shall be limited to non-intrusive and non-invasive visual observations. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 5.6, none of Parent, the Borrower or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by any Requirement of Law or any binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

5.7 Notices. Promptly give notice to the Administrative Agent in each case for further delivery to the Collateral Agent and each Lender of:

(a) knowledge by the Borrower or Parent of the occurrence of any Default or Event of Default;

(b) any (i) default or event of default (or alleged default) under any Contractual Obligation (other than the Loan Documents) of any of the Loan Parties or (ii) litigation, investigation or proceeding which may exist at any time between any of the Loan Parties and any Governmental Authority, that in the case of either of clause (i) or (ii), would reasonably be expected to have a Material Adverse Effect;

(c) any litigation or proceeding against any of the Loan Parties (other than the Chapter 11 Cases and the Recognition Proceedings) that would reasonably be expected to have a Material Adverse Effect;

(d) the following events to the extent such events would reasonably be expected to have a Material Adverse Effect, as soon as possible and in any event within 15 days after the Borrower or any Commonly Controlled Entity knows or has reason to know thereof: (i) the occurrence of any ERISA Event or Canadian Pension Termination Event with respect to any Plan or Canadian Defined Benefit Plan, a failure to make any required contribution to a Single Employer Plan or Multiemployer Plan or a Canadian Pension Plan that would reasonably be expected to give rise to a Lien in favor of the PBGC, the Financial Services Commission of Ontario (or other like provincial entities) ("FSCO") or a Single Employer Plan or Multiemployer Plan or Canadian Pension Plan, the creation of any Lien in favor of any Person including the PBGC, the FSCO or a Single Employer Plan or Multiemployer Plan or Canadian Pension Plan or any withdrawal from, or the termination or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC or the FSCO or the Borrower or any Loan Party or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination or Insolvency of, any Plan or Canadian Defined Benefit Plan;

(e) any event, occurrence, or circumstance in which a material portion of the Collateral is damaged, destroyed, or otherwise impaired or adversely affected, to the extent any of the foregoing would reasonably be expected to have a Material Adverse Effect; and

(f) any other development or event that results in or would reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action (if any) Parent, the Borrower or the relevant Loan Party proposes to take with respect thereto.

5.8 Environmental Laws. (a) Comply in all respects with all applicable Environmental Laws, and obtain, maintain and comply with any and all Environmental Permits, except to the extent the failure to so comply with Environmental Laws or obtain, maintain or comply with Environmental Permits would not reasonably be expected to have a Material Adverse Effect.

(a) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other corrective actions required pursuant to Environmental Laws and promptly comply in all respects with all lawful orders and directives of all Governmental Authorities regarding any violation of or non-compliance with Environmental Laws and any release or threatened release of Hazardous Materials, except, in each case, to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect.

5.9 Opposition to Motions. Promptly oppose (i) any motion filed by any third party in the Bankruptcy Court or Canadian Court to (x) lift the stay on the Collateral (other than motions filed by the Administrative Agent or the Lenders) or (y) terminate the exclusive ability of the Loan Parties to file a plan of reorganization, or (ii) any other motion that, if granted, could reasonably be expected to have a material adverse effect on the Administrative Agent or the Lenders or any Collateral.

5.10 Additional Collateral, etc. Subject to any applicable limitation in any Intercreditor Agreement:

(a) [Reserved].

(b) [Reserved].

(c) With respect to any new Subsidiary created or acquired after the Closing Date (other than Excluded Subsidiaries) by the Borrower or a Subsidiary Guarantor promptly cause such new Subsidiary (A) to become a party to the Guarantee and Collateral Agreement and (B) to take such actions reasonably necessary to grant to the Collateral Agent for the benefit of the Secured Parties a perfected first priority security interest (subject to Permitted Liens) in the Collateral described in the Guarantee and Collateral Agreement with respect to such Subsidiary to the extent required under the Guarantee and Collateral Agreement, including, without limitation, the filing of UCC financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by applicable law.

(d) Notwithstanding the foregoing provisions of this Section 5.10 or any other provision hereof or of any other Loan Document, (i) the Borrower and Guarantors shall not be required to grant a security interest in any Excluded Assets, (ii) Liens required to be granted pursuant to this Section 5.10, and actions required to be taken, including to perfect such Liens, shall be subject to exceptions and limitations consistent with those set forth in the Security Documents on the Closing Date (or as created or amended after the Closing Date with the approval of the Borrower), (iii) other than with respect to (A) the Canadian Guarantor and (B) any other Foreign Subsidiary that becomes a Guarantor after the Closing Date, and in such instance, only with respect to the stock of such Foreign Subsidiary and subject to customary exceptions, limitations and restrictions imposed by local law, no Loan Party shall be required to take any actions outside the United States or under non-United States law to create or perfect any Liens on the Collateral (including, without limitation, any Intellectual Property registered or applied for registration in any jurisdiction outside the United States) and no Security Document shall be governed by the laws of any jurisdiction outside the United States, (iv) the Loan Parties shall not be required to deliver any landlord waivers, estoppels, collateral access agreements or bailee letters, (v) the Loan Parties shall not be required to deliver control agreements or



otherwise deliver perfection by “control” (within the meaning of the Uniform Commercial Code or the Securities Transfer Act (Ontario) (or equivalent in any other province or territory)) (including with respect to deposit accounts, securities accounts and commodities accounts), (vi) notices shall not be required to be sent by any Loan Party or any Subsidiary or permitted to be sent by any Secured Party to account debtors or other contractual third parties unless an Event of Default has occurred and is continuing, (vii) no perfection of security interests (except to the extent perfected by the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order or through the filing of UCC and PPSA financing statements) shall be required with respect to letter of credit rights and (viii) in no event shall perfection be required with respect to any Collateral by means other than (A) the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order and (B) filings of UCC and (with respect to the Canadian Guarantor) PPSA financing statements in the office of the secretary of state or provincial ministry (or similar central filing office) of the jurisdiction of formation or organization of such Loan Party.

5.11 [Reserved].

5.12 Further Assurances. Upon the exercise by the Administrative Agent, the Collateral Agent or any Lender of any right or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, recording, qualification or authorization of any United States or Canadian Governmental Authority, the Borrower will execute and deliver, or will cause its Subsidiaries to execute and deliver all applications, certifications, instruments and other documents that such Agent or such Lender may be required to obtain from the Borrower or any of its Subsidiaries for such governmental consent, approval, recording, qualification or authorization, subject to the terms of Section 5.10 and other than with respect to any Excluded Assets.

5.13 Maintenance of Ratings. The Borrower shall use commercially reasonable efforts to obtain, within 45 days following the Closing Date, and if so obtained, will use commercially reasonable efforts to maintain thereafter a private rating (but not any specific rating) from either Moody’s or S&P for the Term Loans.

5.14 Fiscal Period. End the Fiscal Year of the Borrower on December 31 and maintain the Borrower’s method of determining fiscal quarters as such method is in effect on the Closing Date.

5.15 [Reserved].

5.16 Anti-Corruption and Sanctions. Use, and cause the respective directors, officers, employees and agents of the Borrower and its Subsidiaries to use, the proceeds of any Loan in a manner not (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto. Notwithstanding the foregoing, the covenants in this Section 5.16 shall not be made by nor apply to any Person that qualifies as a corporation that is registered or incorporated under the laws of Canada or any province thereof and that carries on business in whole or in part in Canada within

the meaning of Section 2 of the Foreign Extraterritorial Measures (United States) Order, 1992 passed under the Foreign Extraterritorial Measures Act (Canada) in so far as such covenants would result in a violation of or conflict with the Foreign Extraterritorial Measures Act (Canada) or any similar law.

## SECTION 6. NEGATIVE COVENANTS

Holdings, GNC Parent LLC, Parent and the Borrower each agrees that, so long as any Loan or other amount (excluding Obligations in respect of contingent reimbursement and indemnification obligations which are not due and payable) is owing to any Lender or any Agent hereunder, it shall not, and shall not permit any of the Loan Parties that are Subsidiary Guarantors to:

6.1 [Reserved].

6.2 Limitation on Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of the Loan Parties under (i) the Loan Documents, (ii) the Prepetition Loan Documents in effect on the Petition Date, (iii) the Prepetition ABL/FILO Amendment and Restatement, (iv) the LC Cash Collateral Agreement and the Existing Letters of Credit, and (v) the Carve Out;

(b) Indebtedness of any Loan Party to any other Loan Party or any Restricted Subsidiary, so long as any such Indebtedness owed to a non-Loan Party is subordinated to the Obligations pursuant to the Bankruptcy Court DIP Order;

(c) Indebtedness (including intercompany Indebtedness) and Guarantee Obligations outstanding on the Closing Date;

(d) Guarantee Obligations by Holdings, the Borrower or any of the Guarantors in respect of Indebtedness of the Borrower or any of the Guarantors otherwise permitted hereunder;

(e) Indebtedness in respect of Cash Management Services in the ordinary course of business and Indebtedness arising from the endorsement of instruments or other payment items for deposit and the honoring by a bank or other financial institution of instruments or other payments items drawn against insufficient funds;

(f) to the extent constituting Indebtedness, indemnification, deferred purchase price adjustments, earn-outs or similar obligations, in each case, incurred or assumed in connection with the acquisition of any business or assets or any Investment permitted to be acquired or made hereunder or any Disposition permitted hereunder;

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

(h) Indebtedness in respect of Hedge Agreements entered into in the ordinary course of business, and not for speculative purposes, to protect against exposure to interest rates, commodity prices or foreign exchange rates;

(i) Indebtedness representing deferred compensation or similar obligations to employees of the Borrower and the Guarantors incurred in the ordinary course of business;

(j) Indebtedness incurred by the Borrower or any of the Guarantors in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims; provided that upon the drawing of such letter of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 90 days (or such longer period as may be agreed upon by the Administrative Agent) unless the amount or validity of such obligations are being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the Borrower or the Guarantors, as the case may be; provided further that such Indebtedness shall not exceed \$500,000 in the aggregate at any time outstanding;

(k) Indebtedness in respect of performance, bid, release, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of the Guarantors, in each case in the ordinary course of business;

(l) Indebtedness in respect of letters of credit issued for the account of the Borrower or any of the Guarantors to finance the purchase of inventory so long as (x) such Indebtedness is secured only by cash collateral and in accordance with the Budget and (y) the aggregate principal amount of such Indebtedness does not exceed \$1,500,000 at any one time outstanding;

(m) Indebtedness incurred in the ordinary course of business with respect to customer deposits and other unsecured current liabilities not the result of borrowing and not evidenced by any note or other evidence of Indebtedness;

(n) unsecured Indebtedness of the Borrower or any of the Guarantors owing to the Borrower or any other Guarantors to the extent expressly contemplated in the Budget and constituting an Investment permitted by Section 6.8;

(o) Indebtedness in an aggregate principal amount not to exceed \$625,000 at any one time outstanding; provided that no more than \$250,000 of such Indebtedness may be in respect of borrowed money; and

(p) to the extent constituting Indebtedness, all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in Section 6.2(a) through (o) above.

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness

denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus any undrawn commitments with respect thereto and the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing.

To the extent otherwise constituting Indebtedness, the accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall be deemed not to be Indebtedness for purposes of this Section 6.2. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

6.3 Limitation on Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

(a) Liens for Taxes, assessments or governmental charges that are not required to be paid pursuant to Section 5.3 that are not overdue for a period of more than 60 days or that are being contested in good faith by appropriate proceedings (provided that adequate reserves with respect to such proceedings are maintained on the books of the Borrower or its Subsidiaries, as the case may be, in conformity with GAAP);

(b) (i) carriers', warehousemen's, landlord's, mechanics', contractor's, materialmen's, repairmen's or other like Liens imposed by law or arising in the ordinary course of business which secure amounts that are not overdue for a period of more than 60 days or if more than 60 days overdue, are unfiled and no action has been taken to enforce such Lien, or that are being contested in good faith by appropriate proceedings (provided that adequate reserves with respect to such proceedings are maintained in the books of the Borrower or the applicable Subsidiary, as the case may be, in conformity with GAAP), (ii) Liens of customs and revenue authorities to secure payment of customs duties in connection with the importation of goods and (iii) Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or such other goods in the ordinary course of business;

(c) subject to the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order (i) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations

of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to any Loan Party or any Subsidiary;

(d) deposits by or on behalf of any Loan Party or any of its Subsidiaries to secure the performance of bids, trade contracts and governmental contracts (other than Indebtedness for borrowed money), leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(e) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and title defects that, in the aggregate, do not materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries taken as a whole;

(f) Liens in existence on the Closing Date and Replacement Liens in respect thereof;

(g) Subject to the Bankruptcy Court DIP Order, Liens created pursuant to (i) the Loan Documents, (ii) the Prepetition Loan Documents in effect on the Petition Date, (iii) the Prepetition ABL/FILO Amendment and Restatement, (iv) the LC Cash Collateral Agreement and the Existing Letters of Credit, and (v) the Carve Out;

(h) any interest or title of a lessor or sublessor under any lease or sublease or real property license or sub-license entered into by the Borrower or any Guarantor in the ordinary course of its business and covering only the assets so leased, subleased, licensed or sub-licensed and any Liens on such lessor's, sublessor's, licensee's or sub-licensee's interest or title;

(i) Liens in connection with attachments or judgments or orders in circumstances not constituting an Event of Default under Section 7.1(f);

(j) Liens existing on property at the time of its acquisition or existing on the property of a Person which becomes a Subsidiary of the Borrower after the Closing Date; provided that (i) such Liens existed at the time such property was acquired or such Person became a Subsidiary of the Borrower, (ii) such Liens were not granted in connection with or in contemplation of the applicable acquisition or Investment, (iii) any Indebtedness secured thereby is permitted by Section 6.2 and (iv) such Liens are not expanded to cover additional Property (other than proceeds and products thereof); and Replacement Liens in respect thereof;

(k) Liens consistent with those arising by operation of law consisting of customary and ordinary course rights of setoff upon deposits of cash and Cash Equivalents in favor of banks or other financial or depository institutions in the ordinary course of business;

(l) Liens on insurance policies and the proceeds thereof securing insurance premium financing permitted hereunder;

(m) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Borrower or any Guarantor in the ordinary course of business;

(n) (i) Liens of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on the items in the course of collection, (ii) Liens attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and not for speculative purposes and (iii) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to accounts and cash and Cash Equivalents on deposit in accounts maintained by the Borrower or any Guarantor, in each case under this clause (iii) granted in the ordinary course of business in favor of the banks or other financial or depositary institution with which such accounts are maintained, securing amounts owing to such Person with respect to Cash Management Services (including, without limitation, operating account arrangements and those involving pooled accounts and netting arrangements); provided that, in the case of this clause (iii), unless such Liens arise by operation of applicable law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness for borrowed money;

(o) non-exclusive licenses and sub-licenses of Intellectual Property granted by the Borrower or any of the Guarantors in the ordinary course of business (and, to the extent in existence on the Closing Date or granted by the Borrower or any of the Guarantors in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States and Canada);

(p) UCC or PPSA financing statements or similar public filings that are filed as a precautionary measure in connection with operating leases or consignment of goods in the ordinary course of business;

(q) Liens on property purportedly rented to, or leased by, the Borrower or any of the Guarantors pursuant to a Sale and Leaseback Transaction; provided, that (i) such Sale and Leaseback Transaction is permitted by Section 6.12, (ii) such Liens do not encumber any other property of the Borrower or the Guarantors, and (iii) such Liens secure only the Attributable Indebtedness incurred in connection with such Sale and Leaseback Transaction;

(r) Liens on the assets of Foreign Subsidiaries that secure only Indebtedness permitted pursuant to Section 6.2 and related obligations of Foreign Subsidiaries;

(s) good faith earnest money deposits made in connection with an Investment (other than Investments under Section 6.8(r)) or letter of intent or purchase agreement permitted hereunder;

(t) Liens in favor of a Loan Party or a Restricted Subsidiary securing intercompany Indebtedness permitted hereunder; provided, that such intercompany Indebtedness, to the extent owed from a Loan Party to a non-Loan Party, shall be subordinated to the Obligations pursuant to the Bankruptcy Court DIP Order;

(u) Liens (i) on an Investment permitted pursuant to Section 6.8 to be applied against the purchase price for such Investment or (ii) consisting of an agreement to Dispose of

any property in a Disposition permitted under Section 6.5, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(v) Liens deemed to exist in connection with Investments in repurchase agreements under Section 6.8; provided such Liens do not extend to any assets other than those assets that are the subject of such repurchase agreement;

(w) Liens that are customary contractual rights of setoff relating to purchase orders and other agreements entered into with customers of the Borrower or any of the Subsidiaries in the ordinary course of business;

(x) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of the Guarantors are located;

(y) Liens or rights of setoff against credit balances of the Borrower or any of the Guarantors with credit card issuers or credit card processors or amounts owing by such credit card issuers or credit card processors to the Borrower or any of the Guarantors in the ordinary course of business, to secure the obligations of the Borrower or any of the Guarantors to such credit card issuers and credit card processors as a result of fees and chargebacks;

(z) Liens with respect to Capital Stock in joint ventures that arise pursuant to the applicable underlying joint venture agreement;

(aa) Liens securing obligations in an amount not to exceed \$625,000 at any one time outstanding; provided that no more than \$250,000 of such secured obligations may be in respect of Indebtedness for borrowed money; and

(bb) Liens in favor of the Prepetition Lenders and Prepetition Agents granted pursuant to the Bankruptcy Court DIP Orders.

6.4 Limitation on Fundamental Changes. Consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself, or Dispose of all or substantially all of its Property or business, except that so long as no approval of the Bankruptcy Court is required (or such approval is required and shall have been received):

(a) any Subsidiary of the Borrower may be merged or consolidated with or into the Borrower (provided that the Borrower shall be the continuing or surviving entity) and any Subsidiary of the Borrower may be merged, consolidated or amalgamated with or into any Guarantor (provided that if a Guarantor is party thereto (i) a Guarantor shall be the continuing, surviving or resulting entity or (ii) simultaneously with such transaction, the continuing, surviving or resulting entity shall become a Guarantor and the Borrower shall comply with Section 5.10 in connection therewith);

(b) any Subsidiary of the Borrower may Dispose of all or substantially all of its Property or business (i) (upon liquidation, windup, dissolution or otherwise) to (x) if such Subsidiary is a Loan Party, the Borrower or any other Loan Party and (y) if such Subsidiary is

not a Loan Party, the Borrower or any Subsidiary or (ii) pursuant to a Disposition permitted by Section 6.5;

(c) any Foreign Subsidiary may (i) be merged or consolidated or amalgamated with or into any other Foreign Subsidiary, or (ii) Dispose of any or all of its assets to (upon voluntary liquidation, windup, dissolution or otherwise) any other Foreign Subsidiary;

(d) any merger, amalgamation or consolidation the sole purpose of which is to reincorporate or reorganize a Loan Party or Subsidiary in another jurisdiction; provided that (x) in the case of any such merger, amalgamation or consolidation involving a Loan Party, a Loan Party is the surviving, continuing or resulting Person (or simultaneously with such transaction, the continuing, surviving or resulting entity shall become a Subsidiary Guarantor) and the Borrower shall comply with Section 5.10 in connection therewith and (y) in the case of any such merger or consolidation involving a Loan Party or Subsidiary that is domiciled within the United States (or in the case of the Canadian Guarantor, Canada), the continuing, surviving or resulting entity shall be domiciled within the United States (or in the case of the Canadian Guarantor, Canada);

(e) any Investment permitted by Section 6.8 may be structured as a merger, consolidation or amalgamation; provided that in the case of any such merger, consolidation or amalgamation of a Loan Party, the surviving, continuing or resulting legal entity of such merger, consolidation or amalgamation is a Loan Party (or simultaneously with such transaction, the continuing, surviving or resulting entity shall become a Subsidiary Guarantor) and the Borrower shall comply with Section 5.10 in connection therewith; and

(f) any Loan Party (other than the Borrower) may dissolve, liquidate or wind up its affairs at any time if such dissolution, liquidation or winding up would not reasonably be expected to have a Material Adverse Effect.

6.5 Limitation on Disposition of Property. Dispose of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or, in the case of any Restricted Subsidiary of the Borrower, issue or sell any shares of such Restricted Subsidiary's Capital Stock to any Person, except:

(a) the Disposition of obsolete or worn out property in the ordinary course of business;

(b) the sale of inventory and equipment held for sale in the ordinary course of business or pursuant to a "going out of business" sale;

(c) Dispositions permitted by Section 6.4 (other than Section 6.4(b)(ii));

(d) the sale or issuance of any Loan Party's or any Subsidiary's Capital Stock to the Borrower or any other Loan Party or the sale or issuance of any Excluded Subsidiary's Capital Stock to another Excluded Subsidiary; provided that any Guarantor's ownership interest therein is not diluted;



- (e) the sale of assets in connection with the closure of stores and the Disposition of franchises and stores (and related assets) in the ordinary course of business or pursuant to a “going out of business sale”;
- (f) the Disposition of cash or Cash Equivalents;
- (g) (i) the non-exclusive license or sub-license of Intellectual Property in the ordinary course of business (and, to the extent in existence on the Closing Date or granted in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States and Canada) and (ii) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any immaterial Intellectual Property;
- (h) the lease, sublease, license or sub-license of property which is described in Section 6.3(h);
- (i) the Disposition of surplus or other property no longer used or useful in the business of the Borrower and its Subsidiaries in the ordinary course of business or pursuant to a “going out of business sale”;
- (j) the Disposition of other assets having a fair market value not to exceed \$250,000 in the aggregate in any fiscal year;
- (k) the Disposition of assets subject to or in connection with any Recovery Event;
- (l) Dispositions consisting of Restricted Payments permitted by Section 6.6;
- (m) Dispositions consisting of Investments permitted by Section 6.8;
- (n) Dispositions consisting of Liens permitted by Section 6.3;
- (o) Dispositions of assets pursuant to Sale and Leaseback Transactions permitted pursuant to Section 6.12;
- (p) Dispositions of property to a Loan Party or a Subsidiary; provided that if the transferor of such property is a Loan Party the transferee thereof must be a Loan Party;
- (q) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;
- (r) Dispositions of accounts receivable in connection with the collection or compromise thereof in the ordinary course of business (and not for financing purposes); and
- (s) the unwinding of any Hedge Agreement.

6.6 Limitation on Restricted Payments. Declare or pay any dividend on (other than dividends payable solely in Qualified Capital Stock of the Person making the dividend so long as the ownership interest of any Guarantor in such Person is not diluted), or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Loan Party, whether now or hereafter outstanding, or make any other distribution in respect thereof, whether in cash or property (collectively, “Restricted Payments”), except that:

(a) any Loan Party may make Restricted Payments to any other Loan Party;

(b) to the extent provided for in the Budget, any Loan Party may make Restricted Payments;

(c) the Borrower may pay dividends to permit Parent or any direct or indirect parent company of Parent to (i) pay operating costs and expenses and other corporate overhead costs and expenses (including, without limitation, directors’ fees and expenses and administrative, legal, accounting, filings and similar expenses and salary, bonus and other benefits payable to officers and employees of Parent or any direct or indirect parent company of Parent), in each case to the extent such costs, expenses, fees, salaries, bonuses and benefits are attributable to the ownership or operations of Parent, the Borrower and the Subsidiaries, are reasonable and incurred in the ordinary course of business, (ii) [reserved], (iii) pay taxes which are not determined by reference to income, but which are imposed on Parent or any direct or indirect parent company of Parent as a result of Parent’s or such parent company’s ownership of the equity of Parent or the Borrower or any direct or indirect parent company of Parent, as the case may be, but only if and to the extent that Parent or such parent company has not received cash or other property in connection with the events or transactions giving rise to such taxes, (iv) [reserved], (v) pay franchise taxes and other fees, taxes and expenses required to maintain its corporate existence, (vi) finance any Investment permitted to be made hereunder (so long as (A) such dividends are made substantially concurrently with the closing of such Investment and (B) immediately following the closing thereof (1) all property acquired (whether assets or Capital Stock) shall be contributed to the Borrower or a Subsidiary Guarantor or (2) the Person formed or acquired shall be merged into the Borrower or a Subsidiary Guarantor in order to consummate such Investment (and subject to the provisions of Sections 5.10 and 6.4)), (vii) pay costs, fees and expenses related to any unsuccessful equity or debt offering permitted by this Agreement (other than any such offering intended to benefit Subsidiaries of any such parent company other than the Borrower and its Subsidiaries) and (viii) make payments permitted under Section 6.11 (but only to the extent such payments have not been and are not expected to be made directly by the Borrower or a Subsidiary Guarantor); provided that dividends paid pursuant to this Section 6.6(c) (other than dividends paid pursuant to clause (ii), (iii), or (iv) above) are used by Parent or any direct or indirect parent holding company of Parent for such purpose within 60 days of the receipt of such dividends or are refunded to the Borrower;

(d) any non-Wholly Owned Subsidiary of the Borrower may declare and pay cash dividends to its equity holders generally so long as the Borrower or its respective Subsidiary which owns the equity interests in the Subsidiary paying such dividends receives at least its proportionate share thereof (based upon the relative holding of the equity interests in the Subsidiary paying such dividends);

(e) repurchases of Capital Stock in any Loan Party deemed to occur upon exercise of stock options or warrants or similar rights if such Capital Stock represents a portion of the exercise price of such options or warrants or similar rights (as long as the Loan Parties make no payment in connection therewith that is not otherwise permitted hereunder);

(f) GNC Puerto Rico, LLC may make distributions to GNC Live Well Ireland in an aggregate amount not to exceed \$300,000 per fiscal year;

(g) to the extent constituting Restricted Payments, the Borrower and the Subsidiaries may enter into and consummate transactions permitted by Section 6.4 and Section 6.8 (other than Section 6.8(p)); and

(h) the Borrower or any of the Restricted Subsidiaries may pay cash in lieu of fractional Capital Stock in connection with any dividend, split or combination thereof.

6.7 [Reserved].

6.8 Limitation on Investments. Make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "Investments"), except:

(a) extensions of trade credit or the holding of receivables in the ordinary course of business and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(b) investments in cash and items that were Cash Equivalents at the time such Investment was made;

(c) Investments arising in connection with the incurrence of Indebtedness permitted by Section 6.2(b), 6.2(c) and 6.2(d), to the extent constituting intercompany Indebtedness;

(d) loans and advances to employees, officers, directors, managers and consultants of Parent (or any direct or indirect parent company thereof to the extent relating to the business of Parent, the Borrower and the Subsidiaries), the Borrower or any Subsidiaries of the Borrower in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate principal amount not to exceed \$100,000 at any one time outstanding;

(e) Investments (other than those relating to the incurrence of Indebtedness permitted by Section 6.8(c)) by any Loan Party in any Person that, prior to or concurrently with such Investment, is or becomes a Loan Party (including any such Investment consisting of the contribution by any Loan Party of Capital Stock held by such Loan Party in any other Person (including a Loan Party));

(f) Investments consisting of notes payable by franchisees to any Loan Party in an aggregate principal amount not to exceed \$1,000,000 at any one time outstanding;

(g) Investments received in connection with the bankruptcy or reorganization of, insolvency or liquidation of, or settlement of claims against and delinquent accounts of and disputes with, franchisees, customers and suppliers, or as security for any such claims, accounts and disputes, or upon the foreclosure with respect to any secured Investment;

(h) advances of payroll payments to employees, officers, directors and managers of Parent, the Borrower and the Subsidiaries in the ordinary course of business;

(i) Investments by any Loan Party in Excluded Subsidiaries and joint ventures in an aggregate amount not to exceed \$100,000 at any time outstanding;

(j) Investments by any Loan Party in any Person that is a Foreign Subsidiary in an aggregate amount not to exceed \$250,000;

(k) [reserved];

(l) Investments consisting of promissory notes and other deferred payment obligations and noncash consideration delivered as the purchase consideration for a Disposition permitted by Section 6.5;

(m) Investments existing on the Closing Date and any modification, replacement, renewal, reinvestment or extension thereof (provided that the amount of the original Investment is not increased except by the terms of such original Investment or as otherwise permitted by this Section 6.8);

(n) any Loan Party may endorse negotiable instruments and other payment items for collection or deposit in the ordinary course of business or make lease, utility and other similar deposits in the ordinary course of business;

(o) Investments consisting of obligations under Hedge Agreements permitted by Section 6.2;

(p) Investments consisting of Restricted Payments permitted by Section 6.6 (other than Section 6.6(e));

(q) Investments of any Person that becomes (or is merged or consolidated or amalgamated with) a Subsidiary of the Borrower on or after the Closing Date on the date such Person becomes (or is merged or consolidated or amalgamated with) a Subsidiary of the Borrower; provided that (i) such Investments exist at the time such Person becomes (or is merged or consolidated or amalgamated with) a Subsidiary, and (ii) such Investments are not made in anticipation or contemplation of such Person becoming (or merging or consolidating or amalgamated with) a Subsidiary;

(r) Investments consisting of good faith deposits made in accordance with Section 6.3(s);

(s) deposits made in the ordinary course of business consistent with past practices to secure the performance of leases or in connection with bidding on government contracts;

(t) advances in connection with purchases of goods or services in the ordinary course of business;

(u) Guarantee Obligations permitted under Section 6.2 and, to the extent not constituting Indebtedness, other Guarantee Obligations entered into in the ordinary course of business;

(v) Investments consisting of Liens permitted under Section 6.3;

(w) Investments consisting of transactions permitted under Section 6.4;

(x) Investments in assets useful in the business of the Borrower and its Restricted Subsidiaries made by the Borrower or any of its Restricted Subsidiaries with the proceeds of any Reinvestment Deferred Amount; provided that if the underlying Recovery Event was with respect to a Loan Party, then such Investment shall be consummated by the Borrower or a Subsidiary Guarantor;

(y) Investments by any Loan Party in any Foreign Subsidiary of such Loan Party to the extent each such Investment is made using assets received by such Loan Party as a distribution from a Foreign Subsidiary of such Loan Party; and

(z) Investments in an aggregate amount not to exceed \$250,000 at any time outstanding.

For purposes of covenant compliance, the amount of any Investment at any time shall be the amount actually invested (measured at the time made), without adjustment for subsequent changes in the value of such Investment, net of all Returns on such Investment up to the original amount of such Investment.

6.9 Prepayments of Indebtedness. (a) Make any payment of principal or interest or otherwise on account of any Prepetition Obligations or payables under the Prepetition Loan Documents, other than (i) payments made in compliance in all material respects with the Budget (subject to Permitted Variances), (ii) the Revolver Termination, (iii) letter of credit reimbursement payments pursuant to the LC Cash Collateral Agreement in connection with draws under the Existing Letters of Credit, (iv) payments agreed to in writing by the Required Lenders and (v) payments authorized and approved by the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, including adequate protection payments set forth therein or (b) amend or modify the terms of the Prepetition Loan Documents (other than amendments or modifications not materially adverse to the Agent or the Lenders or their rights and remedies under the Loan Documents or which would not have any material and adverse impact on the Collateral) unless consented to in writing by the Administrative Agent.

6.10 Limitation on Modifications of Organizational Documents. Amend, modify or otherwise change (pursuant to a waiver or otherwise), any of the terms of any

Organizational Document, other than any such amendment, modification or other change which does not adversely affect the Lenders in any material respect.

6.11 Limitation on Transactions with Affiliates. Enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than any Loan Party, any Restricted Subsidiary or any Person that becomes a Restricted Subsidiary as a result of such transaction) unless such transaction is otherwise permitted under this Agreement and upon fair and reasonable terms no less favorable to the Borrower and its Subsidiaries than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate. Notwithstanding the foregoing, the Borrower and its Subsidiaries may (a) [reserved], (b) enter into and consummate the transactions existing on the Closing Date and, to the extent exceeding \$500,000 in amount, listed on Schedule 6.11, (c) make Restricted Payments permitted pursuant to Section 6.6 and repayments and prepayments of Indebtedness permitted pursuant to Section 6.9, (d) make Investments permitted by Section 6.8, (e) [reserved], (f) enter into employment and severance arrangements with officers, directors, managers and employees of the Parent, the Borrower and the Subsidiaries and, to the extent relating to services performed for Parent, the Borrower and the Subsidiaries, pay director, officer and employee compensation (including, without limitation, bonuses) and other benefits (including, without limitation, retirement, health, stock option and other benefit plans) and indemnification and expense reimbursement arrangements; provided that any purchase of Capital Stock of Parent (or any direct or indirect holding company of Parent) in connection with the foregoing shall be subject to Section 6.6, and (g) license on a non-exclusive basis Intellectual Property in the ordinary course of business (and, to the extent in existence on the Closing Date or granted in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States and Canada) (1) on an arm's length basis to permit the commercial exploitation of such Intellectual Property between or among Affiliates of the Borrower and (2) to parent companies of the Parent in connection with their ownership of the Parent.

6.12 Limitation on Sales and Leasebacks. Enter into any arrangement with any Person providing for the leasing by any Loan Party of real or personal property which has been or is to be sold or transferred by such Loan Party to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of such Loan Party (a "Sale and Leaseback Transaction") unless (i) the sale of such property is made for cash consideration in an amount not less than the fair market value of such property, (ii) the Sale and Leaseback Transaction is permitted by Section 6.5 and is consummated within 180 days after the date on which such property is sold or transferred, (iii) any Liens arising in connection with its use of the property are permitted by Section 6.3(q), (iv) the Sale and Leaseback Transaction would be permitted under Section 6.2, assuming the Attributable Indebtedness with respect to the Sale and Leaseback Transaction constituted Indebtedness under Section 6.2.

6.13 [Reserved].

6.14 Limitation on Negative Pledge Clauses. Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of the Borrower or any of the

Guarantors to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations or, in the case of any guarantor, its obligations under the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement, other than (a) this Agreement and the other Loan Documents, the Prepetition Loan Documents in effect on the Petition Date, the Prepetition ABL/FILO Amendment and Restatement, the LC Cash Collateral Agreement and the Existing Letters of Credit, and the Carve Out, (b) customary provisions in joint venture agreements and similar agreements that restrict transfer of or liens on assets of, or equity interests in, joint ventures, (c) non-exclusive licenses or sub-licenses by any Loan Party of Intellectual Property in the ordinary course of business (and, to the extent in existence on the Closing Date or granted by any Loan Party in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States, Canada or Puerto Rico) (in which case any prohibition or limitation shall only be effective against the Intellectual Property subject thereto), (d) (x) prohibitions and limitations in effect on the Closing Date and (y) to the extent such prohibitions and limitations described in clause (x) are set forth in an agreement evidencing Indebtedness, prohibitions and limitations set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such prohibitions and limitations, (e) customary provisions in leases, subleases, licenses and sub-licenses that restrict the transfer thereof or the transfer of the assets subject thereto by the lessee, sublessee, licensee or sub-licensee, (f) prohibitions and limitations arising by operation of law, (g) customary restrictions that arise in connection with any Disposition permitted by Section 6.5 applicable pending such Disposition solely to the assets subject to such Disposition, (h) negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 6.2 but solely to the extent any negative pledge relates to the property financed by or the subject of such Indebtedness and the proceeds and products thereof (other than Indebtedness constituting any unsecured Debt) as long as such pledges and restrictions do not restrict or impair the ability of the Parent, the Borrower and the Restricted Subsidiaries to comply with their obligations under the Loan Documents, (i) customary provisions contained in an agreement restricting assignment of such agreement entered into in the ordinary course of business and (j) customary restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business.

6.15 Limitation on Restrictions on Restricted Subsidiary Distributions. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to (a) make Restricted Payments in respect of any Capital Stock of such Restricted Subsidiary held by, or pay or subordinate any Indebtedness owed to, Parent, the Borrower or any other Restricted Subsidiary, (b) make Investments in the Borrower or any other Restricted Subsidiary or (c) transfer any of its assets to the Borrower or any other Restricted Subsidiary, except in each case for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions existing under the Prepetition Loan Documents in effect on the Petition Date, the Prepetition ABL/FILO Amendment and Restatement, the LC Cash Collateral Agreement and the Existing Letters of Credit, and the Carve Out, (iii) any restrictions with respect to a Restricted Subsidiary imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Restricted Subsidiary, (iv)

customary net worth provisions contained in real property leases entered into by the Borrower or any of its Subsidiaries so long as such net worth provisions would not reasonably be expected to impair materially the ability of the Loan Parties to meet their ongoing obligations under this Agreement or any of the other Loan Documents, (v) any restriction with respect to Excluded Subsidiaries in connection with Indebtedness not prohibited hereunder, (vi) to the extent not otherwise permitted under this Section 6.15, agreements, restrictions and limitations described in clauses (a)-(j) of Section 6.14, (v) restrictions with respect to the transfer of any asset (or the interest in any Person) contained in an agreement that has been entered into in connection with the disposition of such asset (or interest in such Person) permitted hereunder and (vii) prohibitions and limitations arising by operation of law.

6.16 Limitation on Lines of Business. Enter into any business, either directly or through any Subsidiary, except for those businesses in which the Borrower and its Subsidiaries are engaged on the date of this Agreement or that are reasonably related or ancillary thereto or reasonable extensions thereof.

6.17 [Reserved].

6.18 Canadian Pension Plans. Canadian Guarantor shall not, without the consent of the Administrative Agent, maintain, administer, contribute or have any liability in respect of any Canadian Defined Benefit Plan (governed by the province of Ontario) or acquire an interest in any Person if such Person sponsors, maintains, administers or contributes to, or has any liability in respect of any Canadian Defined Benefit Plan (governed by the province of Ontario).

6.19 Use of Proceeds. No portion of the proceeds of the New Money Loans, the Collateral, or the Carve Out may be used:

(a) for any purpose that is prohibited under the Bankruptcy Code or the Bankruptcy Court DIP Order;

(b) to finance in any way: any contested matter, adversary proceeding, suit, arbitration, application, motion or other litigation of any type adverse to the interests of any or all of the Administrative Agent, the Lenders, the Prepetition Agents or the Prepetition Lenders or their respective rights and remedies under the Loan Documents, the Bankruptcy Court DIP Order, the Canadian Court DIP Recognition Order or the Prepetition Loan Documents;

(c) for the payment of fees, expenses, interest or principal under the Prepetition Loan Documents (other than permitted adequate protection payments);

(d) unless the Exit Conversion occurs, to make any distribution under a plan of reorganization confirmed in the Chapter 11 Cases that does not provide for the indefeasible payment of the Loans in full and in cash on the effective date of such plan; and

(e) to make any payment in excess of \$500,000 in the aggregate in settlement of any claim, action or proceeding before any court, arbitrator or other governmental body without the prior written consent of the Administrative Agent acting at the direction of the Required Lenders;



provided that, notwithstanding the foregoing, advisors to the official unsecured creditors' committee, if one is appointed, may investigate the liens granted pursuant to, or any claims under or causes of action with respect to, the Prepetition Loan Documents at an aggregate expense for such investigation not to exceed \$75,000, provided that no portion of such amount may be used to prosecute any claims.

Subject to the Restructuring Support Agreement, nothing herein shall in any way prejudice or prevent the Administrative Agent or the Lenders from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest.

6.20 Chapter 11 Modifications. Except as permitted pursuant to the terms of this Agreement and the Bankruptcy Court DIP Order or otherwise consented to by the Required Lenders, make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Bankruptcy Court DIP Orders.

6.21 Operating Account. Create, incur, assume or suffer to exist any Lien upon the Operating Account other than (i) the first priority Lien created in favor of the Secured Parties under the Loan Documents and (ii) rights of setoff and Liens arising as a matter of law, including bankers' Liens and other similar Liens.

6.22 Right of Subrogation. Assert any right of subrogation or contribution against any other Loan Party until all amounts under this Facility are paid in full in cash and the Commitments are terminated or upon an Exit Conversion.

Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, any disbursements, Indebtedness, Liens, Investments or other transactions restricted by this Section 6 shall nevertheless be permitted hereunder to the extent set forth with specificity in the Budget.

## SECTION 7. EVENTS OF DEFAULT

7.1 Events of Default. If any of the following events shall occur and be continuing:

(a) (i) The Borrower shall fail to pay any principal of any Loan when due in accordance with the terms hereof; or (ii) the Borrower shall fail to pay any interest on any Loan, or any Loan Party shall fail to pay any other amount payable hereunder or under any other Loan Document, within three Business Days after any such interest or other amount becomes due in accordance with the terms hereof or thereof; or

(b) Any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement required to be furnished by it at any time under this Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made or furnished (provided that, in each case such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified by materiality); or

(c) Any Loan Party shall default in the observance or performance of any agreement contained in clause (i) of Section 5.4(a) (with respect to Parent and the Borrower only), Section 5.7(a) or Section 6; or

(d) Any Loan Party shall default in the observance or performance of any covenant or other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Section), and such default shall continue unremedied for a period of fifteen (15) Business Days following delivery of written notice thereof to the Borrower by the Administrative Agent; or

(e) (i) Any Person shall engage in any “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan (other than any “prohibited transaction” for which a statutory or administrative exemption is available) that results in liability of the Borrower or any Commonly Controlled Entity, (ii) any ERISA Event shall occur, or (iii) any other similar event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (iii) above, such event or condition, together with all other such events or conditions, if any, would reasonably be expected to have a Material Adverse Effect; or

(f) One or more final judgments or decrees for the payment of money shall be entered against Parent, the Borrower or any of its Restricted Subsidiaries involving for Parent, the Borrower and its Restricted Subsidiaries taken as a whole a liability (not paid or fully covered by insurance as to which the relevant insurance company has not denied coverage in writing) of \$2,000,000 or more, and all such judgments or decrees shall not have been satisfied, vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or

(g) The Interim DIP Order, Interim DIP Recognition Order, and the Final DIP Order or Final DIP Recognition Order, as applicable, together with the Loan Documents shall cease to create a valid and perfected Lien with such priority required by this Agreement; or

(h) The guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason (other than by reason of the express release thereof pursuant to the provisions of the Loan Documents), to be in full force and effect or any Loan Party shall so assert in writing (other than by reason of the express release thereof pursuant to the provisions of the Loan Documents); or

(i) Any Change of Control shall occur; or

(j) The occurrence of a Canadian Pension Plan Termination Event, or any Lien arises (save for contribution amounts not yet due) in connection with any Canadian Pension Plan, that would reasonably be expected to have a Material Adverse Effect; or

(k) The proceeds of any Loan shall have been expended in a manner which is not in accordance in all material respects with the Budget (subject to Permitted Variances), absent the consent of the Required Lenders; or

(l) There occurs any Budget Event; or

(m) Any Loan Party shall file a motion in the Chapter 11 Cases without the express written consent of Required Lenders, to obtain additional financing from a party other than Lenders under Section 364(d) of the Bankruptcy Code that does not provide for the payment of the Obligations in full in cash upon the incurrence of such additional financing; or

(n) Any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter, an order (i) approving payment of any prepetition claim in excess of \$500,000 in the aggregate other than (x) as provided for in the “first day” or “second day” orders, (y) as contemplated by the Budget (including Permitted Variances), or (z) otherwise as consented to by the Required Lenders in writing, (ii) granting relief from the automatic stay under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of \$500,000 in the aggregate, or (iii) except with respect to the Prepetition Obligations as provided in the Bankruptcy Court DIP Orders, approving any settlement or other stipulation in excess of \$500,000 in the aggregate not approved by the Required Lenders and not included in the Budget with any secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor; or

(o) An order is entered in any of the Chapter 11 Cases appointing, or any Loan Party, or any Restricted Subsidiary of a Loan Party shall file an application for an order seeking the appointment of, (i) a trustee under Section 1104, or (ii) an examiner with enlarged powers relating to the operation of the Loan Parties’ business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; provided that, for the avoidance of doubt, the appointment of a fee examiner shall not constitute an Event of Default; or

(p) An order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, in each case, which does not contain a provision for termination of the Commitment, and payment in full in cash of all Obligations (other than contingent Obligations not due and owing) of the Loan Parties hereunder and under the other Loan Documents upon entry thereof; or

(q) An order is entered by the Bankruptcy Court in any of the Chapter 11 Cases without the express prior written consent of the Required Lenders (i) to revoke, reverse, stay, modify, supplement or amend the Bankruptcy Court DIP Order in a manner that is inconsistent with this Agreement that is not otherwise consented to by the Required Lenders, (ii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to the Loan Parties equal or superior to the priority of the DIP Superpriority Claim, (iii) to grant or permit the grant of a Lien on the Collateral (other than Liens permitted under Section 6.3); or

(r) At any time after the Final DIP Order Entry Date, an application for any of the orders described in clauses 7.1(n), (o), (p), (q) and (s) shall be made by a Person other than the Loan Parties and such application is not contested by the Loan Parties in good faith or any Person obtains a final order under § 506(c) of the Bankruptcy Code against the Administrative Agent or obtains a final order adverse to the Administrative Agent or the Lenders or any of their respective rights and remedies under the Loan Documents or in the Collateral; or

(s) The entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any Loan Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the Required Lenders; or

(t) At any time after the Final DIP Order Entry Date, (i) any Loan Party shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of the Secured Parties, or to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) the Lien or security interest created by Security Documents or the Bankruptcy Court DIP Orders with respect to the Collateral shall, for any reason, cease to be valid or (iii) any action is commenced by the Loan Parties which contests the validity, perfection or enforceability of any of the Liens and security interests of the Secured Parties created by any of the Bankruptcy Court DIP Order, Canadian Court DIP Recognition Order, this Agreement, or any Security Document; or

(u) Any Loan Party shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or Canadian Court) any other Person's motion to, disallow in whole or in part the Lenders' claim in respect of the Obligations or contest any material provision of any Loan Document or any material provision of any Loan Document shall cease to be effective (other than in accordance with its terms); or

(v) (i) The Approved Plan of Reorganization or the Confirmation Order is withdrawn, amended, supplemented or otherwise modified in a manner that materially adversely affects the rights and duties of the Lenders and/or the Administrative Agent without the prior written consent of the Required Lenders, (ii) any plan of reorganization other than an Approved Plan of Reorganization is consummated without the Required Lenders' consent, (iii) any plan of reorganization is filed that does not provide for repayment in full in cash of the Facility without the Required Lenders' consent except to the extent otherwise provided in the Approved Plan of Reorganization or (iv) the Loan Parties publicly announce, or execute a definitive written agreement with respect, to an Alternative Transaction without the consent of the Required Lenders; or

(w) any Subsidiary of a Loan Party that is not subject to the Chapter 11 Cases becomes subject to an insolvency proceeding without the consent of the Required Lenders, other than GNC Holdings, Inc. in connection with the Recognition Proceeding; or

(x) The Bankruptcy Court denies entry of the Confirmation Order and such order remains in effect for seven (7) Business Days after entry of such order, provided, that if the Loan Parties subsequently obtain an order of the Bankruptcy Court approving a plan of reorganization and a subsequent recognition order of the Canadian Court recognizing such order, that are in form and substance substantially similar to the Approved Plan of Reorganization or otherwise approved by the Required Lenders, such Event of Default shall be deemed cured or not to have occurred; or

(y) The termination of the Restructuring Support Agreement in accordance with its terms due to the action or omission, as applicable, of the Loan Parties; or

(z) The failure to meet any of the Milestones by the applicable date for such Milestone set forth in the Bankruptcy Court DIP Order;

then, and in any such event, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent (and for the avoidance of doubt no other Person) shall, by notice to the Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable, subject to the Bankruptcy Court DIP Order and the Canadian Court DIP Order.

## SECTION 8. THE AGENTS

8.1 Appointment. Each Lender hereby irrevocably designates, appoints and authorizes the Administrative Agent and the Collateral Agent as the agents of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Administrative Agent and the Collateral Agent, in such capacities, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent and the Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, each Lender hereby authorizes the Administrative Agent and the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent and the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto and to enter into each Security Document, the Intercreditor Agreements and any other intercreditor or subordination agreements contemplated hereby on behalf of and for the benefit of the Lenders and the other Secured Parties and agrees to be bound by the terms thereof. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent and the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent or the Collateral Agent. Notwithstanding anything to the contrary herein or in any other Loan Document, the Collateral Agent is authorized to take direction from the Administrative Agent.

Without limiting the powers of the Collateral Agent, for the purposes of holding any hypothec granted to the Attorney (as defined below) pursuant to the laws of the Province of Québec to secure the prompt payment and performance of any and all Obligations by any Loan Party, each of the Lenders hereby irrevocably appoints and authorizes the Collateral Agent and, to the extent necessary, ratifies the appointment and authorization of the Collateral Agent, to act as the hypothecary representative of the creditors as contemplated under Article 2692 of the Civil Code of Québec (in such capacity, the “Attorney”), and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Attorney under any related deed of hypothec. The Attorney shall: (a) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Attorney pursuant to any such

deed of hypothec and applicable law, and (b) benefit from and be subject to all provisions hereof with respect to the Collateral Agent mutatis mutandis, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Lenders and the Loan Parties. Any person who becomes a Lender shall, by its execution of an Assignment and Assumption Agreement, be deemed to have consented to and confirmed the Attorney as the person acting as hypothecary representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Lender, all actions taken by the Attorney in such capacity. The substitution of the Collateral Agent pursuant to the provisions of this Section 8 also constitute the substitution of the Attorney.

8.2 Delegation of Duties. Each of the Administrative Agent and the Collateral Agent may execute any of its duties under this Agreement and the other Loan Documents by or through sub-agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. No such Agent shall be responsible for the negligence or misconduct of any such sub-agents or attorneys-in-fact selected by it with reasonable care. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of each such Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facility as well as activities as such Agent. No such Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

8.3 Exculpatory Provisions. Neither any Agent nor any of their respective officers, directors, employees, agents, advisors, attorneys-in-fact or affiliates shall be:

(a) liable to any other Credit Party for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (i) with the consent or at the request of the Ad Hoc Group of Crossover Lenders, the Required Lenders (or such other number or percentage of the Lenders as shall be necessary) or (in the case of the Collateral Agent) the Administrative Agent, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.2) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given in writing to such Agent by the Borrower or a Lender;

(b) responsible in any manner to any other Credit Party for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any other Credit Party to ascertain or to inquire as to the observance or performance of any of the covenants or agreements

contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party. Neither the Administrative Agent nor the Collateral Agent shall be under any obligation to any other Credit Party to ascertain or to inquire as to the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, the value or the sufficiency of any Collateral, or the satisfaction of any condition set forth in Section 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent;

(c) subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(d) subject to any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent or the Collateral Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) or (in the case of the Collateral Agent) the Administrative Agent, provided that such Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(e) subject to a duty or responsibility to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent, the Collateral Agent or any of their respective Affiliates in any capacity, except as expressly set forth herein and in the other Loan Documents;

(f) obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it;

(g) responsible for any unsuitability, inadequacy, expiration or unfitness of any security interest created hereunder or pursuant to any other Loan Document nor shall it be obligated to make any investigation into, and shall be entitled to assume, the adequacy and fitness of any security interest created hereunder or pursuant to any other Loan Document; or

(h) responsible or liable for any failure or delay in the performance of its obligations hereunder or under any other Loan Document arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

8.4 Reliance by the Agents. Each of the Administrative Agent and the Collateral Agent shall be entitled to rely, and shall be fully protected in relying and shall not incur any liability for relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, facsimile or email message, statement, order, telephonic or electronic notices or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Loan Parties), independent accountants and other experts selected by such Agent. Each of the Administrative Agent and the Collateral Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with such Agent. Each of the Administrative Agent and the Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all affected Lenders) or (in the case of the Collateral Agent) the Administrative Agent as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each of the Administrative Agent and the Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Ad Hoc Group of Crossover Lenders or the Required Lenders (or, if so specified by this Agreement, all affected Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans. In determining compliance with any condition hereunder to the making of a Loan or a Withdrawal that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or Withdrawal. Each of the Administrative Agent and the Collateral Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

8.5 Notice of Default. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless such Agent has received notice from a Lender, Parent or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Administrative Agent or the Collateral Agent receives such a notice, such Agent shall give notice thereof to the Lenders and the other such Agent. Each of the Administrative Agent and the Collateral Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all affected Lenders) or (in the case of the Collateral Agent) the Administrative Agent; provided that unless and until such Agent shall have received such directions, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

8.6 Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that none of the Agents nor any of their respective officers, directors, employees,



agents, advisors, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, no Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of such Agent or any of their respective officers, directors, employees, agents, advisors, attorneys-in-fact or affiliates.

8.7 Indemnification. The Lenders agree to indemnify each Agent and its officers, directors, employees, affiliates, agents, advisors and controlling persons (each, an “Agent Indemnitee”) (to the extent not reimbursed by the Loan Parties and without limiting any obligation of the Loan Parties to do so), ratably according to their respective Aggregate Exposure Percentages in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Aggregate Exposure Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs and expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent Indemnitee in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent Indemnitee under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent Indemnitee’s gross negligence or willful misconduct. The agreements in this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

8.8 Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from, own securities of, act as the financial advisor of or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any Subsidiary or other Affiliate thereof as though such Agent were not an Agent and without any duty to account therefor to the Lenders or provide notice to or consent of the Lenders with

respect thereto. With respect to its Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms “Lender” and “Lenders” shall include each Agent in its individual capacity.

8.9 Successor Administrative Agent. Either of the Agents may resign as Agent upon 10 days’ notice to the Lenders and the Borrower. If either Agent shall resign, then the Borrower and the Required Lenders (or, if an Event of Default has occurred and is continuing under Section 7.1(a), the Required Lenders) shall appoint a successor agent for the Lenders, which shall be a financial institution with an office in the United States, or an Affiliate of any such financial institution with an office in the United States, whereupon such successor agent shall succeed to the rights, powers and duties of such Agent, and the term “Administrative Agent” or “Collateral Agent”, as applicable, shall mean such successor agent effective upon such appointment and approval, and the former Agent’s rights, powers and duties as Administrative Agent or Collateral Agent, as applicable, shall be terminated, without any other or further act or deed on the part of such former Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has been appointed as Administrative Agent or Collateral Agent, as applicable, by the date that is 10 days following a retiring Agent’s notice of resignation (or such earlier date as shall be agreed by the Borrower and the Required Lenders) (the “Resignation Effective Date”), the retiring Agent’s resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of such Agent hereunder until such time, if any, as the Borrower and Required Lenders (or, if an Event of Default has occurred and is continuing under Section 7.1(a), the Required Lenders as set forth above) shall appoint a successor agent as provided for above; provided that in no event shall any successor Agent be a Defaulting Lender or a Disqualified Institution. After any retiring Agent’s resignation as Administrative Agent, the provisions of this Section 8 and of Section 9.3 shall continue to inure to its benefit.

8.10 Effect of Resignation or Removal. With effect from the Resignation Effective Date (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Borrower (or, if an Event of Default has occurred and is continuing under Section 7.1(a), the Required Lenders as set forth above) shall appoint a successor agent as provided for above. Upon the acceptance of a successor’s appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Agent (other than any rights to indemnity payments or other amounts owed to the retiring Agent as of the Resignation Effective Date), and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent’s resignation hereunder and under the other Loan Documents, the

provisions of this Section 8 and Section 9.3 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring Agent was acting as Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity (other than in its capacity as a Lender) hereunder or under the other Loan Documents, including, without limitation, (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Secured Parties and (B) in respect of any actions taken in connection with transferring the agency to any successor Agent.

8.11 Collateral and Guarantee Matters. The Administrative Agent and the Collateral Agent agree:

(a) to take such action and execute such documents as may be reasonably requested by the Loan Parties pursuant to Section 9.14 to release any Lien on any property granted to or held by the Collateral Agent on behalf of the Secured Parties under any Loan Document (i) upon the payment in full of the Obligations (other than Obligations in respect of contingent reimbursement and indemnification obligations) and termination of all Commitments, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, (iii) that is or becomes an Excluded Asset or (iv) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 9.2;

(b) to subordinate any Lien on any property granted to or held by the Collateral Agent on behalf of the Secured Parties under any Loan Document as set forth in the applicable Intercreditor Agreement; and

(c) to take such action and execute such documents as may be reasonably requested by any of the Loan Parties pursuant to Section 9.14 to release any Guarantor from its Guarantee Obligations and other obligations under the Loan Documents, and to release any Liens granted by it under the Loan Documents, if such Person ceases to be a Subsidiary or is or becomes an Excluded Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Ad Hoc Group of Crossover Lenders or the Required Lenders will confirm in writing the Administrative Agent's and the Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantee Obligations or Liens pursuant to this Section 8.11. In each case as specified in this Section 8.11, the Administrative Agent and the Collateral Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement and to release the Liens granted by such Guarantor under the Loan Documents, in each case in accordance with the terms of this Section 8.11.

Neither the Administrative Agent nor the Collateral Agent shall be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent or the Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral, any security interests of the Administrative Agent or the Collateral Agent therein or any filings, registrations, or recordings made with respect thereto. Neither the Collateral Agent nor the Administrative Agent shall have any obligation whatsoever to any Lender or any other person to investigate, confirm or assure that the Collateral exists or is owned by any Loan Party or is insured or has been encumbered, or that the liens and security interests granted to the Collateral Agent pursuant hereto or any of the Loan Documents or otherwise have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority.

8.12 Appointment of Borrower. Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrower may execute such documents and provide such authorizations on behalf of such Loan Parties as the Borrower deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent or a Lender to the Borrower shall be deemed delivered to each Loan Party and (c) the Administrative Agent, or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrower on behalf of each of the Loan Parties.

8.13 Administrative Agent or Collateral Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, including during the pendency of the Chapter 11 Cases, each of the Administrative Agent and Collateral Agent (irrespective of whether the principal of any Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent or Collateral Agent shall have made any demand on the Loan Parties) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, Administrative Agent and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, Administrative Agent, Collateral Agent and their respective agents and counsel and all other amounts due Lenders, Administrative Agent and Collateral Agent hereunder) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

(c) and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to pay

to Administrative Agent or Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent, Collateral Agent and their respective agents and counsel, and any other amounts due Administrative Agent or Collateral Agent hereunder. To the extent that the payment of any such compensation, expenses, disbursements and advances of Administrative Agent, Collateral Agent and their respective agents and counsel, and any other amounts due Administrative Agent or Collateral Agent under this Agreement out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

8.14 Agent Duties. If any of the rights, responsibilities or duties of the Agents conflict with such Agents' rights, responsibilities or duties under the Prepetition Term Loan Agreement, this Agreement shall supersede the Prepetition Term Loan Agreement.

## SECTION 9. MISCELLANEOUS

9.1 Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent electronically or by facsimile, as follows:

- (i) if to Parent or the Borrower, to it at:

General Nutrition Centers, Inc.  
300 Sixth Avenue  
Pittsburgh, PA 15222  
Attention: Tricia Tolivar  
Telephone: (412) 288-2029  
Email: Tricia-Tolivar@gnc-hq.com

with copies (which shall not constitute notice) to:

Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022  
Attention: Michèle Penzer  
Telephone: (212) 906-1245  
Email: michele.penzer@lw.com

and

Latham & Watkins LLP  
330 North Wabash, Suite 2800  
Chicago, IL 60611

Attention: Rick Levy and Caroline Reckler  
Telephone: (312) 876-7692 (Rick Levy); (312) 876-7663 (Caroline Reckler)  
Email: Richard.Levy @lw.com; Caroline.Reckler@lw.com

(ii) if to the Administrative Agent:

GLAS Trust Company LLC  
3 Second Street, 10th Floor  
Jersey City, New Jersey 07311  
Attention: Administrator for GNC  
Facsimile: 212-202-6246  
Email: clientservices.Americas@glas.agency

if to the Collateral Agent:

GLAS Trust Company LLC  
230 Park Avenue, 10<sup>th</sup> Floor  
New York, New York 10169  
Attention: Administrator for GNC  
Facsimile: 212-202-6246  
Email: [clientservices.Americas@glas.agency](mailto:clientservices.Americas@glas.agency)

with a copy to:

Dorsey & Whitney LLP  
51 West 52<sup>nd</sup> Street  
New York, New York 10019  
Attn: Sam Kohn and Erin Trigg  
Telephone: (212) 415-9205 (Sam Kohn); (212) 415-9392 (Erin Trigg)  
Email: [kohn.sam@dorsey.com](mailto:kohn.sam@dorsey.com); [trigg.erin@dorsey.com](mailto:trigg.erin@dorsey.com)

if to any other Lender, to it at its address (or facsimile number or email address) set forth in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent, the Collateral Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

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

communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(d) THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s, any Loan Party’s or the Administrative Agent’s transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, other than for direct or actual damages to the extent resulting from the gross negligence, bad faith or willful misconduct of such party or its Related Parties as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) The Administrative Agent, the Collateral Agent and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the Collateral Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party in accordance with Section 9.3. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

9.2 Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the Collateral Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by Parent or the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time.

(a) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.1, Section 4.2 or the waiver of any Default, mandatory prepayment or mandatory reduction of Commitments shall not constitute an increase of any Commitment of any Lender), (ii) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly and adversely affected thereby (except in connection with the waiver of applicability of any post-default increase in interest rates (which waiver shall be effective with the consent of the Required Lenders)), (iii) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment without the written consent of each Lender directly and adversely affected thereby (it being understood that a waiver of any condition precedent set forth in Section 4.1 or Section 4.2 or the waiver of any Default, mandatory prepayment or mandatory reduction of Commitments shall not constitute a postponement of the scheduled date of expiration of any Commitment of any Lender), (iv) change Section 2.21(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby, or (v) change any of the provisions of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or grant any consent hereunder, or release all or substantially all of the Collateral or release Guarantors from their guarantee obligations under the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement representing all or substantially all of the value of such guarantees, taken as a whole, in each case, without the written consent of each Lender directly and adversely affected thereby; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder in a manner adverse to such Agent without the prior written consent of such Agent.

(b) Notwithstanding anything to the contrary contained in this Section 9.2, the Administrative Agent and the Borrower, in their sole discretion, may amend, modify or supplement any provision of this Agreement or any other Loan Document to (i) amend, modify or supplement such provision or cure any ambiguity, omission, mistake, error, defect or inconsistency, so long as such amendment, modification or supplement does not directly and adversely affect the rights or obligations of any Lender, (ii) to permit additional affiliates of the Borrower to guarantee the Obligations and/or provide Collateral therefor and (iii) to add covenants and other terms for the benefit of the Lenders as provided herein. Such amendments shall become effective without any further action or consent of any other party to any Loan Document.

(c) Notwithstanding anything to the contrary contained in this Section 9.2 or any other Loan Document, guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended



and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Requirements of Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement or any other Loan Documents.

9.3 Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by each Agent and its Affiliates, including the reasonable and documented out-of-pocket fees, charges and disbursements of legal counsel for the Administrative Agent and the other Agents, the Ad Hoc Group Advisors in connection with the preparation and administration of this Agreement or any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the Collateral Agent, or all Lenders collectively, including the reasonable and documented out-of-pocket fees, charges and disbursements of legal counsel, the Ad Hoc Group Advisors, the Administrative Agent and the Collateral Agent, or all Lenders collectively, in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; provided that the Borrower's obligations under this Section 9.3(a) for fees and expenses of legal counsel shall be limited to fees and expenses of (x) one outside legal counsel for all Indemnitees described in clauses (i) and (ii) above, taken as a whole (plus one separate outside legal counsel for each of the Collateral Agent and the Administrative Agent), (y) in the case of any conflict of interest, one outside legal counsel for such affected Indemnitee or group of Indemnitees and (z) if necessary, one local or foreign legal counsel in each relevant jurisdiction.

(a) The Borrower shall indemnify the Ad Hoc Committee, the Administrative Agent, each other Agent and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable and documented out-of-pocket expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of (i) one outside legal counsel to each of the Administrative Agent and the Collateral Agent and one outside legal counsel to the other Indemnitees taken as a whole, (ii) in the case of any conflict of interest, one outside legal counsel for the affected Lender or group of Lenders and (iii) if necessary, one local or foreign legal counsel in each relevant jurisdiction), which may at any time be imposed on, incurred by or asserted or awarded against any such Indemnitee arising out of, in connection with, or as a result of (w) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or any other transactions contemplated hereby, (x) any Loan or the use of the proceeds therefrom, (y) any actual or alleged presence or release of Hazardous Materials at, on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability of the Borrower or any of its Subsidiaries, or (z) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims,

damages, liabilities or related expenses (1) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or (except with respect to the Agents) material breach of its obligations under the Loan Documents or willful misconduct of such Indemnitee or its Primary Related Parties, (2) arise out of any claim, litigation, investigation or proceeding that does not involve an act or omission by the Borrower or any of its Affiliates and that is brought by an Indemnitee against any other Indemnitee (provided that in the event of such a claim, litigation, investigation or proceeding involving a claim or proceeding brought by or against the Administrative Agent (in its capacity as such) or the Collateral Agent (in its capacity as such) by other Indemnitees, the Administrative Agent (in its capacity as such) or the Collateral Agent (in its capacity as such) shall be entitled (subject to the other limitations and exceptions set forth above) to the benefit of the indemnities set forth above) or (3) are in respect of indemnification payments made pursuant to Section 8.7, to the extent the Borrower would not have been or was not required to make such indemnification payments directly pursuant to the provisions of this Section 9.3(b). This Section 9.3 shall not apply to Taxes, except any Taxes that represent losses, claims, damages or liabilities arising from a non-Tax claim. As used herein, the “Primary Related Parties” of an Indemnitee are its Affiliates with direct involvement in the negotiation of the Facilities under this Agreement and such Indemnitee’s and Affiliates’ respective directors, officers and employees.

(b) To the extent permitted by applicable law, none of Parent, the Borrower nor any Indemnitee shall assert, and Parent, the Borrower and each Indemnitee hereby waives, any claim against Parent, the Borrower or any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any agreement or instrument contemplated hereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and, to the extent permitted by applicable law, Parent and Borrower and each Indemnitee hereby waive, release and agree not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that nothing contained in this paragraph shall limit the obligations of the Borrower under Section 9.3(b) in respect of any such damages claimed against the Indemnitees by Persons other than Indemnitees.

(c) All amounts due under this Section shall be payable not later than thirty days after written demand therefor.

9.4 Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) subject to Section 6.4, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) 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.

(a) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or, if an Event of Default has occurred and is continuing under Section 7.1(a), any other Eligible Assignee; and provided, further, that the Borrower shall be deemed to have consented to any such assignment unless the Borrower shall have objected thereto by written notice to the Administrative Agent not later than the fifth Business Day following the date the Borrower acknowledges its receipt of notice of the proposed assignment; and

(B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender, or an Approved Fund.

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

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Loans, the amount of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 (and shall be in integral multiples of \$1,000,000 in excess thereof) unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default under Section 7.1(a) has occurred and is continuing;

(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;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with (unless waived by the Administrative Agent in its sole discretion, or unless such assignment is to an Affiliate or an Approved Fund of such assignor) a processing and recordation fee of \$3,500;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their related parties or their respective securities) will be made available and who may receive such

information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws;

- (E) no such assignment shall be made to a natural person; and
- (F) such assignment does not violate Section 9.4(e).

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.18, 2.19, 2.20 and 9.3). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.4 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.4(c).

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount and stated interest of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, and, if an Event of Default has occurred and is continuing, any Lender (but only with respect to the entries related to such Lender), at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section (unless waived by the Administrative Agent in its sole discretion) and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.8(b), 2.21(d) or 8.7, the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No

assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) On or after the Final DIP Order Entry Date, the New Money Loans on the one hand, and the Roll-up Loans, on the other hand, may be assigned or transferred separately and such Loans are not “stapled to” each other. Prior to the Final DIP Order Entry Date, the right to receive Roll-up Loans is on account of such Lender’s New Money Loans and New Money Loan Commitment.

(b) (i) Subject to compliance with Section 9.4(e), any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement 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, modification or waiver described in the first proviso to Section 9.2(b) that (1) requires the consent of each Lender or each directly and adversely affected Lender and (2) directly and adversely affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.18, 2.19 and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.8 as though it were a Lender, provided such Participant agrees to be subject to Section 2.21(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under this Agreement (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant’s interest in any Loans, or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Loan or other obligation is in registered form under Section 5f.103-1(c) and Proposed Section 1.163-5(b) (and any amended or successor version) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. The portion of the Participant Register relating to any Participant requesting payment from the Borrower under the Loan Documents shall be made available to the Borrower upon request.

(i) A Participant shall not be entitled to receive any greater payment under Section 2.18, 2.19 or 2.20 than the applicable Lender would have been entitled to

receive with respect to the participation sold to such Participant, unless (A) the Borrower is notified of the participation sold to such Participant and the sale of the participation to such Participant is made with the Borrower's prior written consent or (B) such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.20 unless such Participant agrees, for the benefit of the Borrower, to comply (and actually complies) with Section 2.20(e) as though it were a Lender.

(ii) No participation may be sold to an Affiliated Lender.

(c) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(d) (i) No assignment or participation shall be made to any Person that is a Disqualified Institution to the extent the list thereof has been provided to any Lender requesting the same as of the date (the "Trade Date") on which such Lender entered into a binding agreement to sell and assign or participate all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any Assignee that becomes a Disqualified Institution after the applicable Trade Date, (x) such Assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Acceptance with respect to such Assignee will not by itself result in such Assignee no longer being considered a Disqualified Institution. Any assignment in violation of this paragraph (e) shall not be void, but the other provisions of this paragraph (e) shall apply.

(ii) If any assignment or participation is made to any Disqualified Institution without the Borrower's prior written consent in violation of clause (e)(i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) purchase or prepay the outstanding Term Loans of such Disqualified Institution by paying the lower of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans or (B) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.4), all of its interest, rights and obligations under this Agreement to one or more Assignees at the lower of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations.

(iii) Notwithstanding anything to the contrary contained in this Agreement, (A) Disqualified Institutions will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, any other Loan Party, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any plan of reorganization, each Disqualified Institution party hereto hereby agrees (1) not to vote on such plan of reorganization, (2) if such Disqualified Institution does vote on such plan of reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such plan of reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to provide the list of Disqualified Institutions to each Lender requesting the same and to post such list to the Platform. Each Lender shall have the right, and the Borrower hereby authorizes each Lender, to provide the list of Disqualified Institutions to any of such Lender’s actual or prospective transferees (including any actual or prospective assignee or participant).

(v) The Administrative Agent, in its capacity as such, shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions; provided that without limiting the generality of the foregoing, the Administrative Agent, in its capacity as such, shall not (a) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Institution or (b) have any liability with respect to or arising out of any assignment or participation of loans, or disclosure of confidential information in connection therewith, to any Disqualified Institution; it being agreed that the foregoing shall not relieve the Administrative Agent, to the extent constituting a Lender, from its obligations in respect of Disqualified Institutions in connection with assignments and participations, and disclosure of confidential information in connection therewith, by it.

9.5 Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with

or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement (excluding Obligations in respect of contingent reimbursement and indemnification obligations that are not then due and payable at the time all other Obligations hereunder are discharged) is outstanding and unpaid. The provisions of Sections 2.18, 2.19, 2.20 and 9.3 and Section 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans or the termination of this Agreement or any provision hereof.

9.6 Counterparts; Integration. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

9.7 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

9.8 Right of Setoff. Subject to the terms of the Bankruptcy Court DIP Order, the Canadian Court DIP Recognition Order and the Carve Out, if an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time with the prior written consent of the Administrative Agent, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) (excluding payroll, tax withholding and trust accounts maintained in the ordinary course of business) at any time held and other obligations at any time owing by such Lender to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have but subject to the terms of the Bankruptcy Court DIP Order, the Canadian Court DIP Recognition Order and the Carve Out. Each Lender shall notify the Administrative Agent and the Borrower promptly after any such setoff.

9.9 Governing Law; Jurisdiction; Consent to Service of Process. (a) EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY CODE, THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.



(a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE BANKRUPTCY COURT. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE BANKRUPTCY COURT AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH HEREIN. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE ADMINISTRATIVE AGENT AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN SUCH COURT AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(b) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.1. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(c) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER

LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

9.12 Confidentiality. (a) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (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), (ii) to the extent requested by any regulatory authority claiming jurisdiction over it, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (provided that the applicable Agent or such Lender, as applicable, shall notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority claiming jurisdiction over it) unless such notification is prohibited by applicable law, rule or regulation), (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) to any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to the Borrower and its obligations (provided, such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this Section 9.12 or other provisions at least as restrictive as this Section 9.12), (vii) with the prior written consent of the Borrower or (viii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section 9.12 or (B) becomes available other than as a result of a breach of this Section 9.12 to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower or any of its Affiliates. For the purposes of this Section, "Information" means all information received from Parent, the Borrower or any of their Affiliates relating to Parent or the Borrower or any of its Subsidiaries or businesses, other than any such information that is available other than as a result of a breach of this Section 9.12 to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section 9.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information which shall in no event be less than commercially reasonable care. To the extent the list of Disqualified Institutions has been

provided to any Lender requesting the same, Information shall not be disclosed to a Disqualified Institution that constitutes a Disqualified Institution at the time of such disclosure without the Borrower's prior written consent.

**(a) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.**

**(b) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS AND WARRANTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.**

9.13 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") and the Administrative Agent and the Collateral Agent (in each case for themselves and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Act, it may be required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or such Agent, as applicable, to identify the Borrower in accordance with the Act.

9.14 Release of Liens and Guarantees. (a) In the event that any Loan Party conveys, sells, leases, assigns, transfers or otherwise Disposes of all or any portion of any of the Capital Stock or assets of any Loan Party to a Person that is not (and is not required hereunder to become) a Loan Party in a transaction permitted under this Agreement, the Liens created by the Loan Documents in respect of such Capital Stock or assets shall automatically terminate and be released without the requirement for any further action by any Person, and the Collateral Agent shall promptly (and the Lenders hereby authorize the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower's expense to further document and evidence such termination and release of Liens created by any Loan Document in respect of such Capital Stock or assets, and, in the case of a transaction permitted under this Agreement the result of which is that a Loan Party would cease to be a Subsidiary or would become an Excluded Subsidiary, the Guarantee Obligations created

by the Loan Documents in respect of such Loan Party (and all security interests granted by such Guarantor under the Loan Documents) shall automatically terminate and be released without the requirement for any further action by any Person, and the Administrative Agent and the Collateral Agent shall promptly (and the Lenders hereby authorize the Administrative Agent and the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower's expense to further document and evidence such termination and release of such security interests and such Loan Party's Guarantee Obligations in respect of the Obligations (including, without limitation, its Guarantee Obligations under the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement). Any representation, warranty or covenant contained in any Loan Document relating to any such Capital Stock, asset or subsidiary of any Loan Party shall no longer be deemed to be made with respect thereto once such Capital Stock or asset or Subsidiary is so conveyed, sold, leased, assigned, transferred or disposed of.

(a) Upon the payment in full of the Obligations (excluding contingent reimbursement and indemnification obligations that are not then due and payable), all Liens created by the Loan Documents shall automatically terminate and be released without the requirement for any further action by any Person, and the Collateral Agent shall promptly (and the Lenders hereby authorize the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower's expense to further document and evidence such termination and release of Liens created by the Loan Documents, and the Guarantee Obligations created by the Loan Documents in respect of the Guarantors shall automatically terminate and be released without the requirement for any further action by any Person, and the Collateral Agent shall promptly (and the Lenders hereby authorize the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower's expense to further document and evidence such termination and release of the Guarantors' Guarantee Obligations in respect of the Obligations (including, without limitation, the Guarantee Obligations under the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement).

9.15 Enforcement Matters. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against Parent, the Borrower, any of its Restricted Subsidiaries or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 7.1 for the benefit of the Required Lenders; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the Collateral Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Collateral Agent) hereunder and under the other Loan Documents (c) any Lender from exercising setoff rights in accordance with Section 9.8 (subject to the terms of Section 2.21(c)), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then the Required Lenders (and no other

Person) shall have the rights otherwise ascribed to the Administrative Agent at the instruction of the Required Lenders pursuant to Section 7.1.

9.16 No Fiduciary Duty. Each Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the “Lender Parties”) may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender Parties, on the one hand, and such Loan Party, its stockholders or its affiliates, on the other. The Loan Parties acknowledge and agree that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lender Parties, on the one hand, and the Loan Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender Parties have assumed any advisory, agent (other than to the extent set forth in Section 9.4(b)(iv)) or fiduciary responsibility in favor of any Loan Party, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender Parties have advised, are currently advising or will advise any Loan Party, its stockholders or its Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents, (y) the Administrative Agent, the Collateral Agent, their respective Affiliates and the Lenders may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Collateral Agent, any of their respective Affiliates nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates and (z) the Lender Parties are acting solely as principals and not as the agents or fiduciaries of any Loan Party, its management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate, that it is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party agrees that it will not claim that the Lender Parties have rendered advisory services of any nature or respect, or owe a fiduciary or similar duty to such Loan Party, in connection with such transaction or the process leading thereto. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Collateral Agent, any of their respective Affiliates or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

9.17 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any

payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

9.18 Canadian Anti-Money Laundering Legislation. (a) Each Loan Party acknowledges that, pursuant to Canadian Anti-Money Laundering Legislation and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws (collectively, including any guidelines or orders thereunder, “AML Legislation”), the Lenders may be required to obtain, verify and record information regarding the Loan Parties and their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Loan Parties, and the transactions contemplated hereby. Each Loan Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any prospective assignee or participant of a Lender or any Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(a) If the Administrative Agent has ascertained the identity of any Loan Party or any authorized signatories of the Loan Parties for the purposes of applicable AML Legislation, then the Administrative Agent:

(i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a “written agreement” in such regard between each Lender and the Administrative Agent within the meaning of the applicable AML Legislation; and

(ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that neither the Administrative Agent nor any other Agent has any obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any Loan Party or any such authorized signatory in doing so.

9.19 Judgment Currency. If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the “Original Currency”) into another currency (the “Second Currency”), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. The Borrower agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following the date the Administrative Agent receives payment of any sum so adjudged to be due hereunder in the Second Currency, the Administrative Agent may, in accordance with normal banking procedures, purchase, in the New York foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if

the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency, the Borrower agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify the Administrative Agent against such loss; and if the amount of the Original Currency so purchased or could have been so purchased is greater than the amount originally due in the Original Currency, the Administrative Agent agrees to remit such excess amount to the Borrower. The term “rate of exchange” in this Section 9.19 means the spot rate at which the Administrative Agent, in accordance with normal practices, is able on the relevant date to purchase the Original Currency with the Second Currency, and includes any premium and costs of exchange payable in connection with such purchase.

9.20 Electronic Execution. The words “delivery,” “execute,” “execution,” “signed,” “signature,” and words of like import in any Loan Document or any other document executed in connection herewith shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, 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, physical delivery thereof 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; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided further, without limiting the foregoing, upon the request of the Administrative Agent, any electronic signature shall be promptly followed by such manually executed counterpart.

9.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including (without limitation), if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such

shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

9.22 Conflicts. If any provision in this Agreement or any other Loan Document expressly conflicts with any provision in the Interim DIP Order or Final DIP Order, the provisions in the Bankruptcy Court DIP Order shall govern and control.

9.23 Operating Account. The parties hereto acknowledge and agree that the Operating Account does not constitute (a) ABL Priority Collateral or (b) collateral for the Prepetition ABL Agreement or the Prepetition ABL/FILO Amendment and Restatement.

## SECTION 10. SECURITY AND PRIORITY

### 10.1 Collateral; Grant of Lien and Security Interest.

(a) Pursuant to, and otherwise subject to the terms of, the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order and in accordance with the terms thereof and subject to the Carve Out, as security for the full and timely payment and performance of all of the Obligations, the Loan Parties hereby pledge and grant to the Collateral Agent (for the benefit of the Secured Parties), a security interest in and to, and a Lien on, all of the Collateral.

(b) Notwithstanding anything herein to the contrary (i) all proceeds received by the Collateral Agent and the Lenders from the Collateral subject to the Liens granted in this Section 10.1 and in each other Loan Document and by the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order shall be subject in all respects to the Carve Out and (ii) no Person entitled to amounts in respect of the Carve Out shall be entitled to sell or otherwise dispose, or seek or object to the sale or other disposition, of any Collateral.

### 10.2 Priority and Liens Applicable to Loan Parties.

(a) Upon entry of the Interim DIP Order or Final DIP Order and subject to the terms thereof, as the case may be, the Obligations, Liens and security interests in favor of the Secured Parties shall, subject in all respects to the Carve Out, at all times, pursuant to the Bankruptcy Code, be secured by a perfected Lien on and security interest in all of the Collateral of the Loan Parties.

(b) The relative priorities of the Liens with respect to the Collateral shall be as set forth in the Interim DIP Order (and, when entered, the Final DIP Order) and each party hereto consents to such relative priorities of the Liens.

(c) Each Loan Party hereby confirms and acknowledges that, pursuant to the Interim DIP Order (and, when entered, the Final DIP Order), the Liens in favor of the Collateral Agent on behalf of and for the benefit of the Secured Parties in all of the Collateral shall be created and perfected, to the maximum extent permitted by law, without the execution or the



recordation or filing in any land records or filing offices of, any mortgage, assignment, security agreements, mortgages, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Collateral Agent of, or over, any Collateral, as set forth in the Interim DIP Order (and, when entered, the Final DIP Order).

10.3 Grants, Rights and Remedies. The Liens and security interests granted pursuant to Section 10.1 hereof and the administrative claim priority and lien priority granted pursuant to Section 10.2 hereof may be independently granted in the Loan Documents. This Agreement, the Bankruptcy Court DIP Order and such other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Agents and the Lenders hereunder and thereunder are cumulative; provided that to the extent of conflict the Bankruptcy Court DIP Order controls.

10.4 No Filings Required. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim DIP Order or the Final DIP Order, as the case may be, and entry of the Interim DIP Order shall have occurred on or before the date of the initial Borrowing hereunder. The Collateral Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, take possession or control of any Collateral, or take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, the Interim DIP Order or the Final DIP Order, as the case may be, or any other Loan Document.

10.5 Survival. Except as set forth in the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, the Liens, lien priority, administrative priorities and other rights and remedies granted to the Collateral Agent and the Lenders pursuant to this Agreement, the Bankruptcy Court DIP Orders, and the Canadian Court DIP Recognition Order and the other Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the Borrower (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever.

10.6 Amendment of Prepetition Term Loan Agreement and Agreement Regarding Method of Issuance of Roll Up Loans. The parties hereto, acting in their capacities as Parent under the Prepetition Term Loan Agreement, Borrower under the Prepetition Term Loan Agreement, Prepetition Term Loan Lenders, Prepetition Term Loan Agent and Prepetition Collateral Agent hereby amend the definition of “Eligible Assignee” in the Prepetition Term Loan Agreement by adding the following at the end thereof: Eligible Assignee shall also include any Loan Party that is a Wholly Owned Subsidiary and a Domestic Subsidiary and a disregarded entity for tax purposes. Roll-up Loans shall be initially issued to such Loan Party in escrow, which will thereupon assign such Roll-up Loan to the corresponding Roll-up Lender in consideration of assignment by such Roll-up Lender to such Loan Party of an equal amount of Prepetition Term Loans. All Prepetition Term Loans so assigned to such Loan Party shall be automatically extinguished upon completion of the assignment and assumption transactions described in this Section 10.6.

*(signature pages follow)*

**Annex B**

**EXIT TERM LOAN FACILITY TERM SHEET**

Set forth below is a summary of the principal terms and conditions for the Exit Term Loan Facility (as defined below). Unless otherwise noted below, capitalized terms used but not defined in this Annex B shall have the meanings set forth in the Restructuring Support Agreement or the DIP Credit Agreement, to which this Annex B is attached as Exhibit I thereto.

**Summary of Principal Terms and Conditions**

**Borrower:** Either (i) a new entity formed at the direction of the Required Consenting Term Lenders (as defined in the Restructuring Support Agreement) or (ii) reorganized General Nutrition Centers, Inc., a Delaware corporation, formerly a debtor and debtor-in-possession in the Chapter 11 Cases (the “*Company*” or the “*Borrower*”).

**Guarantors:** Either (i) new entities formed at the direction of the Required Consenting Term Lenders (as defined in the Restructuring Support Agreement) or (ii) each of the entities listed on Exhibit A-1 hereof (collectively, the “*Guarantors*” and, together with the Borrower, the “*Loan Parties*”). All obligations of the Borrower under the Exit Term Loan Facility (as defined below) will be unconditionally guaranteed on a joint and several basis by the Guarantors. [In addition, [TaxFilerCo] shall provide a limited guarantee and security agreement pledging Tax Refunds (as defined below) to the Agent for the benefit of the Secured Parties or, alternatively, shall enter into an exit tax sharing agreement].

For the avoidance of doubt, each of the affiliates of the Borrower listed on Exhibit A-2 hereof will not be a Guarantor.

**Exit Term Loan Facility:** A secured term loan credit facility (the “*Exit Term Loan Facility*” and the lenders thereunder, the “*Exit Lenders*”), comprised of:

(i) \$100 million of term loans, consisting of New Money Loans (as defined in the DIP Credit Agreement) (the “*DIP Loans*”) converted on a dollar-for-dollar basis on the Exit Date (as defined below) into “first-lien first out loans” under the Exit Term Loan Facility (the “*First-Lien First Out Loans*”, and the lenders thereof, the “*First-Lien First Out Lenders*”); and

(ii) \$150 million of term loans, comprised of (x) \$100 million of Roll-up Loans (as defined in the DIP Credit Agreement) converted on a dollar-for-dollar basis on the Exit Date into “first-lien second out term loans” under the Exit Term Loan Facility and (y) \$50 million of other Prepetition Term Loans (as defined in the DIP Credit Agreement) of the Prepetition Term Loan Lenders (as defined in the DIP Credit Agreement), which will be converted into such first-lien second-out term loans on the Exit Date (the loans described in clauses (x) and (y), the “*First-Lien Second Out Loans*”, and the lenders thereof the “*First-Lien Second Out Lenders*”).

The “*Plan*” means the Chapter 11 Plan of Reorganization and the related disclosure statement of the Debtors to be filed with the Bankruptcy Court, in form and substance reasonably satisfactory to the Required Lenders (as

defined in the DIP Credit Agreement). The reorganization contemplated by the Plan is referred to herein as the “**Reorganization.**”

**Making and Allocation of Loans, Conversion of Claims and Use of Proceeds:**

On the Exit Date, (a) the DIP Loans will be converted dollar-for-dollar into First-Lien First Out Loans, (b) the Roll-up Loans will be converted dollar-for-dollar into First-Lien Second Out Loans, (c) \$50 million of First-Lien Second Out Loans will be allocated to Prepetition Term Loan Lenders on a ratable basis in accordance with their aggregate holdings of Prepetition Term Loans on the Exit Date and (d) all claims in respect of Prepetition Term Loans, DIP Loans and Roll-up Loans will be deemed cancelled and fully satisfied in accordance with and for the consideration set forth in the Plan and Confirmation Order.

**Exit Date:**

The date (the “**Exit Date**”) on which the First-Lien First Out Loans and the First-Lien Second Out Loans are issued under the Exit Term Loan Facility and all Closing Conditions (as defined below) have been satisfied or waived by lenders holding more than 50% of the loans under the Exit Term Loan Facility (the “**Required Exit Lenders**”).

**Maturity:**

With respect to the First-Lien First Out Loans, the date that is 4 years after the Exit Date.

With respect to the First-Lien Second Out Loans, the date that is 4.25 years after the Exit Date.

**Collateral:**

The Exit Term Loan Facility will be secured by a perfected lien on, with the priority described below under the caption “Priority,” substantially all of the Loan Parties’ tangible and intangible assets (collectively, the “**Collateral**”), including owned and ground leased real property, tax refunds, the equity interests of the Guarantors and other majority owned subsidiaries (subject to customary exclusions), all deposit and security accounts (which shall be subject to control agreements to the extent set forth in the Pre-Existing Facility Documentation (as defined below)), with materiality thresholds and exceptions to be agreed.

**Priority:**

The Exit Term Loan Facility will have (i) a first priority lien on Term Priority Collateral, subject to certain customary baskets and exceptions to be agreed (“**Permitted Liens**”), and (ii) a second priority lien on ABL Priority Collateral, subject to Permitted Liens, which Term Priority Collateral and ABL Priority Collateral shall be as defined in and subject to ranking and intercreditor arrangements substantially consistent with the Prepetition Intercreditor Agreement or otherwise reasonably satisfactory to the Required Exit Lenders, subject to any agreed post-closing perfection requirements and subject to thresholds, exceptions and exclusions substantially identical to the Pre-Existing Facility Documentation.

The New Revolver and Exit FILO Facility (as defined below) will have (i) a first priority lien on ABL Priority Collateral, subject to Permitted Liens, and (ii) a second priority lien on Term Priority Collateral, subject to Permitted Liens.

**Exit Facility  
Documentation:**

The loan documents governing the Exit Term Loan Facility shall contain terms substantially similar to the terms of that certain Amended and Restated Term Loan Credit Agreement dated as of February 28, 2018, as in effect on such date, among GNC Corporation, a Delaware corporation, as parent, General Nutrition Centers, Inc., a Delaware corporation, as borrower, the several banks and other financial institutions or entities from time to time parties thereto, JPMorgan Chase Bank, N.A., as administrative agent, and GLAS Trust Company LLC, as collateral agent (the “*Pre-Existing Facility Documentation*”), with modifications to reflect this term sheet and other adjustments reasonably satisfactory to the Borrower and the Required Exit Lenders (such loan documents, the “*Exit Facility Documentation*”).

**Conditions to  
Closing:**

Limited to the following (collectively, the “*Closing Conditions*”):

- A. The negotiation, execution and delivery of the Exit Facility Documentation by the Loan Parties.
- B. The following documents shall be reasonably satisfactory to the Borrower and the Required Exit Lenders:
  - the Plan;
  - the terms of an Exit FILO facility converting the loans under the Prepetition ABL/FILO Amendment and Restatement on a dollar-for-dollar basis on the Exit Date (the “*Exit FILO Facility*”, together with the New Revolver Facility (as defined below), the “*New Revolver and Exit FILO Facility*”) which terms shall be deemed reasonably satisfactory to the Required Exit Lenders if substantially consistent with the New Revolver Basket and Exit FILO Facility Term Sheet in the form attached hereto as Exhibit B; and
  - the confirmation order with respect to the Plan, and corresponding recognition order of the Canadian Court.
- C. To the extent that the Borrower or any Guarantor is a new entity formed at the direction of the Required Consenting Term Lenders (as defined in the Restructuring Support Agreement), all assets that are to be owned by such new entity under the Plan shall have been transferred to such new entity pursuant to documentation in form and substance reasonably acceptable to the Agent.
- D. Substantial consummation (as defined in Section 1101 of the Bankruptcy Code) of the Plan (all conditions precedent set forth therein having been satisfied or waived in accordance with the terms thereof).
- E. Immediately after the Exit Date, the Loan Parties shall have outstanding no indebtedness for borrowed money other than indebtedness outstanding under the Exit Term Loan Facility, the New Revolver and Exit FILO Facility and indebtedness contemplated by the Approved Plan of Reorganization.
- F. Accuracy in all material respects (or, in the case of representations and warranties that are qualified by materiality, in all respects) on the

Exit Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date) of representations and warranties contained in the Exit Facility Documentation which shall be no more burdensome to the Company than those set forth in the Pre-Existing Facility Documentation and absence of an Event of Default under the Exit Facility Documentation.

- G. Compliance with customary documentation conditions for a facility of this size, type, and purpose, including the delivery of customary legal opinions and closing certificates (including a customary solvency certificate in substantially the form provided under the Pre-Existing Facility Documentation), good standing certificates and certified organizational documents, in each case, in form and substance reasonably satisfactory to the Required Exit Lenders.
- H. The Agent shall have a perfected lien on the Collateral of the Loan Parties, subject to Permitted Liens and any post-closing perfection requirements, with the priority set forth under the heading "Priority" hereunder; *provided* that security interests will not be required to be perfected on the Exit Date other than by (A) filings of UCC and PPSA financing statements in the office of the secretary of state or provincial ministry (or similar central filing office) of the Loan Parties and (B) delivery to the Agent, for the benefit of the secured parties, of promissory notes representing material intercompany indebtedness for borrowed money and equity certificates representing equity issued by Loan Parties (other than equity issued by GNC Holdings, Inc.), in each case, together with customary transfer powers executed in blank.
- I. Receipt by the Agent of reasonably satisfactory results of customary lien searches.
- J. The Loan Parties shall have used commercially reasonable efforts to obtain a public corporate credit rating (but not a specific rating) from either Standard & Poor's, a division of S&P Global, Inc., or Moody's Investors Service, Inc. in respect of the Exit Term Loan Facility.
- K. All requisite governmental and material third party approvals shall have been obtained, and there shall be no litigation, governmental, administrative or judicial action against the Loan Parties, in each case, the failure to obtain or existence of which would reasonably be expected to restrain, prevent or impose materially burdensome restrictions on the substantial consummation of the Plan or the Exit Term Loan Facility; *provided*, that the consummation of the New Revolver Facility shall not be a condition precedent to effectiveness or consummation of the Plan or the Exit Term Loan Facility.
- L. Delivery of all documentation and other information required by bank regulatory authorities under applicable "know-your-customer", anti-money laundering rules and regulations, and the Patriot Act that has been reasonably requested by the Exit Lenders at least ten (10) business days prior to the closing date of the Exit Term Loan Facility.

- M. Payment by the Borrower on the Exit Date of all reasonable and documented out-of-pocket costs, fees and expenses owed or otherwise required to be paid pursuant to the Exit Facility Documentation to the Agent and the Lenders (including reasonable and documented fees and expenses of counsel of the Agent and the Exit Lenders and one financial advisor (which shall be Houlihan Lokey, Inc.); *provided*, that legal fees shall be limited to the reasonable and documented fees and disbursements of one counsel for the Agent, one U.S. counsel for the Ad Hoc Committee (which shall be Milbank LLP) and one Canadian counsel for the Ad Hoc Committee (which shall be Cassels Brock & Blackwell LLP) and, in addition, local counsel in each appropriate jurisdiction), including reasonable and documented out-of-pocket costs and expenses of (a) the Agent administering the Exit Term Loan Facility and (b) preparing all documents relating to the Exit Term Loan Facility.
- N. The Company shall file with the SEC a Form 15 to deregister the outstanding securities of the Company under the Exchange Act and will not be a reporting company under the Exchange Act immediately following the effective date of the Plan.

**Interest Rate:**

With respect to the First-Lien First Out Loans, LIBOR + 10.00% *per annum* paid in cash.

With respect to the First-Lien Second Out Loans, either, at the option of the Borrower:

(i) LIBOR + 9.00% *per annum* paid in cash and paid-in-kind interest of 3.00% *per annum*, or

(ii) LIBOR + 11.50% *per annum* paid in cash;

Any paid-in-kind interest so elected to be paid will be added to the principal amounts outstanding under the First-Lien Second Out Loans.

LIBOR will be subject to a 1.00% “floor”.

During the continuance of a payment or bankruptcy Event of Default, past due amounts under the Exit Term Loan Facility will bear interest at an additional 2.00% *per annum* above the interest rate otherwise applicable.

The Borrower shall also have the right to elect that the First-Lien First Out Loans and the First-Lien Second Out Loans bear interest at a rate determined by reference to an “alternate base rate”, and the interest rate margin with respect to First-Lien First Out Loans and First-Lien Second Out Loans bearing interest at the alternate base rate shall be reduced by 1.00% *per annum*.

**Agency Fees:**

As agreed with the Agent.

**Scheduled  
Amortization:**

With respect to the First-Lien First Out Loans, 7.50% *per annum*, payable quarterly for the year beginning at the end of the third fiscal quarter of 2021, and 10.00% *per annum*, payable quarterly, beginning at the end of the third fiscal quarter of 2022 and thereafter.

With respect to the First-Lien Second Out Loans, 1.00% *per annum*, payable quarterly, beginning at the end of the third fiscal quarter of 2021 and thereafter.

**Call Protection:**

None.

**Lender Voting:**

Lenders holding a majority in principal amount of the First-Lien First Out Loans as of the date of determination (the “**Required First-Lien First Out Lenders**”).

Lenders holding a majority in principal amount of the First-Lien Second Out Loans as of the date of determination (the “**Required First-Lien Second Out Lenders**”).

Lender voting rights shall be as follows:

- A. The written consent of each Exit Lender directly and adversely affected by any amendment or modification to any provision relating to (i) principal, interest or fees (other than default interest), (ii) date of payments, (iii) the pro rata sharing of payments, (iv) the “waterfall”, or (v) any provision specifying the number or percentage of Exit Lenders, Required First-Lien First Out Lenders or Required First-Lien Second Out Lenders required to waive, amend or modify any rights or grant any consent shall be required;
- B. The consent of the Required First-Lien First Out Lenders shall be required for any waiver, amendment or modification unless such waiver, amendment or modification relates solely to the First-Lien Second Out Loans and does not directly or indirectly adversely affect the First-Lien First Out Lenders in any manner; and
- C. The consent of the Required First-Lien Second Out Lenders shall be required for any waiver, amendment or modification, unless such waiver, amendment or modification relates solely to the First-Lien First Out Loans and does not directly or indirectly adversely affect the First-Lien Second Out Lenders in any manner.

**Covenants:**

Subject to the immediately succeeding paragraph, to be substantially identical to the Pre-Existing Facility Documentation (including, without limitation, a covenant to use commercially reasonable efforts to obtain a public rating for the Exit Term Loan Facility (but no requirement to obtain or maintain a specific rating)) with such modifications as may be reasonably agreed by the Required Exit Lenders and the Company.

The negative covenant restricting incurrence of Indebtedness shall include a “basket” that permits incurrence of a new revolving credit facility (the “**New Revolver Facility**”), if, after giving effect to the incurrence thereof, (a) the New Revolver Facility availability (not the commitments therefor) does not exceed the remainder of (x) the Borrowing Base (as defined in the Prepetition ABL/FILO Amendment and Restatement, but without giving effect to the “Availability Cushion” described in the New Revolver Basket and Exit FILO Facility Term Sheet (the “**Availability Cushion**”)) less (y)



the aggregate principal amount of Exit FILO Loans then outstanding and (b) as a condition to drawing on the New Revolver Facility, the Borrower shall be in compliance with the Borrowing Base (as defined in the Prepetition ABL/FILO Amendment and Restatement, but without giving effect to the Availability Cushion) after giving effect to such borrowing.

**Financial Covenant:** A maximum total net leverage ratio at a single level to be agreed, tested quarterly beginning with the fiscal quarter ending on June 30, 2022.

Liquidity (as defined below) of \$30 million, tested quarterly beginning with the fiscal quarter ending on June 30, 2022.

**Events of Default:** To be substantially identical to the Pre-Existing Facility Documentation (collectively, the “*Events of Default*”).

**Mandatory Prepayments:** Mandatory prepayments of the borrowings under the Exit Term Loan Facility shall be made at par, without premium or penalty, subject to certain provisions, including rights with respect to ABL Priority Collateral, substantially similar to those under the Pre-Existing Facility Documentation and others to be agreed, modified as appropriate to reflect the proposed exit facility, with respect to:

(i) certain asset sales, including net cash proceeds received in connection with the sale of Nutra to IVC (the “*Nutra Proceeds*”) at the end of the fiscal quarter in which such proceeds are received; *provided* that with respect to Nutra Proceeds received during the first three fiscal quarters of 2021 or 2022 (1) the amount of such payment at such quarter end shall be limited to the lesser of (x) the amount of net cash proceeds so received and (y) the amount that would not cause Liquidity (after giving effect to such prepayment) to be less than the Applicable Liquidity Amount (the difference between clauses (x) and (y), the “*IVC Holdback Amount*”), (2) if there is an IVC Holdback Amount, then at the end of each subsequent fiscal quarter in 2021 or 2022 (other than the fourth fiscal quarter), as applicable, a mandatory prepayment shall be made in an amount equal to the lesser of (i) the IVC Holdback Amount less any portion of the IVC Holdback Amount so applied in prior fiscal quarters and (ii) the amount that would not cause Liquidity (after giving effect to such prepayment) to be less than the Applicable Liquidity Amount (any such prepayment pursuant to this clause (2), an “*IVC Holdback Prepayment*”) and (3) if there is any IVC Holdback Amount remaining as of the end of the fourth fiscal quarter of 2021 or 2022, as applicable, then at the end of such fiscal quarter a mandatory prepayment shall be made in respect of such remaining amount. “*Applicable Liquidity Amount*” shall mean \$75 million for each of fiscal year 2021 and 2022. Any Nutra Proceeds received after 2022 shall be used to prepay borrowings under the Exit Term Loan Facility and there shall be no IVC Holdback Amount after the end of the 2022 calendar year.

(ii) insurance proceeds,

(iii) incurrences of indebtedness not otherwise permitted to be incurred, and

(iv) subject to the following paragraph, receipts of tax refunds by the Loan Parties (the “*Tax Refunds*”) at the end of the fiscal quarter in which such proceeds are received; *provided* that (1) the amount of such Tax Refunds

prepayment at such quarter end shall be limited to the lesser of (x) the amount of net cash proceeds so received and (y) the amount that would not cause Liquidity (after giving effect to such prepayment and any prepayment of the Exit FILO Facility) to be less than \$75 million (the difference between clauses (x) and (y), the “**Tax Holdback Amount**”; and the difference between clause (x) and the Tax Holdback Amount, the “**Tax Refund Prepayment**”) and (2) if there is a Tax Holdback Amount, then at the end of each subsequent fiscal quarter a mandatory prepayment shall be made in an amount equal to the lesser of (i) the Tax Holdback Amount less any portion of the Tax Holdback Amount so applied pursuant to this clause (2) in prior fiscal quarters and (ii) the amount that would not cause Liquidity (after giving effect to such prepayment and any prepayment of the Exit FILO Facility) to be less than \$75 million (any such prepayment pursuant to this clause (2), a “**Tax Holdback Prepayment**”; Tax Holdback Prepayments and Tax Refund Prepayments are collectively referred to herein as “**Tax Prepayments**”).

Mandatory prepayments pursuant to clauses (i) through (iii) above shall be applied *first* to First-Lien First Out Loans and *second* to First-Lien Second Out Loans. Mandatory prepayments pursuant to clause (iv) above shall be applied as follows: a percentage to be agreed to prepay loans under the Exit FILO Facility; and a percentage to be agreed to prepay First-Lien First Out Loans and First-Lien Second Out Loans (with such percentages to be agreed among the Borrower, the Required Exit Lenders and the “Required FILO Lenders” (as defined the New Revolver Basket and Exit FILO Facility Term Sheet)).

The Exit Term Loan Facility shall provide for an excess cash flow sweep substantially consistent with that set forth in the Pre-Existing Facility Documentation (except that (i) for the avoidance of doubt, no Tax Refund nor Nutra Proceeds shall be included in the calculation of excess cash flow in the year received and (ii) excess cash flow shall be reduced by any Tax Holdback Prepayments made during the applicable period and the sweep will be applied on the remaining excess cash flow amount at the applicable percentage set forth below) of (i) 75.00% for the fiscal year ending 2021 to be applied ratably to prepay First-Lien First Out Loans and First-Lien Second Out Loans and (ii) 50.00% for the fiscal year ending 2022 and thereafter to prepay the First-Lien Second Out Loans (but not the First-Lien First Out Loans), in the case of each of clauses (i) and (ii), measured annually and payable within five (5) business days following the delivery of audited financial statements of such fiscal year, but only so long as Liquidity as of the date of such payment is greater than \$40,000,000 after giving pro forma effect to such excess cash flow payment.

Mandatory prepayments will be applied to payments due on the loans in direct order of maturity.

Mandatory prepayments and the application of such proceeds at all times will be subject to the intercreditor arrangements consistent with the Prepetition Intercreditor Agreement, the Pre-Existing Facility Documentation, and the Prepetition ABL Loan Documents, or otherwise

reasonably satisfactory to the Borrower, the Required Exit Lenders and the “required lenders” under the New Revolver and Exit FILO Facility.

For purposes hereof, “*Liquidity*” shall mean unrestricted cash of the Loan Parties and their restricted subsidiaries (other than cash held by foreign subsidiaries that are not Guarantors, cash included in the Borrowing Base and cash supporting letters of credit) and amounts available to be drawn under any revolving credit facility.

**Application of Payments:**

If at any time (x) insufficient funds are received by and available to the Agent to pay fully all amounts of principal, interest and fees and other obligations then due under the Exit Term Loan Facility or (y) during the continuation of an Event of Default and the enforcement of remedies in connection therewith, the Agent receives proceeds of Collateral pledged by the Loan Parties, such funds shall be applied:

- (i) *first*, toward payment of any expenses, fees and indemnities due to the Agent;
- (ii) *second*, toward payment of interest and fees then due from the Borrower with respect to any First-Lien First Out Loans, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;
- (iii) *third*, toward payment of principal then due from the Borrower with respect to any First-Lien First Out Loans, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties;
- (iv) *fourth*, toward payment of interest and fees then due from the Borrower with respect to any First-Lien Second Out Loans, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;
- (v) *fifth*, toward payment of principal then due from the Borrower with respect to any First-Lien Second Out Loans, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties;
- (vi) *sixth*, to payment of all other obligations of the Borrower and the Loan Parties then due and payable under the Exit Term Loan Facility, ratably among the parties entitled thereto in accordance with the amounts of such obligations then due to such parties; and
- (vii) *seventh*, to the Borrower or as otherwise required pursuant to any intercreditor agreement.

**Voluntary Prepayments:** Voluntary prepayments of the borrowings under the Exit Term Loan Facility will be permitted at any time at par, without premium or penalty, subject to the reimbursement of the Exit Lenders' redeployment costs in the case of a prepayment of LIBOR borrowings other than on the last day of the relevant interest period; *provided*, that no voluntary prepayment shall be made on account of the First-Lien Second Out Loans until the First-Lien First Out Loans have been repaid in full.

**Governing Law:** State of New York.

**Agent:** Unless the Required Exit Lenders and the Borrower otherwise elect, GLAS Trust Company LLC will serve as the administrative agent and collateral agent under the Exit Term Loan Facility and will perform duties customarily associated with such capacities (the "*Agent*").

**Expenses and Indemnification:** To be substantially consistent with the Pre-Existing Facility Documentation.

EXHIBIT A-1  
TO  
EXIT TERM LOAN FACILITY TERM SHEET

Guarantor Entities

GNC Holdings, Inc.

GNC Parent LLC

GNC Corporation

General Nutrition Corporation

General Nutrition Investment Company

Lucky Oldco Corporation

GNC Funding, Inc.

GNC International Holdings, Inc.

GNC Canada Holdings, Inc.

General Nutrition Centres Company

GNC Government Services, LLC

GNC China Holdco LLC

GNC Headquarters LLC

Gustine Sixth Avenue Associates, Ltd.

GNC Puerto Rico Holdings, Inc.

GNC Puerto Rico, LLC

EXHIBIT A-2  
TO  
EXIT TERM LOAN FACILITY TERM SHEET

Non-Guarantor Entities

Nutra Insurance Company

GNC Korea Limited

GNC Hong Kong Limited

GNC (Shanghai) Trading Co., Ltd.

GNC China JV Holdco Limited

GNC (Shanghai) Food Technology Limited

GNC South Africa (Pty) Ltd.

GNC Jersey One Limited

GNC Jersey Two Unlimited

THSD

GNC Live Well Ireland

GNC Colombia SAS

GNC Newco Parent, LLC

Nutra Manufacturing, LLC

GNC Supply Purchaser, LLC

GNC Intermediate IP Holdings, LLC

GNC Intellectual Property Holdings, LLC

**Exhibit3**

**DIP ABL FILO Credit Agreement**

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**DEBTOR-IN-POSSESSION**  
**AMENDED AND RESTATED ABL CREDIT AGREEMENT**

**dated as of June [●], 2020**

**among**

**GNC CORPORATION,**

**as Parent,**

**GENERAL NUTRITION CENTERS, INC.,**

**as Borrower,**

**The Several Lenders  
from Time to Time Parties Hereto,**

**and**

**JPMORGAN CHASE BANK, N.A.  
as Administrative Agent and Collateral Agent**

**(amending and restating the ABL Credit Agreement dated as of February 28, 2018, as amended)**

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**JPMORGAN CHASE BANK, N.A.  
as Sole Lead Arranger and Bookrunner**



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DEBTOR-IN-POSSESSION AMENDED AND RESTATED ABL CREDIT AGREEMENT, dated as of June [ ● ], 2020, among GNC CORPORATION, a Delaware corporation (“Parent”), GENERAL NUTRITION CENTERS, INC., a Delaware corporation (the “Borrower”), GNC Holdings, Inc., a Delaware corporation (“Holdings”), GNC Parent LLC, a Delaware limited liability company (“GNC Parent LLC”), the several banks and other financial institutions or entities from time to time parties to this Agreement (the “Lenders”), and JPMORGAN CHASE BANK, N.A., as administrative agent (together with its successors in such capacity, the “Administrative Agent”) and as collateral agent (together with its successors in such capacity, the “Collateral Agent”).

W I T N E S S E T H:

**WHEREAS**, the Loan Parties have commenced voluntary cases (the “Chapter 11 Cases”) under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), and the Loan Parties continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

**WHEREAS**, GNC Holdings, Inc., in its capacity as foreign representative on behalf of the Loan Parties, commenced a recognition proceeding under Part IV of the *Companies’ Creditors Arrangement Act* (the “CCAA”) in the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”) to recognize in Canada the Chapter 11 Cases as “foreign main proceedings” (the “Recognition Proceedings”);

**WHEREAS**, in connection with the filing of the Chapter 11 Cases and the occurrence of the Interim DIP Order Entry Date, the Borrower, in its role as “ABL Administrative Borrower” under the Prepetition ABL Agreement, has terminated the “Revolving Credit Commitments” (as defined in the Prepetition ABL Agreement), repaid all Prepetition Revolving Loans, and cash collateralized the outstanding “Letters of Credit” (as defined in the Prepetition ABL Agreement) (such termination, repayment and cash collateralization, the “Revolver Termination”);

**WHEREAS**, the Borrower and the Lenders have agreed that Prepetition FILO Loans in an aggregate principal amount of \$275,000,000 shall be “rolled up” pursuant to Section 2.1 hereof through an amendment and restatement the Prepetition ABL Agreement pursuant to this Agreement. All indebtedness, Obligations and liabilities outstanding under the Prepetition ABL Agreement after giving effect to the Revolver Termination, as amended and restated hereby, and all Liens existing under the Prepetition ABL Agreement and the other Loan Documents (as defined in the Prepetition ABL Agreement) will continue in full force and effect, uninterrupted and unimpaired, as amended as set forth herein and in the Loan Documents delivered or otherwise continued in connection herewith; and

**WHEREAS**, to provide security for the repayment of the Loans, and the payment of the other Obligations of the Loan Parties hereunder and under the other Loan Documents, the Loan Parties will grant to the Collateral Agent, for its benefit and the benefit of the Lenders, certain security interests, liens, and other rights and protections pursuant to the terms hereof and pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, and super-priority

administrative expense claims pursuant to Section 364(c)(1) of the Bankruptcy Code, all as more fully described herein.

The Lenders are willing to amend and restate the Prepetition ABL Agreement on the terms and subject to the conditions set forth herein. Accordingly, in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree to amend and restate the Prepetition ABL Agreement as follows:

## DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

“ABL Priority Collateral”: the “ABL Priority Collateral” as defined in the Prepetition Intercreditor Agreement.

“ABR”: when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Acceptable Appraiser”: Tiger Valuation Services, LLC or any other experienced and reputable appraiser reasonably acceptable to the Borrower (it being understood that the Borrower’s consent shall not be unreasonably withheld, delayed or conditioned) and the Administrative Agent.

“Account”: with respect to a Person, any of such Person’s now owned and hereafter acquired or arising (1) accounts (as defined in the UCC and/or the PPSA) and, whether or not constituting “accounts” (as defined in the UCC and/or the PPSA), any rights to payment for the sale or lease of goods or rendition of services, whether or not they have been earned by performance or arising out of the use of a credit or charge card or information contained on or used with such card (and whether same is an “Account” (as defined in the UCC and/or the PPSA) or “General Intangible” or “Intangible” (as defined in the UCC or the PPSA, respectively)), (2) all Credit Card Processor Accounts, and (3) all Gift Card Accounts.

“Account Debtor”: any Person who is obligated on an Account, chattel paper, or a “General Intangible” or “Intangible” (as defined in the UCC or the PPSA, respectively).

“Acquired Asset ABL Priority Collateral”: any Accounts, Inventory, Borrowing Base Cash and/or Acquired Asset Borrowing Base Cash acquired by any Loan Party in a Qualifying Acquisition; provided that the Acquired Asset ABL Priority Collateral shall at no time comprise more than 10.0% of the Borrowing Base.

“Acquired Asset Borrowing Base Calculation”: 66 $\frac{2}{3}$ % of the applicable advance rates set forth in the definitions of “Borrowing Base” with respect to the relevant Acquired Asset ABL Priority Collateral, calculated against the book value (or, with respect to Inventory, of the Net Orderly Liquidation Value (based on the Net Orderly Liquidation Value for comparable Inventory pursuant to the most recent Appraisal if inventory appraisals therefor do not exist)) of the relevant Acquired Asset ABL Priority Collateral as set forth in the consolidated balance

sheets of the relevant acquired entities (or, in the case of an asset acquisition, the seller's balance sheet) as of the date with respect to which the most recent Borrowing Base Certificate has been delivered, and applying eligibility and reserve criteria consistent with those applied to Accounts, Inventory and Borrowing Base Cash included in the Borrowing Base, until the delivery to the Administrative Agent of an appraisal and field examination in respect thereof that, in each case, is reasonably satisfactory to the Administrative Agent and addressed to the Administrative Agent.

"Acquired Asset Borrowing Base Cash": Unrestricted Cash that is (i) acquired by any Loan Party in any Qualifying Acquisition and (ii) held by the Loan Parties, in each case (A) in deposit accounts or securities accounts with the Administrative Agent or (B) if JPMorgan Chase Bank, N.A. is no longer the Administrative Agent, held in deposit accounts or securities accounts with any national bank reasonably acceptable to Required Lenders which are subject in each case to a control agreement in form and substance reasonably satisfactory to the Administrative Agent, and (iii) not subject to any other Liens other than non-consensual Liens, Liens permitted by Section 6.3(m) and (q) and Liens that are junior in priority to the Liens securing the Obligations, in each case, permitted under Section 6.3.

"Ad Hoc Committee": collectively, the groups of ad hoc holders of the Prepetition FILO Loans represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP and AlixPartners, on the one hand, and Milbank LLP and Houlihan Lokey, on the other hand.

"Ad Hoc Committee Advisors": Paul, Weiss, Rifkind, Wharton & Garrison LLP, AlixPartners, Milbank LLP and Houlihan Lokey.

"Adjusted LIBO Rate": with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the greater of (a)(i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate, and (b) with respect to Eurodollar Loans, 1.00%.

"Administrative Agent": as defined in the preamble hereto.

"Administrative Questionnaire": an administrative questionnaire in a form supplied by the Administrative Agent.

"Affiliate": as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"Agents": the collective reference to the Administrative Agent and the Collateral Agent.

"Agreement": this Credit Agreement, as amended, amended and restated, supplemented or otherwise modified from time to time.

"Alternate Base Rate": for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus  $\frac{1}{2}$  of 1%,



(c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1% and (d) with respect to ABR Loans, 2.00%; provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the Screen Rate (or if the Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 am London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.17 hereof, then the Alternate Base Rate shall be the greatest of clauses (a), (b) and (d) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Anti-Corruption Laws”: all laws, rules and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Margin”: (i) for FILO Term Loans that are Eurodollar Loans, 9.00% per annum, and (ii) for FILO Term Loans that are ABR Loans, 8.00% per annum.

“Approved Fund”: any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit as its primary activity and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Approved Plan of Reorganization”: a Chapter 11 plan of reorganization, having the terms set forth in the Restructuring Support Agreement and otherwise in form and substance reasonably satisfactory to the Borrower and to Lenders holding at least 66 $\frac{2}{3}$ % of the aggregate amount of the FILO Term Loans and filed by the Loan Parties with the Bankruptcy Court in connection with the Chapter 11 Cases, as may be amended, supplemented or otherwise modified from time to time.

“Arranger”: JPMorgan Chase Bank, N.A.

“Assignment and Assumption”: an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.4), and accepted by the Administrative Agent, in the form of Exhibit C or any other form approved by the Administrative Agent and the Borrower.

“Attributable Indebtedness”: when used with respect to any Sale and Leaseback Transaction, as at the time of determination, the present value (discounted at a rate equivalent to the Borrower’s then-current weighted average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such Sale and Leaseback Transaction.

“Avoidance Actions”: all causes of action arising under Chapter 5 of the Bankruptcy Code and similar statutes of the relevant states.

“Backup Withholding Tax”: United States federal withholding Taxes imposed pursuant to Section 3406 of the Code, as in effect on the date of this Agreement, or any successor provision that is substantially the equivalent thereof, and any regulations or official interpretations thereof (including any revenue ruling, revenue procedure, notice or similar guidance issued by the Internal Revenue Service thereunder as a precondition to relief or exemption from Taxes under such provisions).

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

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

“Bankruptcy Code”: Title 11 of the United States Code, as amended from time to time.

“Bankruptcy Court”: as defined in the recitals hereto.

“Bankruptcy Court DIP Order”: the Interim DIP Order or the Final DIP Order, as applicable.

“Bankruptcy Event”: with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, interim receiver, monitor, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Board”: the Board of Governors of the Federal Reserve System of the United States of America (or any successor).

“Borrower”: as defined in the preamble hereto.

“Borrower Materials”: as defined in Section 5.2.

“Borrowing”: Loans of the same Type, made, deemed made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Borrowing Base”: at any time as set forth in the most recently delivered Borrowing Base Certificate, the sum of:

1. 93% of the value of Eligible Credit Card Receivables held by the Loan Parties; plus
2. 88% of the book value of Eligible Accounts Receivable held by the Loan Parties attributable to wholesale accounts receivable; plus
3. 88% of the book value of Eligible Accounts Receivable held by the Loan Parties attributable to domestic franchisees; provided that at any time the amount of the Borrowing Base consisting of Eligible Accounts Receivable attributable to domestic and foreign franchisees shall not exceed 20% of the Borrowing Base in the aggregate; plus
4. 88% of the book value of Eligible Accounts Receivable held by the Loan Parties attributable to foreign franchisees in each case backed by a letter of credit reasonably acceptable to the Administrative Agent; provided that at any time (i) the amount of the Borrowing Base consisting of Eligible Accounts Receivable attributable to foreign franchisees shall not exceed 15% of the Borrowing Base in the aggregate and (ii) the amount of the Borrowing Base consisting of Eligible Accounts Receivable attributable to domestic (as set out in clause (3) above) and foreign franchisees shall not exceed 20% of the Borrowing Base in the aggregate; plus
5. 98% of the Net Orderly Liquidation Value of Eligible Inventory held by the Loan Parties consisting of finished goods and bulk Eligible Inventory; plus
6. 98% of the Net Orderly Liquidation Value of Eligible Inventory held by the Loan Parties consisting of raw materials Eligible Inventory; plus
7. 100% of the Borrowing Base Cash held by the Loan Parties; plus
8. Upon the occurrence of the Roll-Up Effective Time, an amount equal to \$17,500,000; less
9. Reserves.

Notwithstanding anything to the contrary contained herein, any Acquired Asset ABL Priority Collateral held by a Loan Party will immediately be included in the Borrowing Base at a value equal to the Acquired Asset Borrowing Base Calculation thereof; provided that if the Loan Parties have not delivered, at their expense, a customary field examination and inventory appraisal reasonably acceptable to Administrative Agent within 90 days of the acquisition of such Acquired Asset ABL Priority Collateral (or such longer period as the Administrative Agent may reasonably agree), such Acquired Asset ABL Priority Collateral will cease to be eligible for inclusion in the Borrowing Base until completion of a customary field examination and inventory appraisal reasonably acceptable to Administrative Agent.

“Borrowing Base Cash”: Unrestricted Cash held by the Loan Parties, in each case that is (i) (A) held in deposit accounts or securities accounts with the Administrative Agent or (B) if JPMorgan Chase Bank, N.A. is no longer the Administrative Agent, held in deposit accounts or securities accounts with any national bank reasonably acceptable to Required Lenders which are in each case subject to a control agreement in form and substance reasonably satisfactory to the Administrative Agent and (ii) not subject to any other Liens other than non-consensual Liens, Liens permitted by Section 6.3(m) and (q) and Liens that are junior in priority to the Liens securing the Obligations, in each case, permitted under Section 6.3; provided that, prior to withdrawing Borrowing Base Cash from any account described above in an amount in excess of \$5,000,000 in the aggregate for all withdrawals since the most recent delivery of a Borrowing Base Certificate, the Loan Parties shall deliver an updated Borrowing Base Certificate as of the date of such withdrawal and giving pro forma effect to such withdrawal.

“Borrowing Base Certificate”: a certificate by a Responsible Officer of the Borrower, substantially in the form of Exhibit H (or another form acceptable to the Administrative Agent and the Borrower) setting forth the calculation of the Borrowing Base, including a calculation of each component thereof (including Reserves), all in such detail as is reasonably satisfactory to the Administrative Agent. All calculations of the Borrowing Base in connection with the preparation of any Borrowing Base Certificate will be made by the Borrower and certified to the Administrative Agent.

“Borrowing Request”: a request by the Borrower for a Borrowing substantially in the form of Exhibit F.

“Budget”: the 13-week statement of the Loan Parties’ anticipated cash receipts and Budget Disbursements for the first 13 weeks of the Chapter 11 Cases, set forth on a weekly basis, including the anticipated uses of the proceeds from the Facility for such period and attached hereto as Exhibit I, as updated pursuant to Section 5.1(B)(a) from time to time.

“Budget Disbursements”: in any period, the Loan Parties’ operating disbursements and Capital Expenditures (excluding Professional Fees and restructuring charges arising on account of the Chapter 11 Cases (including U.S. Trustee fees and professional fees and expenses incurred by any official committee appointed in the Chapter 11 Cases or the Agents, the Lenders and/or the Loan Parties or paid by the Loan Parties as adequate protection)).

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

“Canadian Anti-Corruption Laws”: the *Corruption of Foreign Public Officials Act* (Canada), *Special Economic Measures Act* (Canada), the *Freezing Assets of Corrupt Foreign Officials Act* (Canada), Part II.1 of the *Criminal Code* (Canada) and the *Export and Import Permits Act* (Canada), and any related regulations.

“Canadian Anti-Money Laundering Legislation”: the *Criminal Code* (Canada), the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and the *United Nations Act* (Canada), and any regulations thereunder.

“Canadian Defined Benefit Plan”: a Canadian Pension Plan which contains a “defined benefit provision,” as defined in subsection 147.1(1) of the *Income Tax Act* (Canada).

“Canadian Court”: as defined in the recitals hereto.

“Canadian Court DIP Recognition Order”: the Interim DIP Recognition Order and the Final DIP Recognition Order, as applicable.

“Canadian Dollars” and “C\$”: lawful currency of Canada.

“Canadian Guarantee and Collateral Agreement”: the Amended and Restated Canadian Guarantee and Collateral Agreement, dated as of the Closing Date, executed and delivered by the Canadian Guarantor, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Canadian Guarantor”: General Nutrition Centres Company, an unlimited liability company organized under the laws of Nova Scotia.

“Canadian Pension Plan”: any pension plan maintained or sponsored by the Canadian Guarantor that is subject to the funding requirements of the Pension Benefits Act (Ontario), the *Income Tax Act* (Canada) or applicable pension benefits legislation in any other Canadian jurisdiction and is applicable to employees resident in Canada and to which the Canadian Guarantor is making or accruing an obligation to make contributions or has within the preceding five years made or accrued such contributions.

“Canadian Pension Termination Event”: (a) the withdrawal of the Canadian Guarantor from a Canadian Defined Benefit Plan which is “multi-employer pension plan”, as defined under applicable pension standards legislation, during a plan year, or (b) the filing of a notice of interest to terminate in whole or in part a Canadian Defined Benefit Plan or the filing of an amendment with the applicable Governmental Authority which terminates a Canadian Defined Benefit Plan, in whole or in part, or the treatment of an amendment as a termination or partial termination of a Canadian Defined Benefit Plan, (c) the institution of proceedings by any Governmental Authority to terminate a Canadian Defined Benefit Plan in whole or in part or have a replacement administrator or trustee appointed to administer a Canadian Defined Benefit Plan or (d) any other event or condition or declaration or application which might constitute grounds for the termination or winding up of a Canadian Defined Benefit Plan, in whole or in part, or the appointment by any Governmental Authority of a replacement administrator or trustee to administer a Canadian Defined Benefit Plan.

“Canadian Welfare Plan”: any medical, health, hospitalization, insurance or other employee benefit or welfare plan or arrangement of the Canadian Guarantor applicable to employees resident in Canada.

“Capital Expenditures”: for any period, with respect to any Person, the aggregate of all expenditures by such Person for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that are required to be capitalized under GAAP on a balance sheet of such Person, it being understood that Capital Expenditures do not include amounts expended to purchase assets constituting an on-going business.

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

“Capital Stock”: any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing, including convertible securities but excluding debt securities convertible or exchangeable into any of the foregoing.

“Carve Out” has the meaning specified in the Bankruptcy Court DIP Order.

“Cash Equivalents”: (a) United States and Canadian dollars; (b) in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business and not for speculation; (c) securities and other obligations issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (provided that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than one year from the date of acquisition; (d) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, demand deposits, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any Lender or with any domestic or foreign bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia or any U.S. branch of a foreign bank having, capital and surplus of not less than \$500,000,000; (e) repurchase obligations for underlying securities of the types described in clauses (c) and (d) above or clause (g) below entered into with any financial institution meeting the qualifications specified in clause (d) above; (f) commercial paper rated at least P-2 by Moody’s or at least A-2 by S&P (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) and, in each case, maturing within one year after the date of acquisition; (g) marketable short-term money market and similar highly liquid funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency); (h) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an investment grade rating from either Moody’s or S&P (or, if at any time neither Moody’s nor S&P shall be

rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) with maturities of one year or less from the date of acquisition; (i) Investments with average maturities of one year or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency); (j) short-term obligations of, or fully guaranteed by, the government of Canada, (k) short-term obligations of, or fully guaranteed by, the government of a Province of Canada, in each case having a rating of "A-" (or the then equivalent grade) or better by a nationally recognized rating agency and (l) investment funds investing substantially all of their assets in Cash Equivalents of the kinds described in clauses (a) through (k) of this definition.

In the case of Investments by the Canadian Guarantor or by any Foreign Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a) through (l) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by the Canadian Guarantor or by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (l) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents shall also include amounts denominated in currencies other than those set forth in clause (a) above, provided that such amounts are converted into Dollars as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

"Cash Management Obligations": obligations owed by any Loan Party to any Qualified Counterparty in respect of or in connection with Cash Management Services and designated by the Qualified Counterparty and the Borrower in writing to the Administrative Agent as "Cash Management Obligations" and includes any and all Cash Management Obligations in respect of or in connection with Cash Management Services that were so designated in accordance with the Prepetition ABL Agreement.

"Cash Management Order": as defined in Section 4.1(j).

"Cash Management Services": any treasury, depositary, pooling, netting, overdraft, stored value card, purchase card (including so-called "procurement cards" or "P-cards"), debit card, credit card, cash management and similar services and any automated clearing house transfer of funds.

"CCAA": as defined in the recitals hereto.

"CFC": a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"Change in Law": (a) the adoption of any law, rule or regulation after the date of this Agreement or, if later, the date on which the applicable Lender becomes a Lender hereunder

(a “Later Date”), (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or, if later, the date on which the applicable Lender becomes a Lender hereunder, or (c) compliance by any Lender (or, for purposes of Section 2.18(b), by any lending office of such Lender or by such Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement or, if later, the date on which the applicable Lender becomes a Lender hereunder. Notwithstanding anything herein to the contrary (i) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by United States or foreign regulatory authorities, in each case pursuant to Basel III, and (ii) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a Change in Law, regardless of the date enacted, adopted, issued or implemented.

“Change of Control”: the occurrence of any of the following events: (a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of Holdings or any of its Subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) shall become the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of Capital Stock representing more than 51% of the ordinary voting power for the election of directors of Holdings (determined on a fully diluted basis but not giving effect to contingent voting rights which have not vested); (b) Parent shall cease to own and control, of record and beneficially, directly, 100% of each class of outstanding Capital Stock of the Borrower free and clear of all Liens (except Permitted Liens); or (c) Holdings shall cease to beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly) and control, directly or indirectly, 100% of each class of outstanding Capital Stock of the Parent.

“Chapter 11 Cases”: as defined in the recitals hereto.

“Closing Date”: the first date all the conditions in Section 4.1 have been satisfied or waived, which shall not be later than three Business Days after the Interim DIP Order Entry Date.

“Code”: the Internal Revenue Code of 1986, as amended from time to time.

“Collateral”: all Property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement and the “DIP Collateral” as defined in the Bankruptcy Court DIP Orders. The term “Collateral” shall not include any Excluded Assets.

“Collateral Account”: as defined in Section 2.15(k).

“Collateral Agent”: as defined in the preamble hereto.



“Commitment”: with respect to any Lender, such Lender’s FILO Term Loan Commitment.

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

“Commonly Controlled Entity”: an entity, whether or not incorporated, that is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a group that includes the Borrower and that is treated as a single employer under Sections 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“Company Intellectual Property”: as defined in Section 3.9.

“Confirmation Date”: the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

“Confirmation Order”: an order of the Bankruptcy Court, in form and substance acceptable to the Required Lenders, confirming the Approved Plan of Reorganization.

“Contractual Obligation”: with respect to any Person, any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

“Cost”: the calculated cost of purchases, based upon the Borrower’s accounting practices as reflected in the most recent financial statements delivered pursuant to Section 5.1(a).

“Credit Card Processor”: any Person (other than a Loan Party or any Affiliate of any Loan Party) who issues or whose members or Affiliates issue credit or debit cards, including MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club and Carte Blanche.

“Credit Card Processor Accounts”: accounts, receivables and/or payment intangibles owing to a Loan Party from a Credit Card Processor, which shall include in any event payments owing to any Loan Party from a Credit Card Processor that constitute proceeds from the sale or disposition of Inventory of the Loan Parties in the ordinary course of business.

“Credit Party”: the Administrative Agent or any other Lender.

“Crossover Ad Hoc Group”: the ad hoc group of holders of the FILO Term Loans represented by Milbank LLP.

“Customs Broker Agreement”: an agreement, in form reasonably satisfactory to the Administrative Agent, in which the customs broker or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Administrative Agent and agrees, upon notice from the Administrative Agent, to hold and dispose of such Inventory solely as directed by the Administrative Agent.

“Debtor Relief Laws”: the Bankruptcy Code of the United States, the Bankruptcy and Insolvency Act (Canada), the Companies’ Creditors Arrangement Act (Canada), the Winding Up and Restructuring Act (Canada) and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States, Canada or other applicable jurisdictions from time to time in effect.

“Default”: any of the events specified in Section 7, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Defaulting Lender”: any Lender that (a) has failed, within three Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or the Administrative Agent in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after written request by the Administrative Agent, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans (unless such Lender indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan under this Agreement cannot be satisfied) under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the Administrative Agent’s receipt of such certification in form and substance reasonably satisfactory to the Administrative Agent, or (d) has become the subject of a Bankruptcy Event or Bail-in Action. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

“Designated Disbursement Account”: as defined in Section 5.17(c).

“DIP Superpriority Claim”: allowed superpriority administrative expense claims granted by the Bankruptcy Court DIP Order to the Administrative Agent, on behalf of itself and the Lenders, pursuant to Bankruptcy Code sections 364(c)(1), as set forth in the Bankruptcy Court DIP Order (a) with priority over any and all administrative expense claims and unsecured claims against the Loan Parties or their estates in any of the Chapter 11 Cases or in any other

proceedings superseding or related to any of the foregoing, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, or 1114 of the Bankruptcy Code or any other provision of the Bankruptcy Code and (b) which shall at all times be senior to the rights of the Loan Parties and their estates, and any successor trustee or other estate representative to the extent permitted by law.

“Disposition”: with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof (excluding Liens); and the terms “Dispose” and “Disposed of” shall have correlative meanings.

“Disqualified Capital Stock”: any Capital Stock which, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Capital Stock which is not otherwise Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Capital Stock which is not otherwise Disqualified Capital Stock), in whole or in part, (iii) provides for the scheduled payments or dividends in cash, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the date that is 91 days after the Maturity Date at the time of issuance, except, in the case of clauses (i) and (ii), if as a result of a change of control event or asset sale or other Disposition or casualty event, so long as any rights of the holders thereof to require the redemption thereof upon the occurrence of such a change of control event or asset sale or other Disposition or casualty event are subject to the prior payment in full of the Obligations; provided that if such Capital Stock is issued pursuant to a plan for the benefit of employees of Parent, the Borrower or any of its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by Parent, the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Disqualified Institution”:

(a) any Person that is or controls a competitor of the Borrower or any of its Subsidiaries and is identified by the Borrower in writing to the Administrative Agent from time to time prior to, on or after the Closing Date; or

(b) any Affiliate of any of the foregoing Persons that is (i) reasonably identifiable solely on the basis of the similarity of such Affiliate’s name (but excluding any such Affiliate that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and with respect to which such foregoing Person does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such Affiliate) or (ii) identified by the Borrower to the Administrative Agent in writing from time to time prior to, on or after the Closing Date;

provided that any updates, modifications, deletions and/or supplements to the list of Disqualified Institutions, including the designation of any Disqualified Institution after the Closing Date pursuant to clause (a) or clause (b) above, (x) shall not apply retroactively to disqualify any Lender that has previously acquired an assignment or participation interest in any FILO Term Loan (or that is a party to a pending assignment or participation as of the date of such designation), (y) shall be delivered by the Borrower to [JPMDQ\\_Contact@jpmorgan.com](mailto:JPMDQ_Contact@jpmorgan.com) (and failure to so deliver any such update, modification, deletion and/or supplement shall render such update, modification, deletion and/or supplement not received and ineffective) and (z) shall become effective three Business Days after such update, modification, deletion and/or supplement is delivered in accordance with the foregoing clause (y).

“Dollars” and “§”: lawful currency of the United States of America.

“Domestic Subsidiary”: a Restricted Subsidiary that is incorporated, organized or otherwise formed under the laws of the United States, any State thereof or the District of Columbia.

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

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

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

“Electronic Signature”: an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“Eligible Accounts Receivable”: all Accounts (other than Credit Card Processor Accounts and Gift Card Accounts) of the Loan Parties that constitute proceeds from the sale or disposition of Inventory (net of volume rebates) in the ordinary course of business and that are reflected in the most recent Borrowing Base Certificate, except that no Account will be an Eligible Account Receivable if:

- (1) such Account has been outstanding for more than 90 days after the original invoice date or more than 60 days after the original due date relating to such invoice;
- (2) such Account is owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (1) above;

(3) such Account is owed by an Account Debtor that is an Affiliate of any Loan Party or an employee or agent of any Loan Party or any Affiliate of any Loan Party;

(4) such Account is owed by an Account Debtor who is either (i) the United States or any department, agency, or instrumentality of the United States or the federal government of Canada or any department, agency, crown corporation or instrumentality thereof (exclusive, however, of Accounts with respect to which Loan Parties have complied, to the reasonable satisfaction of the Administrative Agent, with the Assignment of Claims Act, 31 USC §3727 or the Financial Administration Act (Canada), as applicable), or (ii) any state of the United States or province or territory of Canada or any other Governmental Authority not covered by the preceding clause (i) (exclusive, however, of Accounts with respect to which (x) the Loan Parties have complied with any applicable State, provincial or local laws comparable to the foregoing) or (y) provincial or local law does not restrict or render ineffective assignment of such Accounts;

(5) such Account is owed by an Account Debtor whose total obligations together with those of its Affiliates owing to Loan Parties exceed 15% of all Eligible Accounts Receivable, to the extent of the obligations owing by such Account Debtor and its Affiliates in excess of such percentage; provided, that in each case, the amount of Eligible Accounts Receivable that are excluded because they exceed the foregoing percentage shall be determined by Administrative Agent based on all of the otherwise Eligible Accounts Receivable of all types prior to giving effect to any eliminations based upon the foregoing concentration limit;

(6) such Account is not subject to the first priority (other than a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y)), valid and perfected Lien of the Administrative Agent as to such Account;

(7) a Loan Party does not have good, valid and marketable title thereto, free and clear of any Lien (other than (a) Liens granted to the Administrative Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Security Documents, (b) a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y) or other Permitted Lien arising by operation of law, or (c) a Lien that is permitted under Section 6.3(g), 6.3(n)(iii), 6.3(p), 6.3(x) or 6.3(aa) and, in each case, junior in priority to the Liens securing the Obligations);

(8) (i) such Account does not constitute the legal, valid and binding obligation of the applicable Account Debtor enforceable in accordance with its terms or (ii) such Account arises in a transaction wherein the goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional;

(9) such Account is owing by a supplier or creditor or is otherwise disputed, or a claim, counterclaim, discount, deduction, reserve, allowance, recoupment or offset has been asserted with respect thereto by the applicable Account Debtor (in each case, only to the extent of the relevant dispute, claim, counterclaim, discount, deduction, reserve, allowance, recoupment or offset);

(10) such Account is owed by an Account Debtor that is subject to a bankruptcy proceeding of the type specified in Section 7.1(f) of the Prepetition ABL Agreement or that is

liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Administrative Agent in its Permitted Discretion;

(11) such Account does not conform with a covenant or representation contained in this Agreement or the Guarantee and Collateral Agreement as to such Account;

(12) such Account is evidenced by Chattel Paper or an Instrument (each as defined in the Guarantee and Collateral Agreement) of any kind, or has been reduced to judgment;

(13) such Account includes a billing for interest, fees or late charges, but ineligibility will be limited to the extent thereof;

(14) such Account arises out of the Pfizer prepaid customer stability program (for so long as the revenue related thereto constitutes deferred revenue);

(15) such Account is owed by an Account Debtor which is owed sums by the Borrower and its Restricted Subsidiaries (with ineligibility limited to the amount owed to such Account Debtor by the Borrower and its Restricted Subsidiaries);

(16) such Account is owed by a franchisee which is in default under its franchise agreement;

(17) such Account represents amounts owed by the national advertising fund related to marketing activities of the Borrower and its Subsidiaries;

(18) such Account represents interest, principal or finance charges owed by franchisees;

(19) such Account represents rent due from franchisees;

(20) such Account is owed by an Account Debtor that is a Sanctioned Person or on any specially designated nationals list maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or a similar list maintained by the Government of Canada, or, to the knowledge of the Borrower or the applicable Guarantor is not able to bring suit or enforce remedies against the Account Debtor through judicial or arbitral process;

(21) such Account is owed by an Account Debtor that is organized outside of the United States or Canada, unless (x) such Account is supported by a letter of credit (delivered to and directly drawable by the Administrative Agent) reasonably satisfactory to the Administrative Agent, or (y) the billing in respect of such Account is made to a branch or office of such Account Debtor that is located in the United States or Canada;

(22) the goods giving rise to such Account have not been delivered to the Account Debtor or to a third party (to the extent title passes to the Account Debtor upon delivery to such third party), the goods giving rise to such Account have been returned by the Account Debtor, or it otherwise does not represent a final sale (it being understood that the returnability of

good will not give rise to a transaction not representing a final sale) or title to the goods has not passed to the Account Debtor;

(23) its payment has been extended beyond the terms set forth in the invoice related thereto (and in any event if its payment has been extended beyond 90 days after the original invoice date or 60 days after the original due date relating to such invoice);

(24) such Account is an Account in respect of which there are unapplied collections (with ineligibility limited to the amount of such unapplied collections);

(25) such Account is owed by an Account Debtor with respect to which return reserves are maintained (with ineligibility limited to the amount of such reserve); or

(26) such account has been or is required to be charged or written off as uncollectible in accordance with GAAP.

If any Account at any time ceases to be an Eligible Accounts Receivable, then such Account will promptly be excluded from the calculation of the Borrowing Base.

Notwithstanding anything to the contrary herein, Eligible Accounts Receivable shall include Eligible Gift Card Receivables after the delivery to the Administrative Agent of a field examination in respect thereof that is reasonably satisfactory to the Administrative Agent and addressed to the Administrative Agent (and, for the avoidance of doubt, Eligible Accounts Receivable shall not include Eligible Gift Card Receivables at any time prior to the delivery of such field examination).

“Eligible Assignee”: (i) any Lender, any Affiliate of a Lender and any Approved Fund and (ii) any commercial bank, insurance company, investment or mutual fund or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933) and which extends credit or buys loans in the ordinary course, other than, in each case, a natural person, a Defaulting Lender or a Disqualified Institution. For the avoidance of doubt, (x) Disqualified Institutions shall be subject to Section 9.4(h) and (y) in no event shall Parent, the Borrower or any of their Subsidiaries or Affiliates be an Eligible Assignee.

“Eligible Credit Card Receivables”: all Credit Card Processor Accounts (net of all associated fees) of the Loan Parties that constitute proceeds from the sale or disposition of Inventory in the ordinary course of business and that are reflected in the most recent Borrowing Base Certificate, except that no Credit Card Processor Account will be an Eligible Credit Card Receivable if:

(1) such Credit Card Processor Account has been outstanding for more than five Business Days from the date of sale;

(2) such Credit Card Processor Account is not subject to the first priority (other than a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y)), valid and perfected Lien of the Collateral Agent as to such Credit Card Processor Account;

(3) a Loan Party does not have good, valid and marketable title thereto, free and clear of any Lien (other than (a) Liens granted to the Administrative Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Security Documents, (b) a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h) 6.3(i), 6.3(k), 6.3(w) or 6.3(y) or other Permitted Lien arising by operation of law, or (c) a Lien that is permitted under Section 6.3(g), 6.3(n)(iii), 6.3(p), 6.3(x) or 6.3(aa) and, in each case, junior in priority to the Liens securing the Obligations);

(4) such Credit Card Processor Account does not constitute the legal, valid and binding obligation of the applicable Credit Card Processor enforceable in accordance with its terms;

(5) such Credit Card Processor Account is disputed, or a claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback has been asserted with respect thereto by the applicable Credit Card Processor (but only to the extent of such dispute, claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback);

(6) such Credit Card Processor Account is owed by a Credit Card Processor that is subject to a bankruptcy proceeding of the type specified in Section 7.1(f) of the Prepetition ABL Agreement or that is liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Administrative Agent in its Permitted Discretion;

(7) such Credit Card Processor Account does not conform with a covenant or representation contained in this Agreement or the Guarantee and Collateral Agreement as to such Credit Card Processor Account;

(8) such Credit Card Processor Account is evidenced by Chattel Paper or an Instrument (each as defined in the Guarantee and Collateral Agreement) of any kind, or has been reduced to judgment;

(9) such Credit Card Processor Account includes a billing for interest, fees or late charges, but ineligibility will be limited to the extent thereof;

(10) such Credit Card Processor Account is owed by a Credit Card Processor that is organized outside of the U.S. or Canada; or

(11) such Credit Card Processor Account has been or is required to be charged or written off as uncollectible in accordance with GAAP.

Anything contained herein to the contrary notwithstanding, for purposes of determining the amount of Eligible Credit Card Receivables in the Borrowing Base at any time, any Credit Card Processor Account that otherwise meets the requirements for Eligible Credit Card Receivables may be included in such calculation even though the same does not constitute proceeds from the sale or disposition of Inventory; *provided* that such amount will be subject to adjustment as may be required by the Administrative Agent at any time and from time to time to reflect such fact. To the extent requested by the Administrative Agent, a notice reasonably satisfactory to the Administrative Agent and the Borrower shall be sent to each Credit Card Processor with respect to the Liens created under the Security Documents.



If any Credit Card Processor Account at any time ceases to be an Eligible Credit Card Receivable, then such Credit Card Processor Account will promptly be excluded from the calculation of the Borrowing Base.

“Eligible Gift Card Receivables”: all Gift Card Accounts of the Loan Parties that constitute proceeds from the sale or disposition of Loan Party gift cards pursuant to a Gift Card Agreement and that are reflected in the most recent Borrowing Base Certificate, except that no Gift Card Account will be an Eligible Gift Card Receivable if:

1. such Gift Card Account has been outstanding for more than 90 days from the date of sale of the relevant gift cards;
2. such Gift Card Account is not subject to the first priority (subject to a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y)), valid and perfected Lien of the Collateral Agent as to such Account;
3. a Loan Party does not have good, valid and marketable title thereto, free and clear of any Lien (other than (a) Liens granted to the Collateral Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Security Documents, (b) a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y), or other Permitted Lien arising by operation of law, or (c) a Lien that is permitted under Section 6.3(g), 6.3(n)(iii), 6.3(p), 6.3(x) or 6.3(aa) and, in each case, junior in priority to the Liens securing the Obligations);
4. such Gift Card Account does not constitute the legal, valid and binding obligation of the applicable Gift Card Administrator enforceable in accordance with its terms;
5. such Gift Card Account is disputed, or a claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback has been asserted with respect thereto by the applicable Gift Card Administrator (but only to the extent of such dispute, claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback);
6. such Gift Card Account is owed by a Gift Card Administrator that is subject to a bankruptcy proceeding of the type specified in Section 7.1(f) of the Prepetition ABL Agreement or that is liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Administrative Agent in its Permitted Discretion;
7. such Gift Card Account does not conform with a covenant or representation contained in this Agreement or the Guarantee and Collateral Agreement as to such Gift Card Account;
8. such Gift Card Account is evidenced by Chattel Paper or an Instrument (each as defined in the Guarantee and Collateral Agreement) of any kind, or has been reduced to judgment;
9. such Gift Card Account includes a billing for interest, fees or late charges, but ineligibility will be limited to the extent thereof; or

10. which the Administrative Agent otherwise determines is unacceptable for any reason whatsoever.

If any Gift Card Account at any time ceases to be an Eligible Gift Card Receivable, then such Gift Card Account will promptly be excluded from the calculation of the Borrowing Base.

“Eligible Inventory”: all Inventory of a Loan Party reflected in the most recent Borrowing Base Certificate, except that no item of Inventory will be Eligible Inventory if such item:

(1) is not subject to the first priority (other than a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y)), valid and perfected Lien of the Collateral Agent as to such Inventory;

(2) a Loan Party does not have good, valid and marketable title thereto, free and clear of any Lien (other than (a) Liens granted to the Collateral Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Security Documents, (b) a Lien permitted under Section 6.3(a), 6.3(b), 6.3(h), 6.3(i), 6.3(k), 6.3(w) or 6.3(y) or other Permitted Lien arising by operation of law, or (c) a Lien that is permitted under Section 6.3(g), 6.3(n)(iii), 6.3(p), 6.3(x) or 6.3(aa) and, in each case, junior in priority to the Liens securing the Obligations);

(3) is slow moving (other than Inventory located at a clearance center that has been appropriately priced consistent with the Loan Parties’ customary practices), obsolete, unmerchantable, defective, used or unfit for sale;

(4) does not conform in all material respects to the representations and warranties contained in this Agreement or the Guarantee and Collateral Agreement;

(5) is not owned only by one or more Loan Parties;

(6) is not finished goods or bulk inventory or raw materials, or which constitutes work-in-process, packaging and shipping material, supplies, samples, prototypes, bags, displays or display items, bill-and-hold goods, goods that are returned or marked for return (but not held for resale), or which constitutes goods held on consignment, or goods which are not of a type held for sale in the ordinary course of business;

(7) is not located in the United States or Canada (other than to the extent that it is in-transit to the United States or Canada and is not deemed ineligible in accordance with clause (12) of this definition);

(8) [reserved];

(9) [reserved];

(10) is being processed offsite at a third-party location or outside processor, or is in-transit to or from said third party location or outside processor;

(11) is the subject of a consignment by any Loan Party as consignor;

(12) is in transit, except that Inventory in transit will not be deemed ineligible if:

(a) it has been shipped (i) from a foreign location (other than Canada or the United States) for receipt by any Loan Party in Canada or the United States within forty-five (45) days of the date of shipment (and such shipment has not been delayed beyond such forty-five (45) day delivery time), or (ii) from a Canadian or United States location for receipt by any Loan Party in Canada or the United States within fifteen (15) days of the date of shipment (and such shipment has not been delayed beyond such fifteen (15) day delivery time), but, in either case, which has not yet been delivered to such Loan Party;

(b) it has been paid for in advance of shipment or is not being shipped by a carrier owned by or affiliated with the vendor;

(c) legal ownership thereof has passed to the applicable Loan Party or the Canadian Guarantor (or is retained by the applicable Loan Party) as evidenced by customary documents of title and such Inventory is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against such Inventory, or with respect to whom any Loan Party is in default of any obligations;

(d) either (i) such Inventory is subject to a negotiable document of title, in form reasonably satisfactory to the Administrative Agent, which shall, except as otherwise agreed by the Administrative Agent in its Permitted Discretion, have been endorsed to the Administrative Agent or an agent acting on its behalf or (ii) such Inventory is evidenced by a non-negotiable document of title, seaway bill, airway bill or other bill of lading in form reasonably acceptable to the Administrative Agent, or other shipping document reasonably acceptable to the Administrative Agent, which names the Administrative Agent as consignee (and/or if requested by the Administrative Agent, a Customs Broker Agreement shall have been delivered to Administrative Agent with respect thereto);

(e) it is insured to the reasonable satisfaction of the Administrative Agent; and

(f) it will be subject to the valid and perfected Lien of the Collateral Agent upon delivery to the applicable Loan Party.

(13) constitutes operating supplies, repair parts, labels or miscellaneous spare parts or other such materials not considered for sale in the ordinary course of business;

(14) is not reflected in a current perpetual inventory report (other than in transit Inventory that is otherwise Eligible Inventory) of the Loan Parties;

(15) is located at a closed store location;

(16) has an expiration date that has passed or that is estimated by the Borrower to occur within 30 days after the date of the applicable Borrowing Base Certificate;

(17) represents warehouse and merchandising supplies located at a distribution center;

(18) consists of loyalty program membership cards and media;

(19) constitutes promotional goods not intended for resale; or

(20) has been acquired from a Sanctioned Person on any specially designated nationals list maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or a similar list maintained by the Government of Canada.

If any Inventory at any time ceases to be Eligible Inventory, such Inventory will promptly be excluded from the calculation of the Borrowing Base.

“Environmental Laws”: any and all laws, rules, orders, regulations, statutes, ordinances, enforceable guidelines, codes, decrees, or other legally enforceable requirements of any international authority, foreign government, the United States or Canada, or any state, provincial, territorial, local, municipal or other governmental authority, regulating, relating to or imposing liability or standards of conduct for protection of the environment or of human health, or employee health and safety (as it relates to exposure to Hazardous Materials).

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

“Environmental Permits”: any and all permits, licenses, approvals, registrations, and other authorizations of a Governmental Authority required under any Environmental Law.

“ERISA”: the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Event” means (i) a Reportable Event with respect to any Single Employer Plan (excluding those for which the provision for 30 day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Single Employer Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Single Employer Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Single Employer Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination

described in Section 4041(c) of ERISA; (iv) the withdrawal by any Loan Party or Commonly Controlled Entity from any Single Employer Plan with two or more contributing sponsors or the termination of any such Single Employer Plan resulting in liability to any Loan Party or Commonly Controlled Entity pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Single Employer Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Single Employer Plan; (vi) the imposition of liability on any Loan Party or Commonly Controlled Entity pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of any Loan Party or Commonly Controlled Entity in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by any Loan Party or Commonly Controlled Entity of notice from any Multiemployer Plan that it is insolvent, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or Section 4068 of ERISA upon the property and rights to property belonging to any Loan Party or Commonly Controlled Entity; or (ix) a Canadian Pension Termination Event.

“Equivalent Amount”: as defined in Section 1.8(c).

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

“Eurodollar”: when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default”: any of the events specified in Section 7, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Exchange Act”: the Securities Exchange Act of 1934, as amended.

“Excluded Accounts”: as defined in the definition of “Excluded Assets”.

“Excluded Assets”: the collective reference to:

1. any licenses, franchises, charters and authorizations of a Governmental Authority to the extent a security interest therein under the Loan Documents is prohibited by or would require the consent, license or approval of any Governmental Authority (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition);
2. any asset if the granting of a security interest under the Loan Documents in such asset would be prohibited by any (x) law, treaty, rule or regulation (including all applicable regulations and laws regarding assignments of and security interests in, government receivables) or a court or other Governmental Authority or would require the consent, license or approval of any Governmental Authority (other than proceeds thereof, to the extent the assignment of such

proceeds is effective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition and the assignment of such proceeds is not prohibited by applicable law and does not require the consent, license or approval of any Governmental Authority) or (y) contractual obligation (only to the extent such restriction is binding on such asset (i) on the Closing Date or (ii) on the date of the acquisition thereof and not entered into in contemplation thereof) (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition);

3. any lease, license or other agreement to the extent that a grant of a security interest therein under the Loan Documents would violate or invalidate such lease, license or agreement (except any such lease, license or agreement among Holdings and its Wholly-Owned Subsidiaries and except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order or other applicable law notwithstanding such prohibition);

4. Capital Stock (i) in any Person that is not a Wholly-Owned Subsidiary to the extent the pledge or other granting of a security interest under the Loan Documents in such Capital Stock would be prohibited by, or require a consent or approval under, organizational or governance documents or shareholders' or similar agreements of or with respect to such Person (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP Order, or other applicable law notwithstanding such prohibition) (ii) in Unrestricted Subsidiaries, broker-dealer Subsidiaries, not-for-profit Subsidiaries and captive insurance Subsidiaries;

5. any assets subject to a Lien permitted by Section 6.3(j) or 6.3(q) to the extent the documents governing such Lien prohibit, or require a consent or approval in order for, such assets to be subject to the Liens created by the Loan Documents (except to the extent such prohibition or restriction is ineffective under the Uniform Commercial Code, the Bankruptcy Court DIP order or other applicable law notwithstanding such prohibition);

6. any United States (or Canadian) intent-to-use application for registration of a trademark or service mark prior to the acceptance by the United States Patent and Trademark Office (or the Canadian Intellectual Property Office) of a statement of use or an amendment to allege use, to the extent and for so long as the grant of a security interest therein would impair the validity or enforceability of, or render void or voidable or result in the cancellation of, a Loan Party's right, title or interest therein or any trademark or service mark registration issued therefrom;

7. assets sold or otherwise disposed of to a Person who is not a Loan Party in compliance with Section 6.5;

8. "margin stock" within the meaning of Regulation U;

9. segregated trust fund accounts, payroll accounts, accounts used solely for making payments in respect of withholding taxes and employee benefits, trust accounts, and escrow accounts for the benefit of unaffiliated third parties, the "Operating Account" (as defined

in the Term Loan DIP Credit Agreement), and the cash collateral account established pursuant to the LC Cash Collateral Agreement (collectively, the “Excluded Accounts”);

10. assets of broker-dealer Subsidiaries, not-for-profit Subsidiaries and captive insurance Subsidiaries;

11. “consumer goods” (as defined in the PPSA);

12. any Receivables for which the account debtor is incorporated or located in Iran; and

13. any Avoidance Actions (other than the proceeds thereof);

provided that (a) in the case of clauses 2(y), (3) and (5), such exclusion shall not apply (i) to the extent the prohibition or restriction is ineffective under Section 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code, the Bankruptcy Code or other applicable law or (ii) to proceeds of the assets referred to in such clause, the assignment of which is expressly deemed effective under Section 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code, the Bankruptcy Code or other applicable law and (b) assets described above shall no longer be “Excluded Assets” upon termination of the applicable prohibition or restriction described above that caused such assets to be treated as “Excluded Assets”; provided further that, Cash Equivalents shall not constitute Excluded Assets.

“Excluded Domestic Subsidiaries”: GNC Intermediate IP Holdings, LLC, GNC Intellectual Property Holdings, LLC, Nutra Insurance Company, GNC Newco Parent LLC and GNC Supply Purchaser, LLC.

“Excluded Subsidiary”: (a) [reserved], (b) [reserved], (c) [reserved], (d) [reserved], (e) the Excluded Domestic Subsidiaries, (f) any Restricted Subsidiary which is a limited partnership of which any Loan Party does not constitute the general partner, (g) [reserved], (h) any Subsidiary to the extent such Subsidiary’s guaranteeing any of the Obligations or otherwise becoming a Loan Party is prohibited or restricted by any Requirement of Law or requires the consent, approval, license or authorization of any Governmental Authority (unless such consent, approval, license or authorization has been obtained (it being agreed that no Loan Party shall be under any obligation to seek the same)), (i) not-for-profit Subsidiaries, (j) any Subsidiary which is not a Wholly-Owned Subsidiary of Parent, (k) captive insurance Subsidiaries, (l) broker-dealer Subsidiaries, (m) special purpose receivables Subsidiaries, (n) [reserved], and (o) any Subsidiary with respect to which (i) the Administrative Agent and the Borrower reasonably agree that the cost or other consequences of providing a guarantee or granting Liens to secure the Obligations are likely to be excessive in relation to the value to be afforded thereby or (ii) in the case of any Person that becomes a Subsidiary after the Closing Date, providing such a guarantee or granting such Liens would reasonably be expected to result in material adverse tax consequences as determined in good faith by the Borrower and consented to by the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed); provided that any Subsidiary described above shall be deemed not to be an Excluded Subsidiary if the Borrower has notified the Administrative Agent in writing that such Subsidiary should not be treated as an Excluded Subsidiary (and solely for purposes of Section 5.10(c) and

the Security Documents, such Subsidiary shall be deemed to have been acquired at the time such notice is received by the Administrative Agent).

“Excluded Taxes”: with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Loan Parties hereunder, (a) Taxes imposed on (or measured by) its overall net income (however denominated), franchise or similar Taxes imposed on it (in each case, in lieu of net income Taxes) and Backup Withholding Taxes imposed on it by (i) the United States of America, (ii) the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office or the office to which its interests, rights and obligations under this Agreement are assigned is located or (iii) any other jurisdictions (or any political subdivision thereof) as a result of a present or former connection between the Administrative Agent, such Lender or other recipient and such jurisdiction imposing such Tax other than a connection arising as a result of the execution or delivery of, receipt of any payments, exercise of any rights or performance of any obligations under, enforcement of or any transaction or other activities related to any Loan Document, (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction in which the Borrower is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.22(b)), any United States federal withholding Tax that is in effect and would apply to amounts payable (including, for the avoidance of doubt, commitment fees and other consent, amendment and similar fees) to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 2.20(a), (d) any Taxes that are attributable to a Foreign Lender’s failure to comply with Section 2.20(e)(i) and (e) any Taxes imposed under, or as a result of the failure of such recipient to satisfy the applicable requirements under, FATCA.

“Existing Credit Agreement”: as defined in the recitals hereto.

“Existing Letters of Credit”: the letters of credit set forth on Schedule 1.1(a).

“Exit Conversion”: as defined in Section 2.24(a).

“Exit ABL Credit Agreement”: as defined in Section 2.24(b)(i).

“Exit FILO Loans”: the loans under the Exit ABL Facility Credit Agreement.

“Exit ABL Term Sheet”: the Term Sheet attached hereto as Exhibit I.

“Facility”: the Loans and Commitments made or deemed made to the Borrower under this Agreement.

“FATCA”: Sections 1471 through 1474 of the Code, as in effect on the date of this Agreement or any successor provision that is substantially the equivalent thereof, any current or future regulations or official interpretations thereof (including any revenue ruling, revenue procedure, notice or similar guidance issued by the Internal Revenue Service thereunder as a



precondition to relief or exemption from Taxes under such provisions and including any agreements entered into pursuant to Section 1471(b)(1) of the Code) and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

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

“FILO Ad Hoc Group”: the ad hoc group of holders of the FILO Term Loans represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP.

“FILO Term Loan Commitment”: as to any FILO Term Loan Lender, the obligation of such Lender, if any, to make FILO Term Loans in an aggregate principal amount not to exceed the amount set forth under the heading “FILO Term Loan Commitment” opposite such Lender’s name on Schedule 2.1, or otherwise as set forth in or referred to on Schedule 2.1. The original aggregate amount of the total FILO Term Loan Commitments on the Closing Date is \$275,000,000, the entire amount of which consists of Rolled-Up Commitments.

“FILO Term Loan Lender”: prior to the Closing Date, each Lender that has a FILO Term Loan Commitment and, after the Closing Date, each Lender that is the holder of FILO Term Loans.

“FILO Term Loans”: Loans deemed made by any Lender pursuant to Section 2.1.

“Final DIP Recognition Order”: an order of the Canadian Court in the Recognition Proceedings, in form and substance satisfactory to the Required Lenders in their sole discretion, recognizing and enforcing the Final DIP Order in Canada.

“Final DIP Order”: the final order of the Bankruptcy Court, approving the Facility on a final basis, in form and substance satisfactory to the Required Lenders and subject to Required FILO Ad Hoc Group Approval, in each case as the same may be amended, modified or supplemented from time to time with the express written consent of the Required Lenders and subject to Required FILO Ad Hoc Group Approval.

“Final DIP Order Entry Date”: the date on which the Final DIP Order is entered on the docket of the Bankruptcy Court.

“Flood Insurance Laws”: collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggart-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Lender”: any Lender that is organized under the laws of a jurisdiction other than that of the United States of America. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary”: any Subsidiary of the Borrower (other than the Canadian Guarantor and other than GNC Puerto Rico LLC) that is not a Domestic Subsidiary.

“GAAP”: generally accepted accounting principles in the United States of America as in effect from time to time.

“GNC Parent LLC”: as defined in the preamble hereto.

“Gift Card Accounts”: accounts, receivables and/or payment intangibles owing to a Loan Party from a Gift Card Administrator pursuant to a Gift Card Agreement.

“Gift Card Administrator”: any Person (other than a Loan Party or any Affiliate of any Loan Party) who offers, sells, administers and/or distributes gift cards of one or more of the Loan Parties.

“Gift Card Agreement”: a gift card agreement between a Loan Party and a Gift Card Administrator.

“Governmental Authority”: any nation or government, any state, province, territory or other political subdivision thereof and any other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government.

“Guarantee and Collateral Agreement”: the Amended and Restated Guarantee and Collateral Agreement, dated as of the Closing Date executed and delivered by Parent and each Loan Party (other than the Canadian Guarantor), as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Guarantee Obligation”: with respect to any Person (the “guaranteeing person”), any obligation of the guaranteeing person guaranteeing or having the economic effect of guaranteeing any Indebtedness, lease payments, dividend payments or other economic obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security for such primary obligation, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, in each case, so as to enable the primary obligor to pay such primary obligation, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term

Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation (or portion thereof) in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

“Guarantors”: the collective reference to Holdings, GNC Parent LLC, Parent, the Canadian Guarantor, the Borrower (solely with respect to Cash Management Obligations between Qualified Counterparties and its Restricted Subsidiaries) and the Subsidiary Guarantors.

“Hazardous Materials”: (i) petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and explosive or radioactive substances or (ii) any chemical, material, waste, substance or pollutant that is prohibited, limited or regulated pursuant to any Environmental Law.

“Hedge Agreements”: all interest rate or currency swaps, caps or collar agreements, foreign exchange agreements, commodity contracts or similar arrangements entered into by the Borrower or its Restricted Subsidiaries providing for protection against fluctuations in interest rates, currency exchange rates, commodity prices or the exchange of nominal interest obligations, either generally or under specific contingencies.

“Holdings”: as defined in the preamble hereto.

“Impacted Interest Period”: as defined in the definition of “LIBO Rate”.

“Indebtedness”: of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of Property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out obligation unless such obligation is not paid after becoming due and payable or appears as a liability on the balance sheet of such Person and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property), but limited to the lesser of the fair market value of such Property and the principal amount of such Indebtedness if recourse is solely to such Property, (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under bankers' acceptances, letters of credit, surety bonds and similar instruments (except unsecured and unmatured reimbursement

obligations in respect thereof obtained in the ordinary course of business to secure the performance of obligations that are not Indebtedness pursuant to another clause of this definition), (g) the liquidation value of all Disqualified Capital Stock of such Person, to the extent mandatorily redeemable in cash prior to the date which is the 91<sup>st</sup> day after the Maturity Date (other than in connection with change of control events and asset sales and other Disposition and casualty events to the extent that the terms of such Capital Stock provide that such Person may not redeem any such Capital Stock in connection with such change of control event or asset sale or other Disposition or casualty event unless such redemption is subject to the prior payment in full of the Obligations), (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above; (i) all obligations of the kind referred to in clauses (a) through (h) above secured by any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligations (but limited to the lesser of the fair market value of such Property and the principal amount of such obligations) and (j) the net obligations of such Person in respect of Hedge Agreements solely for the purposes of Section 6.2 and Section 7.

“Indemnified Taxes”: Taxes other than Excluded Taxes.

“Initial Recognition Order” means an order of the Canadian Court, in form and substance acceptable to the Required Lenders in their sole discretion, among other things, recognizing the Chapter 11 Cases as foreign main proceedings under Part IV of the CCAA.

“Insolvency”: with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

“Insolvent”: pertaining to a condition of Insolvency.

“Intellectual Property”: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, Canadian, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, service marks, technology, know-how and processes, recipes, formulas, trade secrets, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Intercreditor Agreements”: the Prepetition Intercreditor Agreement and any other intercreditor agreement entered into by or among any Representatives and the Loan Parties, in each case as in effect from time to time.

“Interest Election Request”: a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.10.

“Interest Payment Date”: (a) with respect to any ABR Loan, the last day of each month, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and the Maturity Date of the Facility.

“Interest Period”: with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two or three months thereafter, provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim CCAA Order”: the order issued by the Canadian Court in form and substance acceptable to the Required Lenders in their sole discretion, which provides, among other things, an interim stay against the Loan Parties in Canada and which order shall have been entered by the Canadian Court as soon as practicable after the filing of the Chapter 11 Cases and before the “first day” hearing before the Bankruptcy Court.

“Interim DIP Order”: the order of the Bankruptcy Court, approving the Facility on an interim basis, substantially in the form of Exhibit J hereto.

“Interim DIP Order Entry Date”: the date on which the Interim DIP Order is entered on the docket of the Bankruptcy Court.

“Interim DIP Recognition Order” the order issued by the Canadian Court in form and substance acceptable to the Required Lenders in their sole discretion, which shall have been issued by the Canadian Court no later than three (3) Business Days after the entry of the Interim DIP Order and shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of the Required Lenders. For the avoidance of doubt the Interim DIP Recognition Order may be part of the Supplemental Order.

“Interpolated Rate”: as defined in the definition of “LIBO Rate”.

“Inventory”: with respect to a Person, all of such Person’s now owned and hereafter acquired inventory (as defined in the UCC and/or the PPSA), goods and merchandise, wherever located, in each case, to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials, and supplies of any kind, nature or description which are used or consumed in such Person’s business or used in connection with the packing, shipping, advertising, selling, or finishing of such goods, merchandise and other property, and all documents of title or other documents representing the foregoing.

“Investments”: as defined in Section 6.8.

“IRS”: the United States Internal Revenue Service.

“LC Cash Collateral Agreement”: the Cash Collateral Agreement, dated as of [ ● ], 2020 between General Nutrition Centers, Inc. and JPMorgan Chase Bank, N.A.

“Lender Parties”: as defined in Section 9.16.

“Lenders”: the Persons listed on Schedule 2.1 and any other Person that rolled up its Prepetition FILO Loans pursuant to Section 2.1, provided a FILO Term Loan Commitment or shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“LIBO Rate”: with respect to any Eurodollar Borrowing for any Interest Period, the London interbank offered rate as administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for Dollars for a period equal in length to such Interest Period as displayed on page LIBOR01 or LIBOR02 of the Reuters Screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; in each case, the “Screen Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the Screen Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement; provided, further that, if the Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”) with respect to Dollars, then the LIBO Rate shall be the Interpolated Rate at such time. “Interpolated Rate” means, at any time, the rate per annum (rounded to the same number of decimal places as the Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the Screen Rate for the longest period (for which that Screen Rate is available in Dollars) that is shorter than the Impacted Interest Period and (b) the Screen Rate for the shortest period (for which that Screen Rate is available for Dollars) that exceeds the Impacted Interest Period, in each case, at such time.

“Lien”: any mortgage, pledge, hypothecation, security assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing); provided that in no event shall an operating lease in and of itself constitute a Lien.

“Loan”: any FILO Term Loan deemed made by any Lender pursuant to this Agreement.

“Loan Documents”: this Agreement, the Security Documents, the Prepetition Intercreditor Agreement and the Notes.

“Loan Parties”: the Borrower and the Guarantors.

“Material Adverse Effect”: (a) a material adverse effect on the business, assets, liabilities, financial condition or results of operations of the Loan Parties and their Restricted Subsidiaries, taken as a whole, (b) a material and adverse effect on the rights and remedies of the Administrative Agent, the Collateral Agent and Lenders, taken as a whole, under the Loan Documents or (c) a material and adverse effect on the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents; provided that the Lenders agree that none of the following shall constitute a Material Adverse Effect under clause (a) hereof: (i) the COVID-19 pandemic and the direct and indirect effects of the COVID-19 pandemic upon the Loan Parties (provided that the exception in this clause (i) shall not apply to the extent that such pandemic and the direct and indirect effects thereof are disproportionately adverse to the Loan Parties, taken as whole, as compared to other companies in similar lines of business that the Loan Parties operate), (ii) the Chapter 11 Cases, Recognition Proceedings and/or the events and conditions related and/or leading up to or following the commencement of the Chapter 11 Cases and Recognition Proceedings, (iii) any defaults under agreements that are stayed under the Bankruptcy Code or CCAA, as applicable, as a result of the Chapter 11 Cases or Recognition Proceedings, (iv) reduction in payment terms by suppliers, reclamation claims, and any “going concern” or other qualification, exception or explanatory note in the Loan Parties’ audited financial statements, (iv) any matters publicly disclosed prior to the Closing Date, (v) any matters disclosed in the “first day orders” and “second day orders” entered by the Bankruptcy Court at the time of the commencement of the Chapter 11 Cases, and (vi) any matters disclosed in the Schedules hereto.

“Material Debt”: Indebtedness (other than Indebtedness constituting Obligations), or obligations in respect of one or more Hedge Agreements (other than to the extent constituting Obligations), of any one or more of Parent, the Borrower or any Restricted Subsidiary in an aggregate principal amount exceeding \$10,000,000. For purposes of determining Material Debt, the “obligations” of Parent, the Borrower or any Restricted Subsidiary in respect of any Hedge Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Parent, the Borrower or such Restricted Subsidiary would be required to pay if such Hedge Agreement were terminated at such time.

“Maturity Date”: the earliest to occur of (i) [●]<sup>1</sup>, (ii) the date that is 35 days (or such later date as the Required Lenders may agree) after the Petition Date if the Final DIP Order has not been entered prior to the expiration of such 35-day period, (iii) the date the Bankruptcy Court orders the conversion of the Chapter 11 Cases to a Chapter 7 liquidation or the dismissal of the Chapter 11 Cases, (iv) the acceleration of the Loans and the termination of the Commitment under the Facility, (v) the sale of all or substantially all of the Loan Parties’ assets and (vi) the consummation of a Chapter 11 plan of reorganization for the Loan Parties; provided that if the Exit Conversion occurs, the Loans shall not be paid in cash and shall convert in accordance with the terms and conditions set forth in Section 2.23.

“Maximum Rate”: as defined in Section 9.17.

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<sup>1</sup> To be date that is 6 months from Petition Date.

“Milestones”: the “DIP Term Milestones” as defined in the Bankruptcy Court DIP Order (which Milestones may be extended in writing by the Required Lenders).

“Moody’s”: Moody’s Investor Services, Inc.

“Multiemployer Plan”: a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower or any Commonly Controlled Entity contributes or has an obligation to contribute or with respect to which the Borrower or any Commonly Controlled Entity has any liability (including if such liability was imposed pursuant to Section 4212(c) of ERISA).

“Net Cash Proceeds”: (a) in connection with any Recovery Event, the proceeds thereof received by the Loan Parties in the form of cash and Cash Equivalents of such Recovery Event, net of the sum of (i) out-of-pocket attorneys’ fees, accountants’ fees and investment banking and advisory fees incurred by the Loan Parties in connection with such Recovery Event, (ii) principal, premium or penalty, interest and other amounts required to be paid in respect of Indebtedness secured by the asset subject to such Recovery Event and that is required to be repaid in connection with such Recovery Event (other than Indebtedness under the Loan Documents), (iii) other out-of-pocket fees and expenses actually incurred in connection therewith, (iv) taxes (and the amount of any distributions made pursuant to Section 6.6 to permit Parent or any direct or indirect parent company of the Parent to pay taxes) (including, without limitation, sales, transfer, deed or mortgage recording taxes) paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (v) in the case of any Recovery Event by a Restricted Subsidiary that is not a Wholly Owned Subsidiary, the pro-rata portion of the Net Cash Proceeds thereof (calculated without regard to this clause (v)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a Restricted Subsidiary that is a Wholly Owned Subsidiary as a result thereof and (vi) any reserve established in accordance with GAAP; provided that such reserved amounts shall be Net Cash Proceeds to the extent and at the time of any reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any such reserve, and (b) in connection with any issuance or incurrence of any Indebtedness or Capital Stock, the cash proceeds received by the Loan Parties from such issuance or incurrence, net of attorneys’ fees, investment banking and advisory fees, accountants’ fees, underwriting discounts and commissions and other customary fees, costs and expenses actually incurred in connection therewith, any swap breakage costs and other termination costs related to Hedge Agreements and any other fees and expenses actually incurred in connection therewith), in each case as determined reasonably and in good faith by a Responsible Officer of the Borrower.

“Net Orderly Liquidation Value”: with respect to Eligible Inventory, the net appraised liquidation value thereof (expressed as a percentage of the Cost of such Inventory) as determined from time to time by an Acceptable Appraiser in accordance with Section 5.6.

“Non-Consenting Lender”: as defined Section 2.22(c).

“Nonpublic Information”: information which has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD.



“Note”: any promissory note evidencing any FILO Term Loan substantially in the form of Exhibit D.

“NYFRB”: the Federal Reserve Bank of New York.

“NYFRB Rate”: for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement; provided, further, that the NYFRB Rate shall in no event be determined for any day to be lower than the Federal Funds Effective Rate for such day (to the extent that the Federal Funds Effective Rate is published for such day or for the immediately preceding Business Day).

“Obligations”: the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower or any other Loan Party, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans (including, without limitation, the Rolled-Up Obligations) and all other obligations and liabilities of the Loan Parties to the Administrative Agent, the Collateral Agent or to any Lender, any Qualified Counterparty, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred or deemed incurred, which may arise under, out of, or in connection with, this Agreement or any other Loan Document, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to the Arranger, to the Administrative Agent, to the Collateral Agent or to any Lender that are required to be paid by the Borrower or any other Loan Party pursuant hereto), and any Cash Management Obligations; provided, that (i) obligations of the Borrower or any Restricted Subsidiary under any Cash Management Obligations shall be secured and guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (ii) any release of Collateral or Guarantors effected in the manner permitted by this Agreement or any Security Document shall not require the consent of holders of any Cash Management Obligations.

“Operating Account”: the deposit account at JPMorgan Chase Bank, N.A. maintained by the Borrower (as the “Borrower” under the Term Loan DIP Credit Agreement) as the “Operating Account” under the Term Loan DIP Credit Agreement and having an account number with the last four digits 9152.

“Organizational Documents”: with respect to any Person, (i) in the case of any corporation, the certificate of incorporation or articles of incorporation and by-laws (or similar constitutive documents) of such Person, (ii) in the case of any limited liability company, the certificate or articles of formation or organization and operating agreement (or similar constitutive documents) of such Person, (iii) in the case of any limited partnership, the certificate

of formation and limited partnership agreement (or similar constitutive documents) of such Person, (iv) in the case of any general partnership, the partnership agreement (or similar constitutive document) of such Person, (v) in the case of any unlimited liability company, the memorandum of association, and (vi) in any other case, the functional equivalent of the foregoing.

“Other Taxes”: any and all present or future recording, stamp or documentary or any other excise or property Taxes, charges or similar levies imposed by any Governmental Authority arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

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

“Parent”: as defined in the preamble hereto.

“Participant”: as defined in Section 9.4(b)(vi).

“PBGC”: the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

“Permitted Discretion”: the reasonable credit judgment in good faith and in accordance with customary business practices for comparable asset-based lending transactions, and as it relates to the modification of eligibility standards and criteria shall require that (a) such modification after the Closing Date be based on the analysis of facts or events (i) first occurring or first discovered by the Administrative Agent after the Closing Date or (ii) that are materially different from the facts or events occurring or known to the Administrative Agent on the Closing Date, unless the Borrower and the Administrative Agent otherwise agree in writing, and (b) the effect of any adjustment or imposition of exclusionary criteria be a reasonable quantification (as reasonably determined by the Administrative Agent) of the incremental dilution of the applicable Borrowing Base attributable to such contributing factors.

“Permitted Liens”: Liens permitted by Section 6.3.

“Person”: an individual, partnership, corporation, limited liability company, unlimited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Petition Date”: [ ● ], 2020.

“Plan”: at a particular time, any employee benefit plan that is covered by ERISA and in respect of which the Borrower or a Commonly Controlled Entity is (or, if such Plan were terminated at such time, would under Section 4062 or Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Platform”: as defined in Section 5.2.

“Pledged Capital Stock”: as defined in the Guarantee and Collateral Agreement.

“PPSA”: the Personal Property Security Act (Ontario) or the equivalent legislation (including the *Civil Code* (Quebec)) in any other applicable province or territory of Canada.

“Prepetition ABL Agent”: JPMorgan Chase Bank, N.A., in its capacity as administrative agent under any of the Prepetition ABL Loan Documents or any successor administrative agent.

“Prepetition ABL Agreement”: that certain ABL Credit Agreement, dated as of February 28, 2018 (the “Prepetition Credit Closing Date”) (as amended by that certain First Amendment, dated as of March 20, 2018, that certain Second Amendment, dated as of May 15, 2020, and that certain Third Amendment, dated as of June 12, 2020), among Parent, the Borrower, the Subsidiaries party thereto as borrowers, the several banks and other financial institutions or entities from time to time party thereto as lenders and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

“Prepetition ABL Loan Documents”: the Prepetition ABL Agreement and the other “Loan Documents” under and as defined in the Prepetition ABL Agreement.

“Prepetition ABL Loan Indebtedness”: Indebtedness of Parent, the Borrower or any Guarantor outstanding, or secured, under the Prepetition ABL Loan Documents.

“Prepetition Agents”: the Prepetition Term Loan Agent and the Prepetition ABL Agent.

“Prepetition Borrowing Base Certificate”: the “Borrowing Base Certificate” (as defined in the Prepetition ABL Agreement) most recently delivered by the Borrower under the Prepetition ABL Agreement prior to the Petition Date.

“Prepetition Convertible Notes Documents”: the Prepetition Convertible Notes Indenture and the other documents evidencing Indebtedness for borrowed money executed in connection therewith.

“Prepetition Convertible Notes Indenture”: as defined in the definition of “Prepetition Convertible Senior Notes”.

“Prepetition Convertible Senior Notes”: the 1.50% Convertible Senior Notes due August 15, 2020 issued under that certain indenture dated as of August 10, 2015, among Holdings, Parent, the Borrower and the other subsidiaries party thereto, and Bank of New York Mellon Trust Company, N.A., as trustee (such indenture, the “Prepetition Convertible Notes Indenture”).

“Prepetition Convertible Senior Note Indebtedness”: Indebtedness of Holdings, the Borrower or any Guarantor under the Prepetition Convertible Notes Documents.

“Prepetition Credit Closing Date”: as defined in the definition of “Prepetition ABL Agreement”.

“Prepetition FILO Lenders”: the lenders of the Prepetition FILO Loans.

“Prepetition FILO Loans”: the “FILO Term Loans” under and as defined in the Prepetition ABL Agreement.

“Prepetition Intercreditor Agreement”: the Intercreditor Agreement, dated as of February 28, 2018, by and among the Prepetition Term Loan Agent, the Prepetition Term Loan Collateral Agent, the Prepetition ABL Agent, Parent, the Borrower and its Restricted Subsidiaries parties thereto, as amended, restated, supplemented or otherwise modified from time to time.

“Prepetition Lenders”: the Prepetition Term Loan Lenders, the Prepetition FILO Lenders and the Prepetition Revolving Lenders.

“Prepetition Loan Documents”: the Prepetition ABL Loan Documents, the Prepetition Term Loan Documents and the Prepetition Convertible Notes Documents.

“Prepetition Obligations”: the Prepetition Term Loan Obligations, the Prepetition ABL Loan Indebtedness and the Prepetition Convertible Senior Note Indebtedness.

“Prepetition Revolving Lenders”: the lenders of the Prepetition Revolving Loans.

“Prepetition Revolving Loans”: the “Revolving Credit Loans” under and as defined in the Prepetition ABL Agreement.

“Prepetition Term Loan Agent”: JPMorgan Chase Bank, N.A., in its capacity as administrative agent under the Prepetition Term Loan Documents or any other successor administrative agent.

“Prepetition Term Loan Agreement”: that certain Amended and Restated Term Loan Credit Agreement, dated as of February 28, 2018 (as amended by that certain First Amendment, dated as of May 15, 2020, and that certain Second Amendment, dated as of June 12, 2020, and as may be further amended, amended and restated, supplemented or otherwise modified from time to time), among Parent, the Borrower, the several banks and other financial institutions or entities from time to time party thereto as lenders, the Prepetition Term Loan Collateral Agent and the Prepetition Term Loan Agent.

“Prepetition Term Loan Collateral Agent”: GLAS Trust Company LLC, in its capacity as collateral agent under any of the Prepetition Term Loan Documents or any successor collateral agent.

“Prepetition Term Loan Documents”: the “Loan Documents” as defined in the Prepetition Term Loan Agreement.

“Prepetition Term Loan Lenders”: the lenders of the Prepetition Term Loans.

“Prepetition Term Loan Obligations”: the “Obligations” under and as defined in the Prepetition Term Loan Agreement.

“Prepetition Term Loans”: the “Loans” under and as defined in the Prepetition Term Loan Agreement.

“Primary Related Party”: as defined in Section 9.3(b).

“Prime Rate”: the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent in its reasonable discretion) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent in its reasonable discretion). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Property”: any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

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

“Qualified Counterparty”: with respect to any Cash Management Obligations, (i) each counterparty that constituted a “Qualified Counterparty” under and as defined in the Prepetition ABL Agreement as of the Petition Date and (ii) any counterparty thereto that, at the time such Cash Management Obligations were entered into or on the Closing Date, was a Lender or an affiliate of a Lender.

“Qualified Capital Stock”: Capital Stock that is not Disqualified Capital Stock.

“Qualifying Acquisition”: any acquisition of all or substantially all assets of a Person, a line of business, or other bulk purchase transaction not prohibited under this Agreement so long as such acquisition or bulk purchase transaction is in respect of the same or like businesses (or a generally related or ancillary line of business or a reasonable extension thereof) as those carried on by a Loan Party as of the Closing Date.

“Receivable”: as defined in the Guarantee and Collateral Agreement.

“Recognition Proceedings” has the meaning specified in the recitals hereto.

“Recovery Event”: any settlement of, or payment in respect of, any property or casualty insurance claim or any condemnation proceeding relating to any asset of the Borrower or any of its Restricted Subsidiaries (other than assets consisting of Term Priority Collateral or otherwise subject to a Permitted Lien).

“Register”: as defined in Section 9.4(b)(iv).

“Regulation FD”: Regulation FD as promulgated by the US Securities and Exchange Commission under the Securities Act and Exchange Act as in effect from time to time.

“Regulation U”: Regulation U of the Board as in effect from time to time.

“Reinvestment Deferred Amount”: with respect to any Reinvestment Event, the aggregate amount of Net Cash Proceeds received by the Borrower or any of its Restricted Subsidiaries in connection therewith that are not applied to prepay the Loans pursuant to Section 2.15(b) as a result of the delivery of a Reinvestment Notice.

“Reinvestment Event”: any Recovery Event in respect of which the Borrower has delivered a Reinvestment Notice.

“Reinvestment Notice”: a written notice executed by a Responsible Officer stating that the Borrower (or a Restricted Subsidiary) intends and expects to use all or a portion of the amount of Net Cash Proceeds of a Recovery Event to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets useful in its or such Restricted Subsidiary’s business.

“Reinvestment Prepayment Amount”: with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets useful in the Borrower’s or a Restricted Subsidiary’s business.

“Reinvestment Prepayment Date”: with respect to any Reinvestment Event, the earlier of (a) the date occurring six months after such Reinvestment Event and (b) the date on which the Borrower shall have determined not to, or shall have otherwise ceased to, restore, rebuild, repair, construct, improve, replace or otherwise acquire assets useful in the Borrower’s or the applicable Restricted Subsidiary’s business with all or any portion of the relevant Reinvestment Deferred Amount.

“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.

“Replacement Liens”: with respect to any Lien, any modification, replacement, renewal or extension of such Lien; provided that (i) such modification, replacement, renewal or extension of such Lien does not extend to any additional property other than (A) after-acquired property (to the extent such after-acquired property would have been subject to such Lien prior to such modification, replacement, renewal or extension) and (B) proceeds and products thereof, and (ii) any Indebtedness secured by such Liens is permitted by Section 6.2.

“Reportable Event”: any of the “reportable events” set forth in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Single Employer Plan, other than those events as to which notice is waived pursuant to PBGC Regulation § 4043 as in effect on the Closing Date (no matter how such notice requirement may be changed in the future).

“Representative”: with respect to Indebtedness permitted to be incurred pursuant to Section 6.2 (and permitted to be secured by all or any portion of the Collateral pursuant to Section 6.3), the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“Required FILO Ad Hoc Group Approval”: as defined in Section 1.9.

“Required Lender Representative”: as defined in Section 1.5.

“Required Lenders”: at any time, the holders of more than 50% of the aggregate unpaid principal amount of the FILO Term Loans then outstanding; provided that at no time will FILO Term Loans held by Defaulting Lenders be included in determining whether the “Required Lenders” threshold is met.

“Requirement of Law”: as to any Person, the Certificate of Incorporation and By Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Requirement of Tax Law”: as to any Person, any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority relating to Taxes, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Reserves”: reserves against the Borrowing Base consisting of, and limited to, one or more of the categories of “Reserves” set forth in the Prepetition ABL Agreement. On or before the date of delivery of each Borrowing Base Certificate, the Borrower and the Required Lender Representative shall establish in good faith the amount in Dollars corresponding to each such category of Reserves to be set forth in such Borrowing Base Certificate (i) employing methodology and criteria consistent with that employed by the Prepetition ABL Agent in establishing the reserves set forth in the Prepetition Borrowing Base Certificate and (ii) based upon information provided to the Required Lender Representative by the Borrower; provided that (x) imposition of Reserves in categories that are not listed on Schedule 1.1(c)<sup>2</sup> shall require the written consent of Lenders holding at least 66 $\frac{2}{3}$ % of the aggregate amount of the FILO Term Loans, (y) amounts of “Landlord Lien Reserves” and “Collateral Access Reserves” may only increase from the respective amounts set forth for such Reserves in the Prepetition Borrowing Base Certificate with the written consent of Lenders holding at least 66 $\frac{2}{3}$ % of the aggregate

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<sup>2</sup> NTD: Such categories to consist of Landlord Lien Reserve, Collateral Access Reserve, Gift Cards (50% of G/L Liability), Customer Deposits (100% of G/L Liability), Canadian Sales Tax (in USD), Canadian Priority Payroll – WEPPA (in USD), Canadian 3PL, Royalties on Licensed Product, Designated Hedging Reserves (i.e., if company obtains swaps in the future), Reserves for any judgment Liens that encumber Collateral included in the Borrowing Bases not to exceed the amount of such judgment.

amount of the FILO Term Loans, and (z) any reduction in the amounts of “Landlord Lien Reserves” and “Collateral Access Reserves” shall be made only by written request from the Borrower to the Required Lender Representative and shall require the written consent of Lenders holding at least 66⅔% of the aggregate amount of the FILO Term Loans. The amount of any Reserve or change in any Reserve shall have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve or such change. No Reserves or changes in Reserves shall be duplicative of Reserves or changes already accounted for through exclusions in the definitions of Eligible Accounts Receivable, Eligible Inventory, Eligible Gift Card Receivables and Eligible Credit Card Receivables (including advance rates) or shall constitute a general reserve applicable to all Eligible Inventory, all Eligible Accounts Receivable, Eligible Gift Card Receivables and/or all Eligible Credit Card Receivables that is the functional equivalent of a decrease in advance rates. In the event of a dispute between the Borrower and the Required Lender Representative regarding the amount of any such Reserve, the Borrower shall submit such dispute to the Bankruptcy Court for determination, and a Reserve shall be established in the amount (if any) so determined by the Bankruptcy Court. At any time that no Required Lender Representative has been appointed, each reference to the Required Lender Representative in this defined term shall be deemed to refer to the Required Lenders, which shall be deemed to have agreed to the amount of each category of fluctuating Reserves so established by the Borrower in the applicable Borrowing Base Certificate unless objected to by the Required Lenders in writing within three (3) Business Days following delivery of such Borrowing Base Certificate to the Lenders and (to the extent named in Section 9.1) the Ad Hoc Committee Advisors).

“Resignation Effective Date”: as defined in Section 8.9.

“Responsible Officer”: as to any Person, the chief executive officer, president, chief financial officer, chief accounting officer, comptroller, treasury manager, treasurer or assistant treasurer of such Person, but in any event, with respect to financial matters, the chief financial officer, chief accounting officer, comptroller, treasurer or assistant treasurer of such Person. Unless otherwise qualified, all references to a “Responsible Officer” shall refer to a Responsible Officer of the Borrower.

“Restricted Payments”: as defined in Section 6.6.

“Restricted Subsidiary”: any Subsidiary other than an Unrestricted Subsidiary

“Restructuring Support Agreement”: that certain Restructuring Support Agreement dated as of June [●], 2020 among the Borrower, the other Loan Parties party thereto, and the Prepetition Term Loan Lenders and Prepetition FILO Lenders that are “Consenting FILO Lenders” thereunder.

“Returns”: with respect to any Investment, any dividends, distributions, return of capital and other amounts received or realized in respect of such Investment.

“Revolver Termination”: as defined in the recitals hereto.



“Roll-Up Effective Time”: the moment in time immediately following the entry by the Bankruptcy Court of the Bankruptcy Court DIP Order approving the roll-up of the Prepetition FILO Loans pursuant to Section 2.1.

“Rolled-Up Commitments”: as defined in Section 2.1.

“Rolled-Up Obligations”: as defined in Section 2.1.

“Sale and Leaseback Transaction”: as defined in Section 6.11.

“Sales Report”: as defined in Section 5.1(B)(c).

“Sanctioned Country”: at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, for purposes of Sanctions imposed, administered or enforced by the U.S. government, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person”: at any time, (a) any Person listed in any Sanctions-related list of “designated Persons” maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom, (b) any Person listed in any Sanctions-related list of “designated Persons” maintained by the federal government of Canada, (c) any Person operating, organized or resident in a Sanctioned Country or (d) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a), (b) or (c).

“Sanctions”: economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government or the Canadian government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom.

“S&P”: Standard & Poor’s Financial Services LLC.

“Screen Rate”: as defined in the definition of “LIBO Rate”.

“SEC”: the Securities and Exchange Commission (or successors thereto or an analogous Governmental Authority).

“Secured Parties”: as defined in the Guarantee and Collateral Agreement.

“Security Documents”: the collective reference to the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement.

“Single Employer Plan”: any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

“Specified Event of Default”: (i) any Event of Default pursuant to Section 7.1(a) or (ii) any Event of Default pursuant to Section 7.1(k).

“Statutory Reserve Rate”: a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subsidiary”: as to any Person, a corporation, partnership, limited liability company, unlimited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantor”: as of the Closing Date, each Subsidiary of the Borrower listed on Schedule 1.1(b), together with each Restricted Subsidiary of the Borrower that becomes a Subsidiary Guarantor after the Closing Date pursuant to Section 5.11(c).

“Supplemental Order” means an order of the Canadian Court, in form and substance acceptable to the Required Lenders in their sole discretion, among other things, granting customary additional relief in the Recognition Proceedings.

“Taxes”: any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Loan Administrative Agent”: as defined in the definition of “Term Loan DIP Credit Agreement”.

“Term Loan Collateral Agent”: as defined in the definition of “Term Loan DIP Credit Agreement”.

“Term Loan DIP Credit Agreement”: that certain Debtor-in-Possession Credit Agreement, dated as of June [ ● ], 2020, among Holdings, GNC Parent LLC, Parent, the Borrower, JPMorgan Chase Bank, N.A. as administrative agent (in such capacity, together with any successor thereto, the “Term Loan Administrative Agent”) on behalf of itself and the lenders

party thereto and GLAS Trust Company LLC as collateral agent (in such capacity, together with any successor thereto, the “Term Loan Collateral Agent”).

“Term Loan Documents”: the Term Loan DIP Credit Agreement and the other “Loan Documents” under and as defined in the Term Loan DIP Credit Agreement.

“Term Loan Lender”: each “Lender” as defined in the Term Loan DIP Credit Agreement.

“Term Loan Obligations”: the “Obligations” (under and as defined in the Term Loan DIP Credit Agreement).

“Term Priority Collateral”: the “Term Priority Collateral” (under and as defined in the Prepetition Intercreditor Agreement).

“Term Loans”: any term loans made or deemed made (by the Bankruptcy Court DIP Order) pursuant to the Term Loan DIP Credit Agreement.

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

“UCC” or “Uniform Commercial Code”: the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“Unrestricted Cash”: cash or Cash Equivalents of the Loan Parties that are not subject to any express contractual restrictions on the application thereof (it being expressly understood and agreed that, for the avoidance of doubt, affirmative and negative covenants and events of default that do not expressly restrict the application of such cash or Cash Equivalents shall not constitute express contractual restrictions for purposes of this definition) and not subject to any Lien (other than (i) Liens created by the Loan Documents, the Bankruptcy Court DIP Order, or the Prepetition Loan Documents in effect on the Petition Date, (ii) Liens securing the Term Loan DIP Credit Agreement, the LC Cash Collateral Agreement, the Existing Letters of Credit, or the Carve Out, (iii) non-consensual Liens permitted by Section 6.3, and (iv) Liens (whether or not consensual) permitted by Sections 6.3(k) or 6.3(n)).

“Unrestricted Subsidiary”: each of GNC Intermediate IP Holdings, LLC, a Delaware limited liability company and GNC Intellectual Property Holdings, LLC, a Delaware limited liability company.

“Variance Report”: as defined in Section 5.1(B)(b).

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

“Withholding Agent”: any Loan Party or the Administrative Agent, as applicable.

“Wholly Owned Subsidiary”: as to any Person, any other Person all of the Capital Stock of which (other than (a) directors’ qualifying shares and (b) nominal shares issued to foreign nationals to the extent required by any applicable Requirement of Law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

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

## 1.2 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, unless otherwise specified herein or in such other Loan Document:

(i) the words “hereof”, “herein” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Documents as a whole and not to any particular provision of thereof;

(ii) Section, Schedule and Exhibit references refer to (A) the appropriate Section, Schedule or Exhibit in this Agreement or (B) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears;

(iii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;

(iv) the word “will” shall be construed to have the same meaning and effect as the word “shall”;

(v) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings);

(vi) unless the context requires otherwise, the word “or” shall be construed to mean “and/or”;

(vii) unless the context requires otherwise, (A) any reference to any Person shall be construed to include such Person’s legal successors and permitted assigns, (B) any reference to any law or regulation shall refer to such law or regulation as amended, modified or supplemented from time to time, and any successor law or regulation, (C) the words “asset” and “property” shall be construed to have the same

meaning and effect, and (D) references to agreements (including this Agreement) or other Contractual Obligations shall be deemed to refer to such agreements or Contractual Obligations as amended, restated, amended and restated, supplemented or otherwise modified from time to time;

(viii) references to any direct or indirect parent company of the Parent shall refer to Holdings and any of its Wholly Owned Subsidiaries which are parent companies of the Parent; and

(ix) 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 Québec, (q) “personal property” shall be deemed to include “movable property”, (r) “real property” shall be deemed to include “immovable property”, (s) “tangible property” shall be deemed to include “corporeal property”, (t) “intangible property” shall be deemed to include “incorporeal property”, (u) “security interest” and “mortgage” shall be deemed to include a “hypothec”, (v) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication under the Civil Code of Québec, (w) all references to “perfection” of or “perfected” Liens shall be deemed to include a reference to the “opposability” of such Liens to third parties, (x) any “right of offset”, “right of setoff” or similar expression shall be deemed to include a “right of compensation”, (y) “goods” shall be deemed to include “corporeal movable property” other than chattel paper, documents of title, instruments, money and securities, and (z) an “agent” shall be deemed to include a “mandatary”.

(c) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including”.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) The expressions “payment in full,” “paid in full” and any other similar terms or phrases when used herein with respect to the Obligations shall mean the payment in full, in immediately available funds, of all of the Obligations (excluding Obligations in respect of any Cash Management Obligations and contingent reimbursement and indemnification obligations that are not then due and payable).

1.3 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Eurodollar Loan”).

1.4 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time (provided that, notwithstanding anything to the contrary herein, (i) all accounting or financial terms used herein shall be construed, and all financial computations pursuant hereto shall be made, without giving effect to any election under

Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Holdings or any Subsidiary at “fair value”, as defined therein, (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein shall be disregarded, and such Indebtedness shall at all times be valued at the full stated principal amount thereof), (iii) [reserved] and (iv) notwithstanding anything to the contrary herein, only those leases that would result or would have resulted in Capital Lease Obligations or Capital Expenditures under GAAP as in effect on the Prepetition Credit Closing Date (assuming for purposes hereof such leases were in existence on the Prepetition Credit Closing Date) will be considered capital leases and all calculations under this Agreement will be made in accordance therewith. In the event that any “Accounting Change” as defined below shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then upon the written request of the Borrower or the Administrative Agent, the Borrower, the Administrative Agent and the Lenders shall enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrower’s financial condition shall be the same after such Accounting Change as if such Accounting Change had not occurred; provided that provisions of this Agreement in effect prior to the date of such Accounting Change shall remain in effect until the effective date of such amendment. “Accounting Change” refers to any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants.

1.5 Required Lender Representative; Agent Determinations. (a) On or prior to the date that is ten (10) Business Days after the Closing Date (or such later date as agreed by the Administrative Agent in its sole discretion), Lenders holding at least 66⅔% of the aggregate amount of the FILO Term Loans shall appoint a representative (which may consist of more than one entity, but not more than three entities, and which shall be reasonably acceptable to the Borrower) to act as set forth in in this Section 1.5 (such representative(s) collectively, together with their respective successors in such capacity, the “Required Lender Representative”) and agree that the Required Lender Representative may provide such directions and consents as expressly set forth in this Agreement and the other Loan Documents (including, without limitation, as set forth in Section 1.5(b) below) as the Required Lender Representative on instruction of Required Lenders deems appropriate and the Lenders shall be obligated by the terms of any such direction or consent. Any Required Lender Representative may resign upon prior written notice delivered to the Borrower, each Agent and the Lenders; provided that Lenders holding at least 66⅔% of the aggregate amount of FILO Term Loans shall appoint a successor Required Lender Representative as soon as possible, and in no event later than ten (10) Business Days (or such later date as agreed to by the Administrative Agent in its sole discretion), after the date such notice of resignation is delivered; provided further that such resignation shall become effective ten (10) Business Days after the date such notice of resignation is delivered if a successor Required Lender Representative is not appointed on or prior to the date that is ten (10) Business Days after the date such notice of resignation is delivered; provided further that so long as at least one Required Lender Representative remains appointed after giving effect to any such

resignation of a Required Lender Representative, Lenders holding at least 66 $\frac{2}{3}$ % of the aggregate amount of FILO Term Loans may elect not to appoint a successor for such resigning Required Lender Representative by providing written notice to the Administrative Agent and the Borrower on or prior to the date that is ten (10) Business Days after the date such notice of resignation is delivered.

(b) Any express references in this Agreement or any other Loan Document to actions, requests, determinations or decisions being made at the Permitted Discretion of or at the discretion of (or any like or similar term, but not “sole” discretion of an Agent) any Agent shall, in each case, mean (or be deemed to mean) such Agent acting at the written direction of, or with the written consent of, the Required Lender Representative (which written direction or consent may be provided via email); provided that if at any time no Required Lender Representative has been appointed, any such reference described in the foregoing provisions of this Section 1.5(b) shall, in each case, mean (or be deemed to mean) such Agent acting at the written direction of, or with the written consent of, the Required Lenders (which written direction or consent may be provided via email and shall be deemed given if the Required Lenders do not object thereto within three (3) Business Days of notice thereof to the Lenders and (to the extent named in Section 9.1) the Ad Hoc Committee Advisors (or if the Bankruptcy Court shall have so approved the matter in question)); provided further that if there is more than one Required Lender Representative and the Required Lender Representatives provide conflicting direction or consent to any Agent, (i) at any time that there are three Required Lender Representatives and a majority of the Required Lender Representatives provide the same direction or consent, such Agent shall act based on the direction or consent provided by such majority of the Required Lender Representatives and (ii) at all other times, such Agent shall not be required to take or make any such action, request, determination or decision without the written direction of, or with the written consent of, the Required Lenders (which written direction or consent may be provided via email and shall be deemed given if the Required Lenders do not object thereto within three (3) Business Days of notice thereof to the Lenders and (to the extent named in Section 9.1) the Ad Hoc Committee Advisors (or if the Bankruptcy Court shall have so approved the matter in question)). The Lenders agree that each Agent may accept, and be permitted to rely on, any direction or consent provided by the Required Lender Representative or the Required Lenders, as applicable, pursuant to this Section 1.5(b) without any obligation or duty to ascertain or to inquire as to the validity, enforceability, effectiveness or genuineness of any such direction or consent provided by the Required Lender Representative.

(c) Any references in this Agreement to matters, calculations or documentation being satisfactory or acceptable (or any like or similar term) to any Agent shall mean (or be deemed to mean) such Agent, as applicable, acting at the written direction of, or with the written consent of, the Required Lenders; provided that the Required Lenders shall be deemed to be satisfied with or to have accepted (or any like or similar term) any such matter, calculation or documentation unless objected to by the Required Lenders in writing within three (3) Business Days after notice of such matter, calculation or documentation is delivered to the Lenders and (to the extent named in Section 9.1) the Ad Hoc Committee Advisors. The Lenders agree that each Agent may accept, and be permitted to rely on, any direction or consent provided by the Required Lenders pursuant to this Section 1.5(b) without any obligation or duty to ascertain or to inquire as to the validity, enforceability, effectiveness or genuineness of any such direction or consent provided by the Required Lenders.

(d) The provisions of this Agreement in respect of the Required Lender Representative shall apply only during such time as JPMorgan Chase Bank, N.A. shall be an Agent hereunder unless otherwise agreed to by the Borrower and the Required Lenders.

1.6 Classification of Permitted Items. For purposes of determining compliance at any time with Sections 6.2, 6.3, 6.5, 6.6, 6.8, 6.9, 6.14 or 6.15, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, Contractual Obligation, encumbrance or restriction or payment, prepayment, repurchase, redemption, defeasance or amendment, modification or other change in respect of Indebtedness meets the criteria of more than one of the categories of transactions permitted pursuant to any clause of such Sections 6.2, 6.3, 6.5, 6.6, 6.8, 6.9, 6.14 or 6.15, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Borrower in its sole discretion at such time of determination. For the avoidance of doubt, the Borrower may at any time classify and reclassify Indebtedness (or any portion thereof) incurred under Section 6.2 and Liens (or any portion thereof) incurred under Section 6.3 among applicable exceptions to such covenants.

1.7 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.8 Currency Equivalents Generally.

(a) For purposes of determining compliance with Sections 6.2, 6.3, 6.8 and 6.9 with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder).

(b) [Reserved]

(c) Principal, interest, reimbursement obligations, fees, and all other amounts payable under this Agreement and the other Loan Documents to Agents and the Lenders shall be payable in the currency in which such Obligations are denominated. Unless stated otherwise, all calculations, comparisons, measurements or determinations under this Agreement shall be made in Dollars. For the purpose of such calculations, comparisons, measurements or determinations, amounts or proceeds denominated in other currencies shall be converted to the Equivalent Amount (as defined below) of Dollars on the date of calculation, comparison, measurement or determination. In particular, without limitation, for purposes of valuations or computations under Section 2, Section 3, Section 5, Section 6 and Section 7 and calculating the Borrowing Base, eligibility criteria including Eligible Accounts Receivable, Eligible Inventory, Eligible Credit Card Receivables, or Eligible Gift Card Receivables, unless expressly provided otherwise, where a reference is made to a Dollar amount, the amount is to be considered as the amount in Dollars and, therefore, each other currency shall be converted into the Equivalent Amount thereof in Dollars. As used herein, “Equivalent Amount” means, on any date, the amount of



Dollars into which an amount of any foreign currency may be converted at the Administrative Agent's spot buying rate in New York City as at approximately 12:00 noon (New York City time) on such date.

1.9 FILO Ad Hoc Group. The terms of the Interim DIP Order, the Final DIP Order, the Interim DIP Recognition Order and the Final DIP Recognition Order, including any amendment, modification, waiver, forbearance, or supplement thereto, shall, to the extent such orders, or any amendments, modification, waivers, forbearances, or supplements thereto, relate to the this Agreement and are adverse to the Lenders, be subject to the approval of the Required FILO Ad Hoc Group Members (as defined in the Restructuring Support Agreement), such approval not to be unreasonably withheld, delayed or conditioned (such approval right, the "Required FILO Ad Hoc Group Approval").

## SECTION 2. AMOUNT AND TERMS OF COMMITMENTS

2.1 FILO Term Loan Roll-Up. Effective upon the occurrence of the Roll-Up Effective Time, without any further action by any party to this Agreement, the Bankruptcy Court or any other Person, to the extent set forth in the Bankruptcy Court DIP Order, (a) all Prepetition FILO Loans owing to each Lender in its capacity as a "FILO Term Loan Lender" under the Prepetition ABL Agreement (the "Rolled-Up Obligations" and such loans, the "FILO Term Loans", and such commitments, the "Rolled-Up Commitments") shall be deemed made hereunder and shall constitute a portion of the outstanding amount of the Obligations owing to the Lenders hereunder. The principal amount of each Lender's FILO Term Loans is set forth on Schedule 2.1. The aggregate principal amount of FILO Term Loans is \$275,000,000.

2.2 [Reserved].

2.3 Repayment of FILO Term Loans. The FILO Term Loans of each FILO Term Loan Lender shall mature and be payable in full on the Maturity Date, and the principal amount of the FILO Term Loans repaid on the Maturity Date shall be, in any event, an amount equal to the aggregate principal amount of all FILO Term Loans outstanding on such date. The FILO Term Loans will not amortize.

2.4 [Reserved].

2.5 Loans and Borrowings. (a) The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder.

(b) Subject to Section 2.17, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the applicable Lender to make such Loan and the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$2,500,000. At the time each ABR Borrowing is made, such

Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$1,000,000. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of 15 Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the applicable Maturity Date for such Borrowing.

2.6 [Reserved].

2.7 [Reserved].

2.8 [Reserved].

2.9 [Reserved].

2.10 Interest Elections. (a) Each Borrowing initially shall be of the Type specified by the Borrower to the Administrative Agent prior to the Roll-Up Effective Time and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such notice. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone not later than 11:00 a.m., New York City time, on the day of a conversion to or continuation of ABR Loans or 11:00 a.m., New York City time, three Business Days before the day of a conversion to or continuation of Eurodollar Loans. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or electronic transmission to the Administrative Agent of a written Interest Election Request signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (x) no such outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (y) unless repaid, each such Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

2.11 [Reserved].

2.12 Repayment of Loans; Evidence of Debt. (a) Except as otherwise set forth in Section 2.24 hereof, the Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan of such Lender on the Maturity Date either in cash or as set forth in Section 2.24.

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

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

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence absent manifest error of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner

affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement. To the extent any such accounts are inconsistent with the Register, the Register shall govern.

(e) Any Lender may request through the Administrative Agent that Loans deemed made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns and in the form of Exhibit D. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.4) be represented by one or more promissory notes in such form payable to such payee and its registered assigns.

2.13 Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (but subject to Section 2.19) subject to prior notice in accordance with paragraph (c) of this Section.

(b) Prior to any optional or mandatory prepayment of Borrowings hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (c) of this Section.

(c) The Borrower shall notify the Administrative Agent by telephone (confirmed by written notice (which may be by email)) of any voluntary prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of an ABR Borrowing, not later than 10:00 a.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, any notice of prepayment of FILO Term Loans may be conditioned upon the effectiveness of other credit facilities or any other financing or a sale transaction, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial voluntary prepayment pursuant to Section 2.13(a) of any Borrowing shall be in an integral multiple of \$500,000 and not less than \$2,500,000 (or, if less, the remaining outstanding amount of such Borrowing). Prepayments shall be accompanied by accrued interest to the extent required by Section 2.16. Each prepayment of FILO Term Loans pursuant to Section 2.13(a), shall be applied ratably to the FILO Term Loans then outstanding. In the event the Borrower fails to specify the Borrowings to which any voluntary prepayment shall be applied, such prepayment shall be applied to prepay FILO Term Loans ratably.

2.14 Fees. (a) [Reserved].

(b) [Reserved]

(c) The Borrower agrees to pay to the Administrative Agent and to the Collateral Agent, for their own account, fees payable in the amounts and at the times separately agreed upon between Parent and each of the Administrative Agent and the Collateral Agent.

2.15 Mandatory Prepayments. (a) If Indebtedness is incurred by a Loan Party (other than Indebtedness permitted under Section 6.2), then no later than two Business Days after the date of such issuance or incurrence, an amount equal to 100% of the Net Cash Proceeds thereof shall be applied to the prepayment of the FILO Term Loans as set forth in Section 2.15(d) together with accrued and unpaid interest thereon. The provisions of this Section do not constitute a consent to the incurrence of any Indebtedness by any Loan Party.

(b) If on any date a Loan Party shall receive Net Cash Proceeds from any Recovery Event then, unless a Reinvestment Notice shall be delivered in respect thereof, no later than three Business Days (or, if a Default or Event of Default has occurred and is continuing, one Business Day) after the date of receipt by such Loan Party of such Net Cash Proceeds, an amount equal to 100% of such Net Cash Proceeds shall be applied to the prepayment of the Term Loans as set forth in Section 2.15(d) together with accrued and unpaid interest thereon; provided that (i) notwithstanding the foregoing, on each Reinvestment Prepayment Date an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event shall be applied to the prepayment of the FILO Term Loans (together with accrued interest thereon), and (ii) if the Net Cash Proceeds from any Recovery Event exceed \$1,000,000, then no Reinvestment Notice with respect thereto may be delivered without the consent of the Required Lenders; provided further that to the extent that the Net Cash Proceeds of any such Recovery Event result from any settlement of, or payment in respect of, any property or casualty insurance claim or any condemnation proceeding relating to Term Priority Collateral, such Net Cash Proceeds shall first be applied as required pursuant to Section 2.15(d) of the Term Loan DIP Credit Agreement before being applied to the mandatory prepayment of the FILO Term Loans pursuant to this Section 2.15(a).

(c) In the event the aggregate amount of outstanding FILO Term Loans exceeds the Borrowing Base, then the Borrower will immediately repay outstanding FILO Term Loans in an aggregate amount equal to such excess.

(d) Amounts to be applied pursuant to this Section 2.15 shall be applied first to prepay outstanding ABR Loans and then to prepay Eurodollar Loans, and shall be applied ratably to the Loans then outstanding.

2.16 Interest. (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Margin.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default pursuant to Section 7.1(a), any overdue amount payable by the Borrower hereunder shall bear interest, after as well as before judgment, at a rate per annum

equal to (i) in the case of overdue principal of or interest on any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other overdue amount, 2% plus the rate applicable to FILO Term Loans that are ABR Loans as provided in paragraph (a) of this Section prior to giving effect to any increase in such rate pursuant to this paragraph (c).

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error. Notwithstanding the forgoing, solely for the purposes of the Interest Act (Canada) and disclosure under such Act, whenever interest to be paid under this Agreement is to be calculated on the basis of a year of 365 days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by either 365 or such other period of time, as the case may be.

2.17 Alternate Rate of Interest. (a) If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means (including, without limitation, by means of an Interpolated Rate) do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including because the Screen Rate is not available or published on a current basis), for such Interest Period; or

(ii) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period, then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or electronic transmission as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (B) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

(b) If at any time the Administrative Agent (in consultation with the Required Lenders and the Borrower) determines (which determination shall be conclusive absent manifest error) that either (i) the circumstances set forth in clause (a)(i) of this Section 2.17 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i) of this Section 2.17 have not arisen but the supervisor for the administrator of the Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Screen Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent (in consultation with the Required Lenders) and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Margin); provided that, if such alternate rate of interest as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 9.2, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this clause (b) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 2.17(b), only to the extent the Screen Rate for such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (y) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

2.18 Increased Costs. (a) If any Change in Law shall:

- (i) subject the Administrative Agent or any Lender to any Taxes (other than (A) Indemnified Taxes covered under Section 2.20, (B) Excluded Taxes or (C) Other Taxes) on its Loans Commitments or other obligations hereunder, or its deposits, reserves or other liabilities or capital attributable thereto;
- (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); or
- (iii) impose on any Lender or the London interbank market any other condition, cost or expense (excluding any condition relating to Taxes) affecting this Agreement or Eurodollar Loans made by such Lender;

and the result of any of the foregoing shall be to (x) increase the cost to such Lender (or in the case of clause (i), to the Administrative Agent or such Lender) of making, converting to, continuing or maintaining any Eurodollar Loan (or in the case of clause (i), any Loan) (or of

maintaining its obligation to make any such Loan) or (y) reduce the amount of any sum received or receivable by the Administrative Agent or such Lender hereunder (whether of principal, interest or otherwise), then, upon request of such Lender, the Borrower will pay to the Administrative Agent or such Lender, as the case may be, such additional amount or amounts as will compensate the Administrative Agent or such Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital or liquidity requirements or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital or liquidity requirements (whether or not having the force of law) from any Governmental Authority made subsequent to the Closing Date has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth in reasonable detail the matters giving rise to a claim under this Section 2.18 by such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) If any Lender reasonably determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Eurodollar Loans, or to determine or charge interest rates based upon the Adjusted LIBO Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower may at its option revoke any pending request for a borrowing of, conversion to or continuation of Eurodollar Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to



ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

2.19 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.13(c) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.22(c), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event (other than loss of profit). Such loss, cost or expense to any Lender shall consist of an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. Absent manifest error in the determination of such amount, the Borrower shall pay such Lender the amount shown as due on any such certificate within 15 days after receipt thereof.

2.20 Taxes. (a) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the applicable Withholding Agent shall be required by Requirement of Tax Law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased by the applicable Loan Party as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.20(a)) the Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable Withholding Agent shall make or cause to be made such deductions and (iii) the applicable Withholding Agent shall pay or cause to be paid the full amount deducted to the relevant Governmental Authority in accordance with Requirement of Tax Law.

(b) In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with Requirement of Tax Law.

(c) The Loan Parties shall indemnify the Administrative Agent and each Lender within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of any Loan Party hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto; provided that the Loan Parties shall not be obligated to make payment to the Administrative Agent or any Lender pursuant to this Section in respect of penalties, interest and other liabilities attributable to any Indemnified Taxes or Other Taxes if (i) written demand therefor has not been made by the Administrative Agent or such Lender within 30 days from the date on which the Administrative Agent or such Lender knew of the imposition of such Indemnified Taxes or Other Taxes by the relevant Governmental Authority, (ii) such penalties, interest and other liabilities have accrued after the Loan Parties have indemnified or paid any additional amount pursuant to this Section or (iii) such penalties, interest and other liabilities are attributable to the gross negligence, bad faith or willful misconduct of the Administrative Agent or such Lender as determined by a court of competent jurisdiction by final and non-appealable judgment. A certificate setting forth in reasonable detail the basis for such claim and the calculation of the amount of any such payment or liability shall be delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, and shall be conclusive absent manifest error.

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

(e) (i) Each Lender other than a Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly executed copies of IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal withholding tax. Each Foreign Lender shall deliver to the Borrower and the Administrative Agent (i) two properly completed and duly executed copies of IRS Form W-8BEN or Form W-8BEN-E, Form W-8ECI or, to the extent a Foreign Lender is not the beneficial owner, Form W-8IMY (together with any applicable underlying IRS forms), or any subsequent versions thereof or successors thereto, (ii) in the case of a Foreign Lender claiming exemption from United States Federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of “portfolio interest,” a certificate in the form attached hereto as Exhibit E-1, E-2, E-3 or E-4, as applicable, and two properly completed and duly executed copies of the applicable IRS Form W-8BEN or Form W-8BEN-E, or any subsequent versions thereof or successors thereto, or (iii) any other form prescribed by applicable requirements of U.S. federal income tax law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable requirements of law to permit the Borrower and the Administrative Agent to determine the deduction required to be made, in each case, certifying such Foreign Lender’s entitlement to an exemption from or a reduction in United States Federal withholding tax with respect to payments of interest to be made hereunder or under any other Loan Documents. Such forms shall be delivered by each Lender on or before

the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation) and from time to time thereafter upon the request of the Borrower or the Administrative Agent. In addition, each Lender shall promptly deliver such forms upon the obsolescence or invalidity of any form previously delivered by such Lender. Each Lender shall promptly notify the Borrower and the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the United States taxing authorities for such purpose). Any Lender, if requested by the Administrative Agent or the Borrower, shall deliver such other documentation prescribed by or reasonably requested by the Administrative Agent or the Borrower as will enable the Administrative Agent or the Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(ii) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed pursuant to FATCA if such Lender fails to comply with any requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the applicable Withholding Agent, on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation) and from time to time thereafter upon the request of the applicable Withholding Agent, such documentation prescribed by Requirement of Tax Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the applicable Withholding Agent as may be necessary for the applicable Withholding Agent to comply with its obligations under FATCA, to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and to determine the amount to deduct and withhold from such payment. To the extent that the relevant documentation provided pursuant to this paragraph is rendered obsolete or inaccurate in any material respect as a result of changes in circumstances with respect to the status of a Lender, such Lender shall, to the extent permitted by Requirement of Tax Law, deliver to the applicable Withholding Agent revised and/or updated documentation sufficient for the applicable Withholding Agent to confirm as to whether such Lender has complied with its respective obligations under FATCA. Solely for purposes of this clause (e)(ii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding any other provision of this Section 2.20, a Lender shall not be required to deliver any form pursuant to this Section 2.20 that such Lender is not legally able to deliver.

(f) Each Lender shall indemnify the Administrative Agent for the full amount of any Taxes imposed by any Governmental Authority that are attributable to such Lender and that are payable or paid by the Administrative Agent, together with all interest, penalties, reasonable costs and expenses arising therefrom or with respect thereto, as determined by the Administrative Agent in good faith. Should the applicable Withholding Agent not deduct or withhold any Taxes imposed by FATCA from a payment under any Loan Document based on the documentation provided by a Lender pursuant to Section 2.20(e)(ii), any amounts subsequently determined by a Governmental Authority to be subject to United States Federal

withholding Tax imposed pursuant to FATCA (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) shall be indemnified by such Lender. A certificate as to the amount of such payment or liability delivered to any Lender by the Withholding Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent under this paragraph (f).

(g) Solely for purposes of determining withholding Taxes imposed under FATCA, from and after the Closing Date, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Loans as not qualifying as a “grandfathered obligation” within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(h) If the Administrative Agent, or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section 2.20, it shall pay over such refund to the applicable Loan Party within a reasonable period (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.20 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party pursuant to this Section 2.20(h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the Administrative Agent or any Lender be required to pay any amount to a Loan Party pursuant to this paragraph (h) the payment of which would place the Administrative Agent or any Lender in a less favorable net after-Tax position than the such party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.20(h) shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

(i) Each party’s obligations under this Section 2.20 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

2.21 Payments Generally; Pro Rata Treatment; Sharing of Set-offs. (a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or amounts payable under Section 2.18, 2.19 or 2.20 or otherwise) prior to the time expressly required hereunder for such payment (or if no such time is expressly required, prior to 2:00 p.m. New York City time), on the date when due, in immediately available funds, without

set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, New York, except that payments pursuant to Sections 2.18, 2.19, 2.20 or 9.3 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under any Loan Document shall be made in Dollars. Any FILO Term Loans paid or prepaid may not be reborrowed.

(b) If at any time (x) insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees and other Obligations then due hereunder, or (y) during the continuation of an Event of Default and the enforcement of remedies in connection therewith in accordance with Section 7.1, the Administrative Agent or the Collateral Agent receives proceeds of Collateral pledged by the Loan Parties, such funds will be applied,

- (1) first, toward payment of any expenses, fees and indemnities due to the Administrative Agent or the Collateral Agent hereunder;
- (2) second, on a pro rata basis toward payment of any outstanding obligations owed to Cash Management Banks under any Cash Management Obligations ratably among the parties entitled thereto in accordance with the amounts of such Cash Management Obligations then due to such parties;
- (3) third, toward payment of interest, expenses and fees then due from the Borrower hereunder with respect to any FILO Term Loan (including amounts due under Section 9.3), ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;
- (4) fourth, on a pro rata basis, toward payment of principal then due from the Borrower hereunder with respect to any FILO Term Loans, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties;
- (5) fifth, to payment of all other Obligations of the Borrower and the Loan Parties then due and payable, ratably among the parties entitled thereto in accordance with the amounts of such Obligations then due to such parties; and

(6) sixth, to the Borrower or as otherwise required pursuant to any Intercreditor Agreement;

provided that the application of such proceeds at all times will be subject to the application of proceeds provisions contained in the Intercreditor Agreements.

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

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

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.21(d) or 8.7, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

2.22 Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.18, or if the Borrower is required to pay any amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section

2.20, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.18 or 2.20, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender (or any Participant in the Loans held by such Lender) requests compensation under Section 2.18, or if the Borrower is required to pay any amount to any Lender (or its Participant) or any Governmental Authority for the account of any Lender pursuant to Section 2.20, or if any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.4 (provided that, if the required Assignment and Assumption is not executed and delivered by such Lender, such Lender will be unconditionally and irrevocably deemed to have executed and delivered such Assignment and Assumption as of the date such Lender receives payment in full of the amounts set forth in clause (i) below)), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees, and all other amounts payable to it hereunder (but, for the avoidance of doubt, not any amounts in respect of contingent reimbursement and indemnification obligations which are not due and payable), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (ii) in the case of any such assignment resulting from a claim for compensation under Section 2.18 or payments required to be made pursuant to Section 2.20, such assignment will result in a reduction in such compensation or payments in the future. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

(c) If any Lender (such Lender, a “Non-Consenting Lender”) has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.2 requires the consent of all of the Lenders or all affected Lenders, then the Borrower may (unless such Non-Consenting Lender grants such consent), at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, replace such Non-Consenting Lender by requiring such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.4 (provided that, if the required Assignment and Assumption is not executed and delivered by such Non-Consenting Lender, such Non-Consenting Lender will be unconditionally and irrevocably deemed to have executed and delivered such Assignment and Assumption as of the date such Non-Consenting Lender receives payment in full of the amounts set forth in clause (i) below)), all of its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Non-Consenting Lender shall have received payment of an amount equal

to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (but, for the avoidance of doubt, not any amounts in respect of contingent reimbursement and indemnification obligations which are not due and payable), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (ii) the replacement Lender shall grant its consent with respect to the applicable proposed amendment, waiver, discharge or termination.

2.23 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then for so long as such Lender is a Defaulting Lender, the FILO Term Loans of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.2); provided, that this clause (a) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender affected thereby if such amendment, waiver or modification would adversely affect such Defaulting Lender compared to other similarly affected Lenders; provided further that no amendment, waiver or modification that would require the consent of a Defaulting Lender under clause (i), (ii) or (iii) of the first proviso of Section 9.2(b) may be made without the consent of such Defaulting Lender.

2.24 Conversion of Loans. (a) Upon the consummation of an Approved Plan of Reorganization, subject to the satisfaction, or waiver, of the conditions set forth in the Exit ABL Term Sheet and otherwise substantially in accordance with the terms set forth in the Exit ABL Credit Agreement, the Borrower may exercise an option to continue or convert the Loans into an exit FILO term facility financing on the effective date of such Approved Plan of Reorganization (the "Exit Conversion").

(b) If the Borrower elects to exercise the Exit Conversion, subject to the satisfaction or waiver of the conditions contained in the Exit ABL Term Sheet by Lenders holding at least 66 $\frac{2}{3}$ % of the aggregate amount of the FILO Term Loans:

(i) each Lender, severally and not jointly, hereby agrees to continue its Loans hereunder outstanding on the effective date of the Approved Plan of Reorganization as Exit FILO Loans under, and subject entirely and exclusively to the terms and provisions of, the definitive documentation to be mutually agreed (including a credit agreement governing the continuation and conversion of the Loans, the "Exit ABL Credit Agreement") and related documentation which documentation shall be substantially consistent with the Exit ABL Facility Term Sheet and is otherwise in form and substance reasonably satisfactory to Lenders holding at least 66 $\frac{2}{3}$ % of the aggregate amount of the FILO Term Loans; and

(ii) subject to Section 2.24(a), the Administrative Agent, the Lenders and the Loan Parties agree that, upon the effectiveness of the Exit ABL Credit Agreement:

(A) the Borrower, in its capacity as reorganized "Borrower" and each Guarantor that is a guarantor under the Prepetition Term Loan Agreement (subject to the Approved Plan of Reorganization), in its capacity as a reorganized Guarantor, shall assume all



the Obligations hereunder with respect to the Loans and all other obligations in respect thereof in the manner set forth in the Exit ABL Credit Agreement and related loan documents;

(B) the Loans hereunder shall be continued as or converted to, as the case may be, Exit FILO Loans under the Exit ABL Credit Agreement;

(C) each Lender hereunder shall be a lender under the Exit ABL Credit Agreement in respect of its Loans continued as or converted to, as the case may be, Exit FILO Loans;

(D) the administrative agent and collateral agent under the Exit ABL Credit Agreement shall be selected by the Required Lenders and the Borrower reasonably in advance of the Exit Conversion; and

(E) with respect to the Loans, this Agreement and all Obligations hereunder with respect thereto shall terminate and be superseded and replaced by the Exit ABL Credit Agreement.

### SECTION 3. REPRESENTATIONS AND WARRANTIES

To induce the Agents and the Lenders to enter into this Agreement, Parent and the Borrower hereby jointly and severally represent and warrant to Agent and each Lender that:

3.1 Financial Condition. The audited consolidated balance sheets of Holdings as at December 31, 2019, and the related consolidated statements of income and of cash flows for the fiscal years ended on such dates, reported on by and accompanied by an unqualified report from PricewaterhouseCoopers, present fairly in all material respects the consolidated financial condition of Holdings as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal years then ended. The unaudited consolidated balance sheet of Holdings as at March 31, 2020, and the related unaudited consolidated statements of income and cash flows for the three-month period ended on such date, present fairly in all material respects the consolidated financial condition of Holdings as at such date and the consolidated results of its operations and its consolidated cash flows for the three-month period then ended (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP (unless otherwise noted therein) applied consistently throughout the periods involved (except as disclosed therein).

3.2 No Change. Since the Petition Date there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

3.3 Corporate Existence; Compliance with Law. As of the Petition Date, each of the Loan Parties (a) is duly organized, validly existing and in good standing or in full force and effect under the laws of the jurisdiction of its organization (to the extent such concepts exist in such jurisdictions), (b) subject to the entry and terms of the Bankruptcy Court DIP Order and other orders of the Bankruptcy Court, as applicable, has the organizational power and authority, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign

organization and in good standing or in full force and effect under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification and (d) unless stayed by the Chapter 11 Cases, is in compliance with all Requirements of Law, except, in the case of the foregoing clauses (a) (solely with respect to Subsidiaries), (b), (c) and (d), as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.4 Organizational Power; Authorization; Enforceable Obligations. Subject to the entry and terms of the Bankruptcy Court DIP Order, each Loan Party has the corporate or other organizational power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to borrow hereunder. Each Loan Party has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party. Other than the Bankruptcy Court DIP Order, no material consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement or any of the other Loan Documents, except (i) consents, authorizations, filings and notices that have been obtained or made and are in full force and effect, (ii) the consents, authorizations, filings and notices described in Schedule 3.4, (iii) the filings referred to in Section 3.18, (iv) filings necessary to create or perfect Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (v) those consents, authorizations, filings and notices the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each Loan Document has been duly executed and delivered on behalf of each Loan Party that is a party thereto. Subject to the entry and the terms of the Bankruptcy Court DIP Order, this Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party that is a party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

3.5 No Legal Bar. Subject to the entry and terms of the Bankruptcy Court DIP Order, the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law applicable to, or any Contractual Obligation of, Parent, the Borrower or any of its Restricted Subsidiaries, except, in each case, as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any such Requirement of Law or any such Contractual Obligation (other than Permitted Liens).

3.6 No Material Litigation. As of the Petition Date, except as set forth on Schedule 3.6 and except for the Chapter 11 Cases (or matters arising therefrom) and Recognition Proceedings (or matters arising therefrom), no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of Parent or the Borrower, threatened in writing against any Loan Party or against any of their respective

properties or revenues (a) with respect to this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that would reasonably be expected to have a Material Adverse Effect (after giving effect to indemnification from certain manufacturers and applicable insurance).

3.7 No Default. None of the Loan Parties is in default under or with respect to any of its post-petition material Contractual Obligations in any respect that would reasonably be expected to have a Material Adverse Effect.

3.8 Ownership of Property; Liens. As of the Petition Date, each of the Loan Parties has good title to, or a valid leasehold interest in, all real property and other Property material to the conduct of its business except where the failure to have such title or interests would not reasonably be expected to have a Material Adverse Effect. None of the Pledged Capital Stock is subject to any Lien except for Permitted Liens.

3.9 Intellectual Property. As of the Petition Date, except as would not reasonably be expected to result in a Material Adverse Effect, to the knowledge of Parent and the Borrower, (i) each of the Loan Parties owns, or has a valid license to use, all Intellectual Property necessary for the conduct of its business as currently conducted ("Company Intellectual Property"); (ii) no claim has been asserted in writing and is pending by any Person challenging or questioning the use of any Company Intellectual Property or the validity or effectiveness of any Company Intellectual Property, nor does Parent or the Borrower know of any valid basis for any such claim; and (iii) the use of Company Intellectual Property by the Loan Parties does not infringe on the Intellectual Property rights of any Person.

3.10 Taxes. As of the Petition Date, each of the Loan Parties has filed or caused to be filed all income and all other material tax returns that are required to be filed and has paid all income and all other material Taxes, assessments, fees and other governmental charges levied or imposed upon it or its properties, income or assets due and payable by it (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the applicable Loan Party, as the case may be) except, in each case, where the failure to do so would not reasonably be expected to have a Material Adverse Effect. To the knowledge of Parent and the Borrower, no material written claim has been asserted with respect to any Taxes (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the applicable Loan Party, as the case may be, or the payment of which are stayed by the Chapter 11 Cases). No Loan Party is a party to any tax sharing, tax allocation or other similar agreement relating to taxes. No Loan Party has made an election pursuant to Section 965(h) of the Code.

3.11 Federal Regulations. No part of the proceeds of any Loans will be used by any Loan Party for "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect or for any purpose that violates the provisions of the Regulations of the Board. On the Closing Date, no Loan Party owns any "margin stock".

3.12 ERISA. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) no ERISA Event has occurred, and (ii) the present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Single Employer Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Single Employer Plan allocable to such accrued benefits by a material amount.

3.13 Investment Company Act. No Loan Party is an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

3.14 Subsidiaries. (a) The Subsidiaries listed on Schedule 3.14(a) constitute all the direct and indirect Subsidiaries of Holdings as of the Closing Date. Schedule 3.14(a) sets forth as of the Closing Date the exact legal name (as reflected on the certificate of incorporation (or formation)) and jurisdiction of incorporation (or formation) of each Subsidiary of Parent and, as to each such Subsidiary, the percentage and number of each class of Capital Stock of such Subsidiary owned by Parent and its Subsidiaries.

(a) As of the Closing Date, except as set forth on Schedule 3.14(b), there are no outstanding subscriptions, options, warrants, calls or similar rights (other than stock options granted to employees, directors, managers and consultants and directors’ qualifying shares) relating to any Capital Stock of any Loan Party.

3.15 [Reserved].

3.16 Environmental Matters. Other than exceptions to any of the following that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) the Loan Parties (i) are in compliance with all applicable Environmental Laws; (ii) hold all Environmental Permits required for any of their current operations or for any property owned, leased, or otherwise operated by any of them; and (iii) are in compliance with all of their Environmental Permits;

(b) to the knowledge of any Loan Party, Hazardous Materials are not present at, on, under or in any real property now or formerly owned, leased or operated by any Loan Party, or, to the knowledge of any Loan Party, at any other location (including, without limitation, any location to which Hazardous Materials have been sent by any Loan Party for re-use or recycling or for treatment, storage, or disposal) which would reasonably be expected to (i) give rise to the imposition of Environmental Liabilities on any Loan Party, (ii) materially interfere with any Loan Party’s continued operations, or (iii) materially impair the fair saleable value of any real property owned or leased by any Loan Party;

(c) there is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) pursuant to any Environmental Law to which any Loan Party is named as a party that is pending or, to the knowledge of any Loan Party, threatened in writing;

(d) none of the Loan Parties has received any written request for information, or been notified in writing that it is a potentially responsible party under or relating to the federal

Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law;

(e) no Loan Party has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with Environmental Law or Environmental Liability; and

(f) no Loan Party has assumed or retained by contract any Environmental Liability.

3.17 Accuracy of Information, etc. No written statement or written information (other than projections and other forward-looking information and information of a general economic nature or general industry nature) contained in this Agreement, any other Loan Document or any other document, certificate or written statement furnished to the Arranger, the Agents or the Lenders or any of them, by or at the direction and on behalf of any Loan Party for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, taken as a whole with all such other written statements, written information, documents and certificates, contained as of the date such written statement, written information, document or certificate was so dated or certified, any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were delivered, contained herein or therein not materially misleading (after giving effect to all written updates thereto delivered by or on behalf of any Loan Party).

3.18 Security. The provisions of the Interim DIP Order, the Final DIP Order, and the Canadian Court DIP Recognition Order, as applicable, are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest (subject, in the case of any Collateral, to Liens permitted by Section 6.3) on all right, title and interest of the respective Loan Parties in the Collateral described therein (with such priority as provided for in the Bankruptcy Court DIP Order (or, with respect to the Canadian Guarantor, in the Canadian Court DIP Recognition Order)). Except for the Interim DIP Order, the Final DIP Order and the Canadian Court DIP Recognition Order, as applicable, no filing or other action will be necessary to perfect the Liens on any Collateral under the Laws of the United States of America or Canada.

3.19 Budget and Financial Plan. The Budget was prepared in good faith based on assumptions believed by the Loan Parties to be reasonable at the time made and upon information believed by the management of the Borrower to have been accurate based upon the information available to the management of the Borrower at the time such Budget was furnished to the Administrative Agent. On and after the delivery of any Variance Report in accordance with this Agreement, such Variance Report shall be complete and correct in all material respects and fairly represent in all material respects the matters set forth therein for the period covered thereby.

3.20 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) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the “Act”).

3.21 Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance in all material respects by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, and the Borrower and its Subsidiaries, and to the knowledge of the Borrower, its directors, officers, employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower or any of its Subsidiaries or (b) to the knowledge of the Borrower, any director, officer, employee or agent of the Borrower or any of its Subsidiaries that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

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

3.23 Canadian Welfare and Pension Plans Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) each Loan Party has adopted all Canadian Welfare Plans required pursuant to applicable Requirements of Law and each of such plans has been maintained and each Loan Party is in compliance with such laws in all material respects including, without limitation, all requirements relating to employee participation, funding, investment of funds, benefits and transactions with the Loan Parties and persons related to them, (ii) no Loan Party has a material contingent liability with respect to any post-retirement benefit under a Canadian Welfare Plan, (iii) with respect to Canadian Pension Plans: (a) no Canadian Pension Termination Event has occurred and no steps have been taken to terminate any Canadian Pension Plan (wholly or in part) which could result in any Loan Party being required to make a material additional contribution to any Canadian Pension Plan, (b) no contribution failure has occurred with respect to any Canadian Pension Plan sufficient to give rise to a lien or charge under any applicable pension benefits laws of any other jurisdiction (for certainty, not including payments in respect of contributions payable but not yet due), and (c) no condition exists and no event or transaction has occurred with respect to any Canadian Pension Plan which is reasonably likely to result in any Loan Party incurring any material liability, fine or penalty, (iv) each Canadian Pension Plan is in compliance (other than immaterial non-compliance) with all applicable pension benefits and tax laws, (v) all contributions (other than immaterial amounts) (including employee contributions made by authorized payroll deductions or other withholdings) required to be made to the appropriate funding agency in accordance with all applicable Requirements of Law (other than immaterial non-compliance) and the terms of each such Canadian Pension Plan have been made in accordance with all applicable Requirements of Law (other than immaterial non-compliance) and the terms of such Canadian Pension Plan (other than immaterial non-compliance), (vi) all liabilities under each Canadian Pension Plan are funded in accordance with the terms of the respective Canadian Pension Plans, the requirements of applicable pension benefits laws and of applicable regulatory authorities (other than immaterial non-compliance), (vii) no event has occurred and no conditions exist with respect to any Canadian Pension Plan that has resulted or could reasonably be expected to result

in any such Canadian Pension Plan having its registration revoked or refused by any administration of any relevant pension benefits regulatory authority or being required to pay any taxes (other than taxes the amounts of which are immaterial) or penalties under any applicable pension benefits or tax laws and (viii) no Loan Party contributes to, sponsors or maintains, or has in the past 5 years contributed to, sponsored or maintained, a Canadian Defined Benefit Pension Plan.

3.24 Canadian Anti-Corruption and Canadian Anti-Money Laundering. The Canadian Guarantor has adopted and maintains adequate procedures designed to ensure that it is in compliance in all material respects with all Canadian Anti-Money Laundering Legislation and Canadian Anti-Corruption Laws.

3.25 Borrowing Base Certificate. At the time of delivery of each Borrowing Base Certificate, assuming that any eligibility criteria that requires the approval or satisfaction of the Administrative Agent has been approved by or is satisfactory to the Administrative Agent, each material Account reflected therein as eligible for inclusion in the Borrowing Base is an Eligible Accounts Receivable, an Eligible Credit Card Receivable or an Eligible Gift Card Receivable, the material Inventory reflected therein as eligible for inclusion in the Borrowing Base constitutes Eligible Inventory and the cash and Cash Equivalents reflected therein as eligible for inclusion in the Borrowing Base constitute Borrowing Base Cash.

#### SECTION 4. CONDITIONS PRECEDENT

4.1 Conditions to the Closing Date. The effectiveness of this Agreement is subject to the satisfaction of the following conditions on the Closing Date:

(a) Loan Documents. The Administrative Agent shall have received (i) this Agreement, executed and delivered by a duly authorized officer of Parent and the Borrower, (ii) an executed signature page from each Lender party to this Agreement on the Closing Date, and (iii) executed copies of the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement.

(b) Closing Certificate. The Administrative Agent shall have received a certificate of each Loan Party, dated the Closing Date, substantially in the form of Exhibit B hereto, with appropriate insertions and attachments as called for in such Exhibit B.

(c) Other Certifications. The Administrative Agent shall have received the following:

(i) if available, a copy of the charter or other similar organizational document of each Loan Party and each amendment thereto, certified (as of a date reasonably near the date of the initial extension of credit) as being a true and correct copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized (or, with respect to the Canadian Guarantor, by a Responsible Officer);

(ii) for Loan Parties other than the Canadian Guarantor, a copy of a certificate of the Secretary of State or other applicable Governmental Authority of the

jurisdiction in which each such Loan Party is organized, dated reasonably near the date of the initial extension of credit, listing the charter or other similar organizational document of such Loan Party and each amendment thereto on file in such office and, if available, certifying that (A) such amendments are the only amendments to such Person's charter on file in such office and (B) such Person is duly organized and (to the extent such certificate exists in the relevant jurisdiction) in good standing or full force and effect under the laws of such jurisdiction; and

(iii) a certificate of a duly authorized officer or director of each Loan Party certifying (i) that the 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 the Loan Documents; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents.

(d) [Reserved].

(e) "Know-Your-Customer". The Loan Parties shall have provided or caused to be provided the documentation and other information to the Administrative Agent required by United States and Canadian regulatory authorities under applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and Canadian Anti-Money Laundering Legislation, in each case, at least two Business Days prior to the Closing Date, to the extent reasonably requested in writing at least five Business Days prior to the Closing Date.

(f) Budget. The Administrative Agent shall have received the initial Budget, a monthly forecast for the period through the Maturity Date and an opening pro forma balance sheet for the Loan Parties.

(g) Term Loan DIP Credit Agreement. The Administrative Agent shall have received an executed copy of the Term Loan DIP Credit Agreement, and the Interim DIP Order shall have approved the funding to the Borrower by the Term Loan Lenders of at least \$30,000,000 in Term Loans.

(h) Commencement of Chapter 11 Cases. The Chapter 11 Cases shall have been commenced and all of the pleadings related to the "first day orders" and "second day orders" entered by the Bankruptcy Court at the time of the commencement of the Chapter 11 Cases and prior to the Interim DIP Order shall be in form and substance reasonably satisfactory to the Required Lenders.

(i) Commencement of Recognition Proceedings. The Recognition Proceedings shall have been commenced.

(j) Interim DIP Order. The Interim DIP Order, substantially in the form of Exhibit J hereto, shall have been entered by the Bankruptcy Court within three (3) Business Days after the Petition Date, subject to the discretion of the Bankruptcy Court, and the Administrative



Agent shall have received a true and complete copy of such order, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Lenders and subject to Required FILO Ad Hoc Group Approval and such order shall not be subject to a stay pending appeal or motion for leave to appeal or other proceeding to set aside any such order or the challenge to the relief provided for in such order, except as consented to by the Required Lenders and subject to Required FILO Ad Hoc Group Approval;

(k) Cash Management Order. An order entered by the Bankruptcy Court pertaining to the Loan Parties' cash management system ("Cash Management Order") and all motions and other documents filed with the Bankruptcy Court prior to the Closing Date in connection therewith shall be in form and substance reasonably satisfactory to the Required Lenders;

(l) No Appointment of Trustee. No trustee or other disinterested person with expanded powers pursuant to Section 1104(c) of the Bankruptcy Code shall have been appointed or designated in any of the Chapter 11 Cases, and no motion shall be pending in the Bankruptcy Court seeking any such relief;

(m) Adequate Protection. The Prepetition ABL Agent and the Prepetition FILO Lenders shall have each received adequate protection in respect of the Liens securing the Prepetition FILO Loans as set forth in the Interim DIP Order;

(n) DIP Financing Protections. The Collateral Agent, for its benefit and the benefit of each Lender, shall have been granted a perfected, valid, enforceable Lien on, and security interest in, the Collateral, in addition to the DIP Superpriority Claim, on the terms and conditions set forth herein and in the Interim DIP Order;

(o) Representations and Warranties. Each of the representations and warranties made by any Loan Party in the Loan Documents shall be true and correct in all material respects on and as of the Closing Date, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date (provided that, in each case, such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified by materiality or Material Adverse Effect);

(p) No Default. No Default or Event of Default shall have occurred and be continuing on the Roll-Up Effective Time or after giving effect to the roll-up of Prepetition FILO Loans on the Roll-Up Effective Time;

(q) Costs and Expenses. All reasonable and documented out-of-pocket costs, fees, expenses (including, without limitation, reasonable and documented legal fees and expenses) set forth in the Loan Documents and required to be paid to the Administrative Agent and the Lenders (and to counsel of the Administrative Agent and the Ad Hoc Committee Advisors) on or before such date shall have been paid; provided that, legal fees shall be limited to the reasonable and documented fees and disbursements of one U.S. counsel for the Administrative Agent (which shall be Simpson Thacher & Bartlett LLP), one Canadian counsel

for the Administrative Agent (which shall be Norton Rose Fulbright Canada LLP), one lead U.S. counsel for the Crossover Ad Hoc Group (which shall be Milbank LLP), one lead Canadian counsel for the Crossover Ad Hoc Group (which shall be Cassels Brock & Blackwell LLP), and one lead U.S. counsel for the FILO Ad Hoc Group (which shall be Paul, Weiss, Rifkind, Wharton & Garrison LLP) including reasonable and documented out-of-pocket costs and expenses of the Agents (including in connection with preparing all documents and enforcing any and all obligations relating to the Facility); and

(r) Responsible Officer Certificate. The Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower certifying compliance with the conditions set forth in clauses (o) and (p) above as of the Closing Date.

For purposes of determining whether the conditions specified in this Section 4.1 have been satisfied on the Closing Date, by executing this Agreement, the Administrative Agent and each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Administrative Agent or such Lender, as the case may be.

## SECTION 5. AFFIRMATIVE COVENANTS

Holdings, GNC Parent LLC, Parent and the Borrower each hereby jointly and severally agree that, so long as Loan or other amount (excluding Obligations in respect of Cash Management Obligations and contingent reimbursement and indemnification obligations which are not due and payable) is owing to any Lender or any Agent hereunder, it shall and shall cause each of the Loan Parties that are Subsidiary Guarantors to:

### 5.1 Financial Statements; Budget.

#### (A) Financial Statements.

Furnish to the Administrative Agent for further delivery to each Lender:

(a) within 90 days after the end of each fiscal year of the Borrower, a copy of the audited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such year and the related audited consolidated statements of income and of cash flows for such year, setting forth in each case in comparative form the figures as of the end of and for the previous year, all in reasonable detail and prepared in accordance with GAAP, reported on by PricewaterhouseCoopers or other independent certified public accountants of nationally recognized standing;

(b) within 45 days after the end of each of the first three quarterly periods of each fiscal year of the Borrower, the unaudited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures as of the end of and for the corresponding period in the previous year, all in reasonable detail and certified by a Responsible Officer as fairly presenting in all material respects the financial condition, results of

operations and cash flows of the Borrower and its consolidated Subsidiaries in accordance with GAAP (subject to normal year end audit adjustments and the absence of footnotes); and

(c) within 30 days after the end of each month (other than the third fiscal month of any fiscal quarter), a copy of the unaudited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such month and the related unaudited consolidated statements of income and of cash flows for such month.

(B) Budget and Other Information.

Furnish to the Administrative Agent for further delivery to each Lender:

(a) concurrently with delivery thereof under the Term Loan DIP Credit Agreement, an updated 13-week statement of the Loan Parties' anticipated cash receipts and Budget Disbursements for the subsequent 13-week period (a "Proposed Budget"). Such Proposed Budget shall on such Wednesday become the "Budget" for all purposes unless the Borrower notifies the Administrative Agent that, in accordance with the terms of the Term Loan DIP Credit Agreement, the Budget then in effect shall continue as the then-effective Budget;

(b) concurrently with delivery thereof under the Term Loan DIP Credit Agreement, a report (each, a "Variance Report") setting forth in reasonable detail (a) the Borrower's actual aggregate cash receipts and aggregate cash Budget Disbursements for the relevant Variance Statement Period (as defined in the Term Loan DIP Credit Agreement) and available cash on hand as of the end of such period and (b) the variance in dollar amounts of the actual aggregate receipts and aggregate cash Budget Disbursements for the relevant Variance Statement Period from those reflected for the corresponding period in the Budget;

(c) on Wednesday of each week (commencing after the first full week after the Petition Date), provide to the Administrative Agent and the Ad Hoc Committee Advisors a report with respect to the immediately prior week setting forth sales and same-store sales (in Dollar amounts) broken down by (i) retail (domestic and franchise), (ii) e-commerce, (iii) U.S. retail segment, (iv) wholesale segment and (v) international segment ("Sales Report");

(d) within seven days after the start of each month commencing after the Petition Date, provide to the Administrative Agent and Ad Hoc Committee Advisors the Sales Report with respect to the immediately prior month;

(e) on Wednesday of each week (commencing after the first full week after the Petition Date), provide to the Administrative Agent and Ad Hoc Committee Advisors a report setting forth, in Dollar amounts, sale proceeds and product margin achieved in the going-out-of-business sale with respect to the immediately prior week; and

(f) on Wednesday of every second week after the Petition Date (commencing after the second full week after the Petition Date), provide to the Administrative Agent and the Ad Hoc Committee Advisors a report containing an update on negotiations with landlords, including a written summary of lease modifications and related savings.

The Borrower shall, to the extent requested by the Ad Hoc Committee Advisors, weekly, at a time mutually agreed with the Administrative Agent that is promptly after the delivery of the information required pursuant to clause (B)(b) above, participate in a conference call for the Ad Hoc Committee Advisors to discuss the financial condition and results of operations of the Loan Parties and the Budget and Variance Report. The Agents and the Lenders acknowledge that the content of such calls will include Nonpublic Information.

Notwithstanding the foregoing, the obligations in paragraphs (A)(a) and (A)(b) of this Section 5.1 may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any direct or indirect parent company of the Borrower that directly or indirectly owns all of the Capital Stock of the Borrower or (B) the Borrower's (or any direct or indirect parent company thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC; provided that, with respect to each of clauses (A) and (B), (i) to the extent such information relates to a parent of the Borrower and if requested by the Administrative Agent, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to the Borrower (or such parent), on the one hand, and the information relating to the Borrower and the Subsidiaries on a standalone basis, on the other hand (which consolidating information shall be certified by a Responsible Officer of the Borrower as fairly presenting such information unless such consolidating information is contained in the financial statements included in a Form 10-K or 10-Q filed with the SEC), and (ii) to the extent such information is in lieu of information required to be provided under Section 5.1(A)(a), the consolidated financial statements included in the materials provided pursuant to the foregoing clause (A) or (B) are accompanied by a report of PricewaterhouseCoopers or other independent public accountants of recognized national standing.

5.2 Certificates; Other Information. Furnish to the Administrative Agent in each case (other than in the case of clauses (c) and (h) below) for further delivery to each Lender, or, in the case of clause (g) below, to the relevant Lender:

(a) [reserved];

(b) concurrently with the delivery of any financial statements pursuant to Sections 5.1(A)(a), 5.1(A)(b) and 5.1(A)(c), a certificate of a Responsible Officer stating that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate;

(c) [reserved];

(d) to the extent that the Borrower (or a direct or indirect parent company of Borrower) is not otherwise required to file reports on form 10-K or 10-Q with the SEC, within 45 days after the end of each of the first three fiscal quarters of the Borrower in each fiscal year, or within 90 days after the fourth fiscal quarter of the Borrower in each fiscal year, a narrative discussion and analysis of the financial condition and results of operations of the Borrower and its Subsidiaries for such fiscal quarter and for the period from the beginning of the then current fiscal year to the end of such fiscal quarter, as compared to the comparable periods of the previous year;

(e) promptly after the furnishing thereof, copies of any material notices received by any Loan Party from, or material statement or material report furnished to, any holder (which is not an Affiliate of Parent) of Material Debt and not otherwise required to be furnished to the Administrative Agent or the Lenders pursuant to any other clause of this Section 5.2;

(f) within ten days after the same are sent, copies of all reports that Parent or the Borrower or any of its Restricted Subsidiaries sends to the holders of (x) any Material Debt or (y) any class of its public equity securities and, within ten days after the same are filed, copies of all reports that Parent or the Borrower or any of its Restricted Subsidiaries may make to, or file with, the SEC (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be furnished to the Administrative Agent or the Lenders pursuant to any other clause of this Section 5.2; in each case only to the extent such reports are of a type customarily delivered by borrowers to lenders in syndicated loan financings;

(g) promptly, such additional financial and other information regarding the business, legal, financial or corporate affairs of any Loan Party or any Restricted Subsidiary as the Administrative Agent may from time to time reasonably request (on its own behalf or on behalf of any Lender); and

(h) promptly after the same are available and to the extent feasible and reasonably practicable not later than three (3) days prior to the filing thereof with the Bankruptcy Court or the Canadian Court by or on behalf of the Loan Parties, proposed forms of the Bankruptcy Court DIP Order, all other proposed orders and pleadings related to the Facility, any plan of reorganization or liquidation, and any disclosure statement related to such plan.

Concurrently with the delivery of any document or notice required to be delivered pursuant to this Section 5.2 (collectively, the “Borrower Materials”), the Borrower shall indicate in writing whether such document or notice contains Nonpublic Information (which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof if such Borrower Materials may be distributed to “public-side” Lenders). Parent and the Borrower and each Lender acknowledge that certain of the Lenders may be “public-side” Lenders (Lenders that do not wish to receive material non-public information with respect to Holdings, Parent, the Borrower, its Subsidiaries or their securities) and, if documents or notices required to be delivered pursuant to this Section 5.2 or otherwise are being distributed through IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform (the “Platform”), any document or notice that the Borrower has indicated contains Nonpublic Information shall not be posted on that portion of the Platform designated for such public-side Lenders. All Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “public side”. If the Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.2 contains Nonpublic Information, the Administrative Agent shall post such document or notice solely on that portion of the Platform designated for Lenders who do not wish to receive material nonpublic information with respect to Parent, the Borrower, its Subsidiaries and their securities.

5.3 Payment of Obligations. Subject to the Bankruptcy Court DIP Order, pay, discharge or otherwise satisfy before they become delinquent, as the case may be, all its material tax obligations, except (a) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of Parent, the Borrower or its Restricted Subsidiaries, as the case may be or (b) where the failure to pay, discharge or otherwise satisfy the same would not reasonably be expected to have a Material Adverse Effect.

5.4 Conduct of Business and Maintenance of Existence, etc. (a) (i) Preserve, renew and keep in full force and effect its corporate or other organizational existence and (ii) take all reasonable action to maintain all rights, privileges, franchises, permits and licenses necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by Section 6.4 and except (other than in the case of the preservation of existence of Parent and the Borrower) to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect; (b) to the extent not in conflict with this Agreement or the other Loan Documents, comply with all applicable Requirements of Law, except to the extent that failure to comply therewith would not, in the aggregate, reasonably be expected to have a Material Adverse Effect; and (c) maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws.

5.5 Maintenance of Property; Insurance. (a) Except as would not reasonably be expected to have a Material Adverse Effect, keep all Property and systems necessary in its business (in the good faith belief of the Borrower) in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance (or, with respect to inventory and equipment at the retail store level, a program of self-insurance) on all its Property meeting the requirements of Section 5.3 of the Guarantee and Collateral Agreement and in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same geographic regions by companies of similar size engaged in the same or a similar business and as would be carried under similar circumstances; provided that such insurance shall not be required to cover ephedra products or other products for which insurance is not available or is not available on commercially reasonable terms.

5.6 Inspection of Property; Books and Records; Discussions. (a) (i) Keep proper books of records in conformity with GAAP and all material applicable Requirements of Law of all material dealings and transactions in relation to its business activities and (ii) permit representatives of the Administrative Agent, at reasonable business times and upon reasonable prior notice, to visit and inspect any of its properties and examine and, at the Borrower's expense, and make abstracts from any of its books and records as often as may reasonably be desired (subject to the immediately succeeding sentence) and to discuss the business, operations, properties and financial and other condition of Parent, the Borrower and its Restricted Subsidiaries with officers and employees of Parent, the Borrower and its Restricted Subsidiaries and with their respective independent certified public accountants (subject to such accountants' policies and procedures). Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing (in which case there shall be no limits on such visits, inspections and examinations) such visits, inspections and examinations shall be limited to two per fiscal year

(and, (x) so long as no Event of Default has occurred and is continuing, only one time at the Borrower's expense and (y) following the occurrence and during the continuance of an Event of Default, not more than two times at the Borrower's expense); provided, however, that unless an Event of Default exists, (i) such inspections for environmental matters shall be limited to no more than once per fiscal year and (ii) at all times such inspections for environmental matters shall be limited to non-intrusive and non-invasive visual observations. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 5.6, none of Parent, the Borrower or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by any Requirement of Law or any binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

(a) At the Administrative Agent's discretion, no more frequently than once per fiscal year, the Loan Parties will, at their expense and upon the Administrative Agent's request, permit any Persons designated by the Administrative Agent and reasonably satisfactory to the Borrower to conduct a field examination and an inventory appraisal, in each case with respect to Collateral contained in the Borrowing Base, at a reasonable business time and upon reasonable prior notice to the Borrower, and with respect to such inventory appraisal, to be conducted by an Acceptable Appraiser. The Loan Parties will reasonably cooperate with the Administrative Agent and such Persons in the conduct of such field examination and inventory appraisal. The Administrative Agent shall provide a copy of any field examination and/or inventory appraisal prepared after the Closing Date to any Lender upon such Lender's request. Notwithstanding the foregoing, at any time during the continuance of a Specified Event of Default, additional field examinations and inventory appraisals shall be permitted at the request of the Administrative Agent, in each case at the Borrower's expense. The Administrative Agent shall have the right, but not the obligation, from time to time at the Borrower's request and expense, to periodically update the inventory appraisal. With respect to each inventory appraisal made pursuant to this Section 5.6(b), (i) the Administrative Agent and the Loan Parties will each be given a reasonable amount of time to review and comment on a draft form of the inventory appraisal prior to its finalization and (ii) any adjustments to the Net Orderly Liquidation Value or the Borrowing Base hereunder as a result of such inventory appraisal shall be reflected in the Borrowing Base Certificate delivered immediately succeeding such inventory appraisal.

5.7 Notices. Promptly give notice to the Administrative Agent in each case for further delivery to the Collateral Agent and each Lender of:

(a) knowledge by the Borrower or Parent of the occurrence of any Default or Event of Default;

(b) any (i) default or event of default (or alleged default) under any Contractual Obligation (other than the Loan Documents) of any of the Loan Parties or (ii) litigation, investigation or proceeding which may exist at any time between any of the Loan

Parties and any Governmental Authority, that in the case of either of clause (i) or (ii), would reasonably be expected to have a Material Adverse Effect;

(c) any litigation or proceeding against any of the Loan Parties (other than the Chapter 11 Cases and the Recognition Proceedings) that would reasonably be expected to have a Material Adverse Effect;

(d) the following events to the extent such events would reasonably be expected to have a Material Adverse Effect, as soon as possible and in any event within 30 days after the Borrower or any Commonly Controlled Entity knows or has reason to know thereof: (i) the occurrence of any ERISA Event or Canadian Pension Termination Event with respect to any Plan or Canadian Defined Benefit Plan, a failure to make any required contribution to a Single Employer Plan or Multiemployer Plan or a Canadian Pension Plan that would reasonably be expected to give rise to a Lien in favor of the PBGC, the Financial Services Commission of Ontario (or other like provincial entities) (“FSCO”) or a Single Employer Plan or Multiemployer Plan or Canadian Pension Plan, the creation of any Lien in favor of any Person including the PBGC, the FSCO or a Single Employer Plan or Multiemployer Plan or Canadian Pension Plan or any withdrawal from, or the termination or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC or the FSCO or the Borrower or any Loan Party or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination or Insolvency of, any Plan or Canadian Defined Benefit Plan; and

(e) any other development or event that results in or would reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action (if any) Parent, the Borrower or the relevant Loan Party proposes to take with respect thereto.

5.8 Environmental Laws. (a) Comply in all respects with all applicable Environmental Laws, and obtain, maintain and comply with any and all Environmental Permits, except to the extent the failure to so comply with Environmental Laws or obtain, maintain or comply with Environmental Permits would not reasonably be expected to have a Material Adverse Effect.

(a) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other corrective actions required pursuant to Environmental Laws and promptly comply in all respects with all lawful orders and directives of all Governmental Authorities regarding any violation of or non-compliance with Environmental Laws and any release or threatened release of Hazardous Materials, except, in each case, to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect.

5.9 Borrowing Base Certificates. On the Closing Date and on the immediately following Wednesday after the end of each consecutive two-calendar-week period, commencing with Wednesday, July 8 (or, promptly following the Disposition of ABL Priority Collateral or the release of a Loan Party owning ABL Priority Collateral, in either case, constituting



\$7,500,000 or more for Collateral other than Borrowing Base Cash in the aggregate in any 30 day period, or \$5,000,000 in the case of Borrowing Base Cash as provided in the definition thereof), deliver a Borrowing Base Certificate to the Administrative Agent as of the close of business on Saturday of the immediately preceding week, and covering the period consisting of the two weeks ended on such Saturday (or if delivered pursuant to the preceding parenthetical, update the most recently-delivered Borrowing Base Certificate solely to give pro forma effect to such Disposition or release). Notwithstanding the foregoing, the Borrower may elect to deliver a Borrowing Base Certificate more frequently than every two weeks; provided that, if the Borrower makes such an election, the Borrower shall continue to deliver a Borrowing Base Certificate on such more frequent basis for at least 60 days.

5.10 Opposition to Motions. Promptly oppose (i) any motion filed by any third party in the Bankruptcy Court or Canadian Court to (x) lift the stay on the Collateral (other than motions filed by the Administrative Agent or the Lenders) or (y) terminate the exclusive ability of the Loan Parties to file a plan of reorganization, or (ii) any other motion that, if granted, could reasonably be expected to have a material adverse effect on the Administrative Agent or the Lenders or any Collateral.

5.11 Additional Collateral, etc.. Subject to any applicable limitation in any Intercreditor Agreement:

(a) [reserved].

(b) [reserved].

(c) With respect to any new Subsidiary created or acquired after the Closing Date (other than Excluded Subsidiaries) by the Borrower or a Subsidiary Guarantor promptly cause such new Subsidiary to become a party to the Guarantee and Collateral Agreement.

(d) Notwithstanding the foregoing provisions of this Section 5.11 or any other provision hereof or of any other Loan Document, (i) the Borrower and Guarantors shall not be required to grant a security interest in any Excluded Assets, (ii) Liens required to be granted pursuant to this Section 5.11, and actions required to be taken, including to perfect such Liens, shall be subject to exceptions and limitations consistent with those set forth in the Security Documents on the Closing Date (or as created or amended after the Closing Date with the approval of the Borrower), (iii) other than with respect to (A) the Canadian Guarantor and (B) any other Foreign Subsidiary that becomes a Guarantor after the Closing Date, and in such instance, only with respect to the stock of such Foreign Subsidiary and subject to customary exceptions, limitations and restrictions imposed by local law, no Loan Party shall be required to take any actions outside the United States or under non-United States law to create or perfect any Liens on the Collateral (including, without limitation, any Intellectual Property registered or applied for registration in any jurisdiction outside the United States) and no Security Document shall be governed by the laws of any jurisdiction outside the United States, (iv) the Loan Parties shall not be required to deliver any landlord waivers, estoppels, collateral access agreements or bailee letters, (v) the Loan Parties shall not be required to deliver control agreements or otherwise deliver perfection by “control” (within the meaning of the Uniform Commercial Code or the Securities Transfer Act (Ontario) (or equivalent in any other province or territory))

(including with respect to deposit accounts, securities accounts and commodities accounts), (vi) notices shall not be required to be sent by any Loan Party or any Subsidiary or permitted to be sent by any Secured Party to account debtors or other contractual third parties unless an Event of Default has occurred and is continuing, (vii) no perfection of security interests (except to the extent perfected by the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order) shall be required with respect to letter of credit rights and (viii) in no event shall perfection be required with respect to any Collateral by means other than the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order.

5.12 [Reserved].

5.13 Further Assurances. Upon the exercise by the Administrative Agent, the Collateral Agent or any Lender of any right or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, recording, qualification or authorization of any United States or Canadian Governmental Authority, the Borrower will execute and deliver, or will cause its Restricted Subsidiaries to execute and deliver all applications, certifications, instruments and other documents that such Agent or such Lender may be required to obtain from the Borrower or any of its Restricted Subsidiaries for such governmental consent, approval, recording, qualification or authorization, subject to the terms of Section 5.10 and other than with respect to any Excluded Assets.

5.14 Maintenance of Ratings. The Borrower shall use commercially reasonable efforts to obtain, within 90 days following the Closing Date, and if so obtained, will use commercially reasonable efforts to maintain thereafter a private rating (but not any specific rating) from either Moody's or S&P for the FILO Term Loans.

5.15 Fiscal Period. End the Fiscal Year of the Borrower on December 31 and maintain the Borrower's method of determining fiscal quarters as such method is in effect on the Closing Date.

5.16 [Reserved].

5.17 Anti-Corruption and Sanctions. Use, and cause the respective directors, officers, employees and agents of the Borrower and its Subsidiaries to use, the proceeds of any Loan in a manner not (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto. Notwithstanding the foregoing, the covenants in this Section 5.16 shall not be made by nor apply to any Person that qualifies as a corporation that is registered or incorporated under the laws of Canada or any province thereof and that carries on business in whole or in part in Canada within the meaning of Section 2 of the Foreign Extraterritorial Measures (United States) Order, 1992 passed under the Foreign Extraterritorial Measures Act (Canada) in so far as such covenants would result in a violation of or conflict with the Foreign Extraterritorial Measures Act (Canada) or any similar law.

## SECTION 6. NEGATIVE COVENANTS

Holdings, GNC Parent LLC, Parent and the Borrower each agree that, so long as any Loan or other amount (excluding Obligations in respect of Cash Management Obligations and contingent reimbursement and indemnification obligations which are not due and payable) is owing to any Lender or any Agent hereunder, it shall not, and shall not permit any of the Loan Parties that are Subsidiary Guarantors to:

6.1 [Reserved].

6.2 Limitation on Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of the Loan Parties under (i) the Loan Documents, (ii) the Prepetition Loan Documents in effect on the Petition Date, (iii) the Term Loan DIP Credit Agreement, (iv) the LC Cash Collateral Agreement and the Existing Letters of Credit and (v) the Carve Out;

(b) Indebtedness of any Loan Party to any other Loan Party or any Restricted Subsidiary, so long as any such Indebtedness owed to a non-Loan Party is subordinated to the Obligations pursuant to the Bankruptcy Court DIP Order;

(c) Indebtedness (including intercompany Indebtedness) and Guarantee Obligations outstanding on the Closing Date;

(d) Guarantee Obligations by Holdings, the Borrower or any of the Guarantors in respect of Indebtedness of the Borrower or any of the Guarantors otherwise permitted hereunder;

(e) Indebtedness in respect of Cash Management Services in the ordinary course of business and Indebtedness arising from the endorsement of instruments or other payment items for deposit and the honoring by a bank or other financial institution of instruments or other payments items drawn against insufficient funds;

(f) to the extent constituting Indebtedness, indemnification, deferred purchase price adjustments, earn-outs or similar obligations, in each case, incurred or assumed in connection with the acquisition of any business or assets or any Investment permitted to be acquired or made hereunder or any Disposition permitted hereunder;

(g) [reserved];

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

(i) Indebtedness in respect of Hedge Agreements entered into in the ordinary course of business, and not for speculative purposes, to protect against exposure to interest rates, commodity prices or foreign exchange rates;

(j) Indebtedness representing deferred compensation or similar obligations to employees of the Borrower and the Guarantors incurred in the ordinary course of business;

(k) Indebtedness incurred by the Borrower or any of the Guarantors in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims; provided that upon the drawing of such letter of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 90 days (or such longer period as may be agreed upon by the Administrative Agent) unless the amount or validity of such obligations are being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the Borrower or the Guarantors, as the case may be; provided further that such Indebtedness shall not exceed \$500,000 in the aggregate at any time outstanding;

(l) Indebtedness in respect of performance, bid, release, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of the Guarantors, in each case in the ordinary course of business;

(m) Indebtedness in respect of letters of credit issued for the account of the Borrower or any of the Guarantors to finance the purchase of inventory so long as (x) such Indebtedness is secured only by cash collateral and in accordance with the Budget and (y) the aggregate principal amount of such Indebtedness does not exceed \$1,500,000 at any one time outstanding;

(n) Indebtedness incurred in the ordinary course of business with respect to customer deposits and other unsecured current liabilities not the result of borrowing and not evidenced by any note or other evidence of Indebtedness;

(o) unsecured Indebtedness of the Borrower or any of the Guarantors owing to the Borrower or any other Guarantors to the extent expressly contemplated in the Budget and constituting an Investment permitted by Section 6.8;

(p) Indebtedness in an aggregate principal amount not to exceed \$2,000,000 at any one time outstanding; and

(q) to the extent constituting Indebtedness, all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in Section 6.2 (a) through (p) above; and

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; provided that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would

cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus any undrawn commitments with respect thereto and the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing.

To the extent otherwise constituting Indebtedness, the accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall be deemed not to be Indebtedness for purposes of this Section 6.2. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

6.3 Limitation on Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

(a) Liens for Taxes, assessments or governmental charges that are not overdue for a period of more than 60 days or that are being contested in good faith by appropriate proceedings (provided that adequate reserves with respect to such proceedings are maintained on the books of the Borrower or its Subsidiaries, as the case may be, in conformity with GAAP);

(b) (i) carriers', warehousemen's, landlord's, mechanics', contractor's, materialmen's, repairmen's or other like Liens imposed by law or arising in the ordinary course of business which secure amounts that are not overdue for a period of more than 60 days or if more than 60 days overdue, are unfiled and no action has been taken to enforce such Lien, or that are being contested in good faith by appropriate proceedings (provided that adequate reserves with respect to such proceedings are maintained in the books of the Borrower or the applicable Subsidiary, as the case may be, in conformity with GAAP), (ii) Liens of customs and revenue authorities to secure payment of customs duties in connection with the importation of goods and (iii) Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or such other goods in the ordinary course of business;

(c) subject to the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order (i) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to any Loan Party or any Subsidiary;

(d) deposits by or on behalf of any Loan Party or any of its Subsidiaries to secure the performance of bids, trade contracts and governmental contracts (other than

Indebtedness for borrowed money), leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(e) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and title defects that, in the aggregate, do not materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries taken as a whole;

(f) Liens in existence on the Closing Date and Replacement Liens in respect thereof;

(g) Liens created pursuant to (i) the Loan Documents, (ii) the Prepetition Loan Documents in effect on the Petition Date, (iii) the Term Loan DIP Credit Agreement, (iv) the LC Cash Collateral Agreement and the Existing Letters of Credit, and (v) the Carve Out;

(h) any interest or title of a lessor or sublessor under any lease or sublease or real property license or sub-license entered into by the Borrower or any Guarantor in the ordinary course of its business and covering only the assets so leased, subleased, licensed or sub-licensed and any Liens on such lessor's, sublessor's, licensee's or sub-licensee's interest or title;

(i) Liens in connection with attachments or judgments or orders in circumstances not constituting an Event of Default under Section 7.1(f);

(j) Liens existing on property at the time of its acquisition or existing on the property of a Person which becomes a Subsidiary of the Borrower after the Closing Date; provided that (i) such Liens existed at the time such property was acquired or such Person became a Subsidiary of the Borrower, (ii) such Liens were not granted in connection with or in contemplation of the applicable acquisition or Investment, (iii) any Indebtedness secured thereby is permitted by Section 6.2 and (iv) such Liens are not expanded to cover additional Property (other than proceeds and products thereof); and Replacement Liens in respect thereof;

(k) Liens consistent with those arising by operation of law consisting of customary and ordinary course rights of setoff upon deposits of cash and Cash Equivalents in favor of banks or other financial or depository institutions in the ordinary course of business;

(l) Liens on insurance policies and the proceeds thereof securing insurance premium financing permitted hereunder;

(m) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Borrower or any Guarantor in the ordinary course of business;

(n) (i) Liens of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on the items in the course of collection, (ii) Liens attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and not for speculative purposes and (iii) bankers' Liens, rights of setoff and

other similar Liens existing solely with respect to accounts and cash and Cash Equivalents on deposit in accounts maintained by the Borrower or any Guarantor, in each case under this clause (iii) granted in the ordinary course of business in favor of the banks or other financial or depository institution with which such accounts are maintained, securing amounts owing to such Person with respect to Cash Management Services (including, without limitation, operating account arrangements and those involving pooled accounts and netting arrangements); provided that, in the case of this clause (iii), unless such Liens arise by operation of applicable law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness for borrowed money;

(o) non-exclusive licenses and sub-licenses of Intellectual Property granted by the Borrower or any of the Guarantors in the ordinary course of business (and, to the extent in existence on the Closing Date or granted by the Borrower or any of the Guarantors in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States and Canada);

(p) UCC or PPSA financing statements or similar public filings that are filed as a precautionary measure in connection with operating leases or consignment of goods in the ordinary course of business;

(q) Liens on property purportedly rented to, or leased by, the Borrower or any of the Guarantors pursuant to a Sale and Leaseback Transaction; provided, that (i) such Sale and Leaseback Transaction is permitted by Section 6.12, (ii) such Liens do not encumber any other property of the Borrower or the Guarantors, and (iii) such Liens secure only the Attributable Indebtedness incurred in connection with such Sale and Leaseback Transaction;

(r) Liens on the assets of Foreign Subsidiaries that secure only Indebtedness permitted pursuant to Section 6.2 and related obligations of Foreign Subsidiaries;

(s) good faith earnest money deposits made in connection with an Investment (other than Investments under Section 6.8(r)) or letter of intent or purchase agreement permitted hereunder;

(t) Liens in favor of a Loan Party or a Restricted Subsidiary securing intercompany Indebtedness permitted hereunder; provided, that such intercompany Indebtedness, to the extent owed from a Loan Party to a non-Loan Party, shall be subordinated to the Obligations pursuant to the Bankruptcy Court DIP Order;

(u) Liens (i) on an Investment permitted pursuant to Section 6.8 to be applied against the purchase price for such Investment or (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 6.5, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(v) Liens deemed to exist in connection with Investments in repurchase agreements under Section 6.8; provided such Liens do not extend to any assets other than those assets that are the subject of such repurchase agreement;

(w) Liens that are customary contractual rights of setoff relating to purchase orders and other agreements entered into with customers of the Borrower or any of the Subsidiaries in the ordinary course of business;

(x) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(y) Liens or rights of setoff against credit balances of the Borrower or any of the Guarantors with credit card issuers or credit card processors or amounts owing by such credit card issuers or credit card processors to the Borrower or any of the Guarantors in the ordinary course of business, to secure the obligations of the Borrower or any of the Guarantors to such credit card issuers and credit card processors as a result of fees and chargebacks;

(z) Liens with respect to Capital Stock in joint ventures that arise pursuant to the applicable underlying joint venture agreement;

(aa) Liens securing obligations in an amount not to exceed \$2,000,000 at any one time outstanding; and

(bb) Liens in favor of the Prepetition Lenders and Prepetition Agents granted pursuant to the Bankruptcy Court DIP Orders;

provided that, notwithstanding anything to the contrary contained herein, no Liens on ABL Priority Collateral that are senior to or *pari passu* with the Liens securing the Obligations shall be permitted under this Section 6.3 (other than any Lien permitted under Section 6.3(a), 6.3(b), 6.3(c), 6.3(d), 6.3(g) (other than with respect to Prepetition Term Loan Documents), 6.3(h), 6.3(i), 6.3(j), 6.3(k), 6.3(l), 6.3(m) (but only as to such acquired goods), 6.3(n), 6.3(q), 6.3(s), 6.3(u), 6.3(v), 6.3(w) or 6.3(y)).

6.4 Limitation on Fundamental Changes. Consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself, or Dispose of all or substantially all of its Property or business, except that so long as no approval of the Bankruptcy Court is required (or such approval is required and shall have been received):

(a) any Subsidiary of the Borrower may be merged or consolidated with or into the Borrower (provided that the Borrower shall be the continuing or surviving entity) and any Subsidiary of the Borrower may be merged, consolidated or amalgamated with or into any Guarantor (provided that if a Guarantor is a party thereto (i) a Guarantor shall be the continuing, surviving or resulting entity or (ii) simultaneously with such transaction, the continuing, surviving or resulting entity shall become a Guarantor and the Borrower shall comply with Section 5.10 in connection therewith);

(b) any Subsidiary of the Borrower may Dispose of all or substantially all of its Property or business (i) (upon liquidation, windup, dissolution or otherwise) to (x) if such Subsidiary is a Loan Party, the Borrower or any other Loan Party and (y) if such Subsidiary is not a Loan Party, the Borrower or any Subsidiary or (ii) pursuant to a Disposition permitted by Section 6.5;



(c) any Foreign Subsidiary may (i) be merged or consolidated or amalgamated with or into any other Foreign Subsidiary, or (ii) Dispose of any or all of its assets to (upon voluntary liquidation, windup, dissolution or otherwise) any other Foreign Subsidiary;

(d) any merger, amalgamation or consolidation the sole purpose of which is to reincorporate or reorganize a Loan Party or Subsidiary in another jurisdiction; provided that (x) in the case of any such merger, amalgamation or consolidation involving a Loan Party, a Loan Party is the surviving, continuing or resulting Person (or simultaneously with such transaction, the continuing, surviving or resulting entity shall become a Subsidiary Guarantor) and the Borrower shall comply with Section 5.10 in connection therewith and (y) in the case of any such merger or consolidation involving a Loan Party or Subsidiary that is domiciled within the United States (or in the case of the Canadian Guarantor, Canada), the continuing, surviving or resulting entity shall be domiciled within the United States (or in the case of the Canadian Guarantor, Canada);

(e) any Investment permitted by Section 6.8 may be structured as a merger, consolidation or amalgamation; provided that in the case of any such merger, consolidation or amalgamation of a Loan Party, the surviving, continuing or resulting legal entity of such merger, consolidation or amalgamation is a Loan Party (or simultaneously with such transaction, the continuing, surviving or resulting entity shall become a Subsidiary Guarantor) and the Borrower shall comply with Section 5.10 in connection therewith; and

(f) any Loan Party (other than the Borrower) may dissolve, liquidate or wind up its affairs at any time if such dissolution, liquidation or winding up would not reasonably be expected to have a Material Adverse Effect.

6.5 Limitation on Disposition of Property. Dispose of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or, in the case of any Restricted Subsidiary of the Borrower, issue or sell any shares of such Restricted Subsidiary's Capital Stock to any Person, except:

(a) the Disposition of obsolete or worn out property in the ordinary course of business;

(b) the sale of inventory and equipment held for sale in the ordinary course of business or pursuant to a "going out of business" sale;

(c) Dispositions permitted by Section 6.4 (other than Section 6.4(b)(ii));

(d) the sale or issuance of any Loan Party's or any Subsidiary's Capital Stock to the Borrower or any other Loan Party or the sale or issuance of any Excluded Subsidiary's Capital Stock to another Excluded Subsidiary; provided that any Guarantor's ownership interest therein is not diluted;

(e) the sale of assets in connection with the closure of stores and the Disposition of franchises and stores (and related assets) in the ordinary course of business or pursuant to a "going out of business" sale;

- (f) the Disposition of cash or Cash Equivalents;
- (g) (i) the non-exclusive license or sub-license of Intellectual Property in the ordinary course of business (and, to the extent in existence on the Closing Date or granted in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States and Canada) and (ii) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any immaterial Intellectual Property;
- (h) the lease, sublease, license or sublicense of property which is described in Section 6.3(h);
- (i) the Disposition of surplus or other property no longer used or useful in the business of the Borrower and its Subsidiaries in the ordinary course of business or pursuant to a “going out of business” sale;
- (j) the Disposition of other assets having a fair market value not to exceed \$2,000,000 in the aggregate; provided that to the extent all or a portion of such Disposition is composed of Eligible Accounts Receivable, Eligible Inventory, Eligible Gift Card Receivables, Eligible Credit Card Receivables, Borrowing Base Cash or Acquired Asset Borrowing Base Cash constituting \$750,000 or more for Collateral in the aggregate in any 30 day period, then as a condition precedent to such Disposition, the Borrower shall deliver to the Administrative Agent a Borrowing Base Certificate reflecting such Disposition (recalculating the Borrowing Base after giving effect to solely such Disposition);
- (k) the Disposition of assets subject to or in connection with any Recovery Event;
- (l) Dispositions consisting of Restricted Payments permitted by Section 6.6;
- (m) Dispositions consisting of Investments permitted by Section 6.8;
- (n) Dispositions consisting of Liens permitted by Section 6.3;
- (o) Dispositions of assets pursuant to Sale and Leaseback Transactions permitted pursuant to Section 6.12;
- (p) Dispositions of property to a Loan Party or a Subsidiary; provided that if the transferor of such property is a Loan Party (i) the transferee thereof must be a Loan Party or (ii) such Investment must be a permitted Investment in a Restricted Subsidiary that is not a Loan Party in accordance with Section 6.8;
- (q) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;
- (r) Dispositions of accounts receivable in connection with the collection or compromise thereof in the ordinary course of business (and not for financing purposes); provided

that to the extent all or a portion of such Disposition is composed of Eligible Accounts Receivable, Eligible Gift Card Receivables or Eligible Credit Card Receivables in an aggregate amount exceeding \$7,500,000 or more for Collateral other than Borrowing Base Cash and Acquired Asset Borrowing Base Cash in the aggregate in any 30 day period, or \$5,000,000 in the case of Borrowing Base Cash and/or Acquired Asset Borrowing Base Cash, as provided in the definition of Borrowing Base Cash, then as a condition precedent to such Disposition, the Borrower shall deliver to the Administrative Agent a Borrowing Base Certificate reflecting such Disposition (recalculating the Borrowing Base after giving effect to solely such Disposition); and

- (s) the unwinding of any Hedge Agreement.

6.6 Limitation on Restricted Payments. Declare or pay any dividend on (other than dividends payable solely in Qualified Capital Stock of the Person making the dividend so long as the ownership interest of any Guarantor in such Person is not diluted), or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Loan Party, whether now or hereafter outstanding, or make any other distribution in respect thereof, whether in cash or property (collectively, "Restricted Payments"), except that:

- (a) any Loan Party may make Restricted Payments to any other Loan Party;
- (b) to the extent provided for in the Budget, any Loan Party may make Restricted Payments;
- (c) the Borrower may pay dividends to permit Parent or any direct or indirect parent company of Parent to (i) pay operating costs and expenses and other corporate overhead costs and expenses (including, without limitation, directors' fees and expenses and administrative, legal, accounting, filings and similar expenses and salary, bonus and other benefits payable to officers and employees of Parent or any direct or indirect parent company of Parent), in each case to the extent such costs, expenses, fees, salaries, bonuses and benefits are attributable to the ownership or operations of Parent, the Borrower and the Subsidiaries, are reasonable and incurred in the ordinary course of business, (ii) [reserved], (iii) pay taxes which are not determined by reference to income, but which are imposed on Parent or any direct or indirect parent company of Parent as a result of Parent's or such parent company's ownership of the equity of Parent or the Borrower or any direct or indirect parent company of Parent, as the case may be, but only if and to the extent that Parent or such parent company has not received cash or other property in connection with the events or transactions giving rise to such taxes, (iv) [Reserved], (v) pay franchise taxes and other fees, taxes and expenses required to maintain its corporate existence, (vi) finance any Investment permitted to be made hereunder (so long as (A) such dividends are made substantially concurrently with the closing of such Investment and (B) immediately following the closing thereof (1) all property acquired (whether assets or Capital Stock) shall be contributed to the Borrower or a Subsidiary Guarantor or (2) the Person formed or acquired shall be merged into the Borrower or a Subsidiary Guarantor in order to consummate such Investment (and subject to the provisions of Sections 5.10 and 6.4)), (vii) pay costs, fees and expenses related to any unsuccessful equity or debt offering permitted by this Agreement (other than any such offering intended to benefit Subsidiaries of any such parent company other than the Borrower and its Subsidiaries) and (viii) make payments permitted under Section 6.11

(but only to the extent such payments have not been and are not expected to be made directly by the Borrower or a Subsidiary Guarantor); provided that dividends paid pursuant to this Section 6.6(c) (other than dividends paid pursuant to clause (ii), (iii), or (iv) above) are used by Parent or any direct or indirect parent holding company of Parent for such purpose within 60 days of the receipt of such dividends or are refunded to the Borrower;

(d) any non-Wholly Owned Subsidiary of the Borrower may declare and pay cash dividends to its equity holders generally so long as the Borrower or its respective Subsidiary which owns the equity interests in the Subsidiary paying such dividends receives at least its proportionate share thereof (based upon the relative holding of the equity interests in the Subsidiary paying such dividends);

(e) repurchases of Capital Stock in any Loan Party deemed to occur upon exercise of stock options or warrants or similar rights if such Capital Stock represents a portion of the exercise price of such options or warrants or similar rights (as long as the Loan Parties make no payment in connection therewith that is not otherwise permitted hereunder);

(f) GNC Puerto Rico, LLC may make distributions to GNC Live Well Ireland in an aggregate amount not to exceed \$300,000 per fiscal year;

(g) to the extent constituting Restricted Payments, the Borrower and the Subsidiaries may enter into and consummate transactions permitted by Section 6.4 and Section 6.8 (other than Section 6.8(p)); and

(h) the Borrower or any of the Restricted Subsidiaries may pay cash in lieu of fractional Capital Stock in connection with any dividend, split or combination thereof.

6.7 [Reserved].

6.8 Limitation on Investments. Make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "Investments"), except:

(a) extensions of trade credit or the holding of receivables in the ordinary course of business and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(b) investments in cash and items that were Cash Equivalents at the time such Investment was made;

(c) Investments arising in connection with the incurrence of Indebtedness permitted by Section 6.2(b), 6.2(c) and 6.2(d), to the extent constituting intercompany Indebtedness;

(d) loans and advances to employees, officers, directors, managers and consultants of Parent (or any direct or indirect parent company thereof to the extent relating to the business of Parent, the Borrower and the Subsidiaries), the Borrower or any Subsidiaries of the Borrower in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate principal amount not to exceed \$1,000,000 at any one time outstanding;

(e) Investments (other than those relating to the incurrence of Indebtedness permitted by Section 6.8(c)) by any Loan Party in any Person that, prior to or concurrently with such Investment, is or becomes a Loan Party (including any such Investment consisting of the contribution by any Loan Party of Capital Stock held by such Loan Party in any other Person (including a Loan Party));

(f) Investments consisting of notes payable by franchisees to any Loan Party in an aggregate principal amount not to exceed \$1,000,000 at any one time outstanding;

(g) Investments received in connection with the bankruptcy or reorganization of, insolvency or liquidation of, or settlement of claims against and delinquent accounts of and disputes with, franchisees, customers and suppliers, or as security for any such claims, accounts and disputes, or upon the foreclosure with respect to any secured Investment;

(h) advances of payroll payments to employees, officers, directors and managers of Parent, the Borrower and the Subsidiaries in the ordinary course of business;

(i) Investments by the any Loan Party in Excluded Subsidiaries and joint ventures in an aggregate amount not to exceed \$2,500,000 at any time outstanding;

(j) Investments by any Loan Party in any Person that is a Foreign Subsidiary in an aggregate amount not to exceed \$2,500,000;

(k) [Reserved];

(l) Investments consisting of promissory notes and other deferred payment obligations and noncash consideration delivered as the purchase consideration for a Disposition permitted by Section 6.5;

(m) Investments existing on the Closing Date and any modification, replacement, renewal, reinvestment or extension thereof (provided that the amount of the original Investment is not increased except by the terms of such original Investment or as otherwise permitted by this Section 6.8);

(n) any Loan Party may endorse negotiable instruments and other payment items for collection or deposit in the ordinary course of business or make lease, utility and other similar deposits in the ordinary course of business;

(o) Investments consisting of obligations under Hedge Agreements permitted by Section 6.2;

(p) Investments consisting of Restricted Payments permitted by Section 6.6 (other than Section 6.6(e));

(q) Investments of any Person that becomes (or is merged or consolidated or amalgamated with) a Subsidiary of the Borrower on or after the Closing Date on the date such Person becomes (or is merged or consolidated or amalgamated with) a Subsidiary of the Borrower; provided that (i) such Investments exist at the time such Person becomes (or is merged or consolidated or amalgamated with) a Subsidiary, and (ii) such Investments are not made in anticipation or contemplation of such Person becoming (or merging or consolidating or amalgamated with) a Subsidiary;

(r) Investments consisting of good faith deposits made in accordance with Section 6.3(s);

(s) deposits made in the ordinary course of business consistent with past practices to secure the performance of leases or in connection with bidding on government contracts;

(t) advances in connection with purchases of goods or services in the ordinary course of business;

(u) Guarantee Obligations permitted under Section 6.2 and, to the extent not constituting Indebtedness, other Guarantee Obligations entered into in the ordinary course of business;

(v) Investments consisting of Liens permitted under Section 6.3;

(w) Investments consisting of transactions permitted under Section 6.4;

(x) Investments in assets useful in the business of the Borrower and its Restricted Subsidiaries made by the Borrower or any of its Restricted Subsidiaries with the proceeds of any Reinvestment Deferred Amount; provided that if the underlying Recovery Event was with respect to a Loan Party, then such Investment shall be consummated by the Borrower or a Subsidiary Guarantor;

(y) Investments by any Loan Party in any Foreign Subsidiary of such Loan Party to the extent each such Investment is made using assets received by such Loan Party as a distribution from a Foreign Subsidiary of such Loan Party; and

(z) Investments in an aggregate amount not to exceed \$2,000,000 at any time outstanding.

For purposes of covenant compliance, the amount of any Investment at any time shall be the amount actually invested (measured at the time made), without adjustment for subsequent changes in the value of such Investment, net of all Returns on such Investment up to the original amount of such Investment.

6.9 Prepayments of Indebtedness. Make any payment of principal or interest or otherwise on account of any Prepetition Obligations or payables under the Prepetition Loan Documents, other than (i) payments made in compliance in all material respects with the Budget (subject to Permitted Variances (as defined in the Term Loan DIP Credit Agreement)), (ii) the Revolver Termination, (iii) letter of credit reimbursement payments pursuant to the LC Cash Collateral Agreement in connection with draws under the Existing Letters of Credit, (iv) payments agreed to in writing by the Required Lenders and (v) payments authorized and approved by the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, including adequate protection payments set forth therein.

6.10 Limitation on Modifications of Organizational Documents. Amend, modify or otherwise change (pursuant to a waiver or otherwise), any of the terms of any Organizational Document, other than any such amendment, modification or other change which does not adversely affect the Lenders in any material respect.

6.11 Limitation on Transactions with Affiliates. Enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than any Loan Party, any Restricted Subsidiary or any Person that becomes a Restricted Subsidiary as a result of such transaction) unless such transaction is otherwise permitted under this Agreement and upon fair and reasonable terms no less favorable to the Borrower and its Subsidiaries than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate. Notwithstanding the foregoing, the Borrower and its Subsidiaries may (a) [reserved], (b) enter into and consummate the transactions existing on the Closing Date and, to the extent exceeding \$1,000,000 in amount, listed on Schedule 6.11, (c) make Restricted Payments permitted pursuant to Section 6.6 and repayments and prepayments of Indebtedness permitted pursuant to Section 6.9, (d) make Investments permitted by Section 6.8, (e) [reserved], (f) enter into employment and severance arrangements with officers, directors, managers and employees of the Parent, the Borrower and the Subsidiaries and, to the extent relating to services performed for Parent, the Borrower and the Subsidiaries, pay director, officer and employee compensation (including, without limitation, bonuses) and other benefits (including, without limitation, retirement, health, stock option and other benefit plans) and indemnification and expense reimbursement arrangements; provided that any purchase of Capital Stock of Parent (or any direct or indirect holding company of Parent) in connection with the foregoing shall be subject to Section 6.6, and (g) license on a non-exclusive basis Intellectual Property in the ordinary course of business (and, to the extent in existence on the Closing Date or granted in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States and Canada) (1) on an arm's length basis to permit the commercial exploitation of such Intellectual Property between or among Affiliates of the Borrower and (2) to parent companies of the Parent in connection with their ownership of the Parent.

6.12 Limitation on Sales and Leasebacks. Enter into any arrangement with any Person providing for the leasing by any Loan Party of real or personal property which has been or is to be sold or transferred by such Loan Party to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of such Loan Party (a "Sale and Leaseback Transaction") unless (i) the sale of such

property is made for cash consideration in an amount not less than the fair market value of such property, (ii) the Sale and Leaseback Transaction is permitted by Section 6.5 and is consummated within 180 days after the date on which such property is sold or transferred, (iii) any Liens arising in connection with its use of the property are permitted by Section 6.3(q), (iv) the Sale and Leaseback Transaction would be permitted under Section 6.2, assuming the Attributable Indebtedness with respect to the Sale and Leaseback Transaction constituted Indebtedness under Section 6.2.

6.13 [Reserved].

6.14 Limitation on Negative Pledge Clauses. Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of the Borrower or any of the Guarantors to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations or, in the case of any guarantor, its obligations under the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement, other than (a) this Agreement and the other Loan Documents, the Prepetition Loan Documents in effect on the Petition Date, the Term Loan DIP Credit Agreement, the LC Cash Collateral Agreement and the Existing Letters of Credit and the Carve Out (b) customary provisions in joint venture agreements and similar agreements that restrict transfer of or liens on assets of, or equity interests in, joint ventures, (c) non-exclusive licenses or sub-licenses by any Loan Party of Intellectual Property in the ordinary course of business (and, to the extent in existence on the Closing Date or granted by any Loan Party in the ordinary course of business, exclusive licenses and sub-licenses of Intellectual Property within the confines of a particular jurisdiction or territory outside of the United States, Canada and Puerto Rico) (in which case any prohibition or limitation shall only be effective against the Intellectual Property subject thereto), (d) (x) prohibitions and limitations in effect on the Closing Date and (y) to the extent such prohibitions and limitations described in clause (x) are set forth in an agreement evidencing Indebtedness, prohibitions and limitations set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such prohibitions and limitations, (e) customary provisions in leases, subleases, licenses and sublicenses that restrict the transfer thereof or the transfer of the assets subject thereto by the lessee, sublessee, licensee or sublicensee, (f) prohibitions and limitations arising by operation of law, (g) customary restrictions that arise in connection with any Disposition permitted by Section 6.5 applicable pending such Disposition solely to the assets subject to such Disposition, (h) negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 6.2 but solely to the extent any negative pledge relates to the property financed by or the subject of such Indebtedness and the proceeds and products thereof (other than Indebtedness constituting any unsecured Debt) as long as such pledges and restrictions do not restrict or impair the ability of the Parent, the Borrower and the Restricted Subsidiaries to comply with their obligations under the Loan Documents, (i) customary provisions contained in an agreement restricting assignment of such agreement entered into in the ordinary course of business, and (j) customary restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business.

6.15 Limitation on Restrictions on Restricted Subsidiary Distributions. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the



ability of any Restricted Subsidiary to (a) make Restricted Payments in respect of any Capital Stock of such Restricted Subsidiary held by, or pay or subordinate any Indebtedness owed to, Parent, the Borrower or any other Restricted Subsidiary, (b) make Investments in the Borrower or any other Restricted Subsidiary or (c) transfer any of its assets to the Borrower or any other Restricted Subsidiary, except in each case for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions existing under the Term Loan DIP Credit Agreement, Prepetition Loan Documents in effect on the Petition Date, the LC Cash Collateral Agreement and the Existing Letters of Credit, and the Carve Out, (iii) any restrictions with respect to a Restricted Subsidiary imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Restricted Subsidiary, (iv) customary net worth provisions contained in real property leases entered into by the Borrower or any of its Subsidiaries so long as such net worth provisions would not reasonably be expected to impair materially the ability of the Loan Parties to meet their ongoing obligations under this Agreement or any of the other Loan Documents, (v) any restriction with respect to Excluded Subsidiaries in connection with Indebtedness not prohibited hereunder, (vi) to the extent not otherwise permitted under this Section 6.15, agreements, restrictions and limitations described in clauses (a)-(j) of Section 6.14, (vii) restrictions with respect to the transfer of any asset (or the interest in any Person) contained in an agreement that has been entered into in connection with the disposition of such asset (or interest in such Person) permitted hereunder and (viii) prohibitions and limitations arising by operation of law.

6.16 Limitation on Lines of Business. Enter into any business, either directly or through any Subsidiary, except for those businesses in which the Borrower and its Subsidiaries are engaged on the date of this Agreement or that are reasonably related or ancillary thereto or reasonable extensions thereof.

6.17 [Reserved].

6.18 Canadian Pension Plans. Canadian Guarantor shall not, without the consent of the Administrative Agent, maintain, administer, contribute or have any liability in respect of any Canadian Defined Benefit Plan (governed by the province of Ontario) or acquire an interest in any Person if such Person sponsors, maintains, administers or contributes to, or has any liability in respect of any Canadian Defined Benefit Plan (governed by the province of Ontario).

6.19 Use of Proceeds. No portion of the proceeds of the Loans, the Collateral, or the Carve Out may be used:

(a) for any purpose that is prohibited under the Bankruptcy Code or the Bankruptcy Court DIP Order;

(b) subject to the terms of the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, to finance in any way: any contested matter, adversary proceeding, suit, arbitration, application, motion or other litigation of any type adverse to the interests of any or all of the Administrative Agent, the Lenders, the Prepetition Agents or the Prepetition Lenders or their respective rights and remedies under the Loan Documents, the

Bankruptcy Court DIP Order, the Canadian Court DIP Recognition Order or the Prepetition Loan Documents;

(c) subject to the terms of the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, for the payment of fees, expenses, interest or principal under the Prepetition Loan Documents (other than permitted adequate protection payments);

(d) unless the Exit Conversion occurs, to make any distribution under a plan of reorganization confirmed in the Chapter 11 Cases that does not provide for the indefeasible payment of the Loans in full and in cash on the effective date of such plan; and

(e) to make any payment in excess of \$1,000,000 in the aggregate in settlement of any claim, action or proceeding before any court, arbitrator or other governmental body without the prior written consent of the Administrative Agent acting at the direction of the Required Lenders;

provided that notwithstanding the foregoing, advisors to the official unsecured creditors' committee, if one is appointed, may investigate the liens granted pursuant to, or any claims under or causes of action with respect to, the Prepetition Loan Documents at an aggregate expense for such investigation not to exceed \$75,000, provided that no portion of such amount may be used to prosecute any claims.

Subject to the Restructuring Support Agreement, nothing herein shall in any way prejudice or prevent the Administrative Agent or the Lenders from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest.

6.20 Chapter 11 Modifications. Except as permitted pursuant to the terms of this Agreement and the Bankruptcy Court DIP Order or otherwise consented to by the Required Lenders, make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Bankruptcy Court DIP Orders.

6.21 Operating Account. Create, incur, assume or suffer to exist any Lien upon the Operating Account other than (i) the first priority Lien created in favor of the Secured Parties under the Loan Documents and (ii) rights of setoff and Liens arising as a matter of law, including bankers' Liens and other similar Liens.

6.22 Right of Subrogation. Assert any right of subrogation or contribution against any other Loan Party until all amounts under this Facility are paid in full in cash and the Commitments are terminated or upon an Exit Conversion.

Notwithstanding anything to the contrary in this Agreement, or in any other Loan Document, any disbursements, Indebtedness, Liens, Investments or other transactions restricted by this Section 6 shall nevertheless be permitted hereunder to the extent set forth in the Budget.

## SECTION 7. EVENTS OF DEFAULT

7.1 Events of Default. If any of the following events shall occur and be continuing:

(a) (i) The Borrower shall fail to pay any principal of any Loan when due in accordance with the terms hereof; or (ii) the Borrower shall fail to pay any interest on any Loan, or any Loan Party shall fail to pay any other amount payable hereunder or under any other Loan Document, within three Business Days after any such interest or other amount becomes due in accordance with the terms hereof or thereof; or

(b) Any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement required to be furnished by it at any time under this Agreement (other than a Borrowing Base Certificate) or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made or furnished (provided that, in each case such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified by materiality); or

(c) Any Loan Party shall default in the observance or performance of any covenant contained in clause (i) of Section 5.4(a) (with respect to Parent and the Borrower only), Section 5.7(a) or Section 6; or

(d) Any Loan Party shall default in the observance or performance of any covenant or other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) and (k) of this Section), and such default shall continue unremedied for a period of thirty (30) days following delivery of written notice thereof to the Borrower by the Administrative Agent; or

(e) (i) Any Person shall engage in any “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan (other than any “prohibited transaction” for which a statutory or administrative exemption is available) that results in liability of the Borrower or any Commonly Controlled Entity, (ii) any ERISA Event shall occur or (iii) any other similar event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (iii) above, such event or condition, together with all other such events or conditions, if any, would reasonably be expected to have a Material Adverse Effect; or

(f) One or more final judgments or decrees for the payment of money shall be entered against Parent, the Borrower or any of its Restricted Subsidiaries involving for Parent, the Borrower and its Restricted Subsidiaries taken as a whole a liability (not paid or fully covered by insurance as to which the relevant insurance company has not denied coverage in writing) of \$5,000,000 or more, and all such judgments or decrees shall not have been satisfied, vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or

(g) The Interim DIP Order, Interim DIP Recognition Order, and the Final DIP Order or Final DIP Recognition Order, as applicable, together with the Loan Documents shall cease to create a valid and perfected Lien with such priority required by this Agreement; or

(h) The guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason (other than by reason of the express release thereof pursuant to the provisions of the Loan Documents), to be in full force and effect or any Loan Party shall so assert in writing (other than by reason of the express release thereof pursuant to the provisions of the Loan Documents); or

(i) Any Change of Control shall occur; or

(j) The occurrence of a Canadian Pension Plan Termination Event, or any Lien arises (save for contribution amounts not yet due) in connection with any Canadian Pension Plan, that would reasonably be expected to have a Material Adverse Effect; or

(k) The Borrower shall (i) make a material misrepresentation in any Borrowing Base Certificate delivered to the Administrative Agent or (ii) shall fail to deliver any Borrowing Base Certificate within five Business Days of such Borrowing Base Certificate becoming due; or

(l) Any Loan Party shall file a motion in the Chapter 11 Cases without the express written consent of Required Lenders, to obtain additional financing from a party other than Lenders under Section 364(d) of the Bankruptcy Code that does not provide for the payment of the Obligations in full in cash upon the incurrence of such additional financing; or

(m) Any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter, an order (i) approving payment of any prepetition claim in excess of \$1,000,000 in the aggregate other than (x) as provided for in the “first day” or “second day” orders, (y) as contemplated by the Budget (including Permitted Variances), or (z) otherwise as consented to by the Required Lenders in writing, (ii) granting relief from the automatic stay under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of \$1,000,000 in the aggregate, or (iii) except with respect to the Prepetition Obligations as provided in the Bankruptcy Court DIP Orders, approving any settlement or other stipulation in excess of \$1,000,000 in the aggregate not approved by the Required Lenders and not included in the Budget with any secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor; or

(n) An order is entered in any of the Chapter 11 Cases appointing, or any Loan Party, or any Restricted Subsidiary of a Loan Party shall file an application for an order seeking the appointment of, (i) a trustee under Section 1104, or (ii) an examiner with enlarged powers relating to the operation of the Loan Parties’ business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; provided that, for the avoidance of doubt, the appointment of a fee examiner shall not constitute an Event of Default; or

(o) An order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, in each case, which does not contain a provision for termination of the Commitment, and payment in full in cash of all Obligations (other than contingent Obligations

not due and owing) of the Loan Parties hereunder and under the other Loan Documents upon entry thereof; or

(p) Other than as set forth in the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, an order is entered by the Bankruptcy Court in any of the Chapter 11 Cases without the express prior written consent of the Required Lenders (i) to revoke, reverse, stay, modify, supplement or amend the Bankruptcy Court DIP Order in a manner that is inconsistent with this Agreement that adversely affects, and is not otherwise consented to by, the Required Lenders, (ii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to the Loan Parties equal or superior to the priority of the DIP Superpriority Claim, (iii) to grant or permit the grant of a Lien on the Collateral (other than Liens permitted under Section 6.3); or

(q) At any time after the Final DIP Order Entry Date, an application for any of the orders described in clauses 7.1(m), (n), (o), (p) and (r) shall be made by a Person other than the Loan Parties and such application is not contested by the Loan Parties in good faith or any Person obtains a final order under § 506(c) of the Bankruptcy Code adverse in any material respect to the Administrative Agent or obtains a final order adverse in any material respect to the Administrative Agent or the Lenders or any of their respective rights and remedies under the Loan Documents or in the Collateral; or

(r) The entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any Loan Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the Required Lenders; or

(s) At any time after the Final DIP Order Entry Date (i) any Loan Party shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of the Secured Parties, or to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) the Lien or security interest created by Security Documents or the Bankruptcy Court DIP Orders with respect to the Collateral shall, for any reason, cease to be valid or (iii) any action is commenced by the Loan Parties which contests the validity, perfection or enforceability of any of the Liens and security interests of the Collateral Agent created by any of the Bankruptcy Court DIP Order, Canadian Court DIP Recognition Order, this Agreement, or any Security Document; or

(t) Any Loan Party shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or Canadian Court), any other Person's motion to, disallow in whole or in part the Lenders' claim in respect of the Obligations or contest any material provision of any Loan Document or any material provision of any Loan Document shall cease to be effective (other than in accordance with its terms); or

(u) (i) The Approved Plan of Reorganization or the Confirmation Order is withdrawn, amended, supplemented or otherwise modified in a manner that materially adversely affects the rights and duties of the Lenders and/or the Administrative Agent without the prior written consent of the Required Lenders or (ii) any plan of reorganization other than an Approved Plan of Reorganization is consummated without the Required Lenders' consent; or

(v) Any Restricted Subsidiary of a Loan Party that is not subject to the Chapter 11 Cases becomes subject to an insolvency proceeding without the consent of the Required Lenders, other than GNC Holdings, Inc. in connection with the Recognition Proceeding; or

(w) The Bankruptcy Court denies entry of the Confirmation Order and such order remains in effect for seven (7) Business Days after entry of such order, provided, that if the Loan Parties subsequently obtain an order of the Bankruptcy Court approving a plan of reorganization and a subsequent recognition order of the Canadian Court recognizing such order, that are in form and substance substantially similar to the Approved Plan of Reorganization or otherwise approved by the Required Lenders, such Event of Default shall be deemed cured or not to have occurred; or

(x) [Reserved]; or

(y) The failure to meet any of the Milestones by the applicable date for such Milestone set forth in the Bankruptcy Court DIP Order.

then, and in any such event, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent (and for the avoidance of doubt no other Person) shall, by notice to the Borrower, declare the FILO Term Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable, subject to the Bankruptcy Court DIP Order, and the Canadian Court DIP Recognition Order.

## SECTION 8. THE AGENTS

8.1 Appointment. Each Lender hereby irrevocably designates, appoints and authorizes the Administrative Agent and the Collateral Agent as the agents of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Administrative Agent and the Collateral Agent, in such capacities, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent and the Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, each Lender hereby authorizes the Administrative Agent and the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent and the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto and to enter into each Security Document, the Intercreditor Agreements and any other intercreditor or subordination agreements contemplated hereby on behalf of and for the benefit of the Lenders and the other Secured Parties and agrees to be bound by the terms thereof. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent and the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or

otherwise exist against the Administrative Agent or the Collateral Agent. Notwithstanding anything to the contrary herein or in any other Loan Document, (i) each Agent is authorized to take direction from the Required Lender Representative to the extent set forth in Section 1.5(b), (ii) each Agent is authorized to take direction from the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.2) and (iii) the Collateral Agent is authorized to take direction from the Administrative Agent.

Without limiting the powers of the Administrative Agent, for the purposes of holding any hypothec granted to the Attorney (as defined below) pursuant to the laws of the Province of Québec to secure the prompt payment and performance of any and all Obligations by any Loan Party, each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent and, to the extent necessary, ratifies the appointment and authorization of the Administrative Agent, to act as the hypothecary representative of the creditors as contemplated under Article 2692 of the Civil Code of Québec (in such capacity, the “Attorney”), and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Attorney under any related deed of hypothec. The Attorney shall: (a) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Attorney pursuant to any such deed of hypothec and applicable law, and (b) benefit from and be subject to all provisions hereof with respect to the Administrative Agent mutatis mutandis, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Lenders and the Loan Parties. Any person who becomes a Lender shall, by its execution of an Assignment and Assumption Agreement, be deemed to have consented to and confirmed the Attorney as the person acting as hypothecary representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Lender, all actions taken by the Attorney in such capacity. The substitution of the Administrative Agent pursuant to the provisions of this Section 8 also constitute the substitution of the Attorney.

8.2 Delegation of Duties. Each of the Administrative Agent and the Collateral Agent may execute any of its duties under this Agreement and the other Loan Documents by or through sub-agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. No such Agent shall be responsible for the negligence or misconduct of any such sub-agents or attorneys-in-fact selected by it with reasonable care. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of each such Agent and any such sub-agent, and shall apply to their respective activities as Arranger and as such Agent. No such Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

8.3 Exculpatory Provisions. Neither any Agent, Arranger, nor any of their respective officers, directors, employees, agents, advisors, attorneys-in-fact or affiliates shall be:

(a) liable to any other Credit Party for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan

Document (i) with the consent or at the request of the Required Lender Representative in accordance with Section 1.5, the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.2) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given in writing to such Agent by the Borrower or a Lender;

(b) responsible in any manner to any other Credit Party for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents or the Arranger under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Loan Party party thereto to perform its obligations hereunder or thereunder. The Agents and the Arranger shall not be under any obligation to any other Credit Party to ascertain or to inquire as to the observance or performance of any of the covenants or agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party. Neither the Administrative Agent nor the Collateral Agent nor the Arranger shall be under any obligation to any other Credit Party to ascertain or to inquire as to the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), or the creation, perfection or priority of any Lien purported to be created by the Security Documents, the value or the sufficiency of any Collateral, or the satisfaction of any condition set forth in Section 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent or the Arranger, as applicable;

(c) subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(d) subject to any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent or the Collateral Agent is required to exercise as directed in writing by the Required Lender Representative or the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that such Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;



(e) subject to a duty or responsibility to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent, the Collateral Agent, an Arranger or any of their respective Affiliates in any capacity, except as expressly set forth herein and in the other Loan Documents;

(f) obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it;

(g) responsible for any unsuitability, inadequacy, expiration or unfitness of any security interest created hereunder or pursuant to any other Loan Document nor shall it be obligated to make any investigation into, and shall be entitled to assume, the adequacy and fitness of any security interest created hereunder or pursuant to any other Loan Document; or

(h) responsible or liable for any failure or delay in the performance of its obligations hereunder or under any other Loan Document arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

8.4 Reliance by Administrative Agent. Each of the Administrative Agent and the Collateral Agent shall be entitled to rely, and shall be fully protected in relying and shall not incur any liability for relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, facsimile or email message, statement, order, telephonic or electronic notices or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Loan Parties), independent accountants and other experts selected by such Agent. Each of the Administrative Agent and the Collateral Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with such Agent. Each of the Administrative Agent and the Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lender Representative in accordance with Section 1.5 or the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents or, if so specified by this Agreement, all affected Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each of the Administrative Agent and the Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lender Representative in accordance with Section 1.5, the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents or, if so specified by this Agreement, all affected Lenders), and such request

and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans. In determining compliance with any condition hereunder to the occurrence of the Closing Date that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the occurrence of the Closing Date. The Administrative Agent and the Collateral Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

8.5 Notice of Default. Neither the Administrative Agent nor the Collateral Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless such Agent has received notice from a Lender, Parent or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Administrative Agent or the Collateral Agent receives such a notice, such Agent shall give notice thereof to the Lenders and the other such Agent. Each of the Administrative Agent and the Collateral Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents or, if so specified by this Agreement, all affected Lenders); provided that unless and until such Agent shall have received such directions, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

8.6 Non-Reliance on Agents, Arranger and Other Lenders. Each Lender expressly acknowledges that none of the Agents, the Arranger nor any of their respective officers, directors, employees, agents, advisors, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Agent or Arranger hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent or Arranger to any Lender. Each Lender represents to the Agents and the Arrangers that it has, independently and without reliance upon any Agent, Arranger or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent, Arranger or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, no Agent or Arranger shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of such

Agent or Arranger or any of their respective officers, directors, employees, agents, advisors, attorneys-in-fact or affiliates.

8.7 Indemnification. The Lenders agree to indemnify each Agent and its officers, directors, employees, affiliates, agents, advisors and controlling persons (each, an “Agent Indemnitee”) (to the extent not reimbursed by the Loan Parties and without limiting any obligation of the Loan Parties to do so), ratably according to their respective outstanding FILO Term Loans in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such outstanding FILO Term Loans immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs and expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent Indemnitee in any way relating to or arising out of, the Commitments, the FILO Term Loans, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent Indemnitee under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent Indemnitee’s gross negligence, bad faith or willful misconduct. The agreements in this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

8.8 Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from, own securities of, act as the financial advisor of or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any Subsidiary or other Affiliate thereof as though such Agent were not an Agent and without any duty to account therefor to the Lenders or provide notice to or consent of the Lenders with respect thereto. With respect to its Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms “Lender” and “Lenders” shall include each Agent in its individual capacity.

8.9 Successor Administrative Agent. Either of the Agents may resign as Agent upon 10 days’ notice to the Lenders and the Borrower. The Borrower and the Required Lenders, after consultation with the Agent (it being understood that the consent of the Agent shall not be required), may upon 10 days’ prior notice remove either or both Agents. If either Agent shall resign or be removed, then the Borrower and the Required Lenders (or, if an Event of Default has occurred and is continuing under Section 7.1(a), the Required Lenders) shall appoint a successor agent for the Lenders, which shall be a financial institution with an office in the United States, or an Affiliate of any such financial institution with an office in the United States, whereupon such successor agent shall succeed to the rights, powers and duties of such Agent, and the term “Administrative Agent” or “Collateral Agent”, as applicable, shall mean such successor agent effective upon such appointment and approval, and the former Agent’s rights, powers and duties as Administrative Agent or Collateral Agent, as applicable, shall be

terminated, without any other or further act or deed on the part of such former Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has been appointed as Administrative Agent or Collateral Agent, as applicable, by the date that is 10 days following a retiring Agent's notice of resignation or the delivery of such removal notice (or such earlier date as shall be agreed by the Borrower and the Required Lenders) (the "Resignation Effective Date"), the retiring Agent's resignation or removal, as the case may be, shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of such Agent hereunder until such time, if any, as the Borrower and the Required Lenders (or, if an Event of Default has occurred and is continuing under Section 7.1(a), the Required Lenders as set forth above) shall appoint a successor agent as provided for above; provided that in no event shall any successor Agent be a Defaulting Lender or a Disqualified Institution. After any retiring Agent's resignation or removal as Administrative Agent, the provisions of this Section 8 and of Section 9.3 shall continue to inure to its benefit.

8.10 Effect of Resignation or Removal. With effect from the Resignation Effective Date (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent (or its agent or bailee for such purpose) on behalf of the Lenders under any of the Loan Documents, the retiring or removed Collateral Agent (or its agent or bailee for such purpose) shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Borrower (or, if an Event of Default has occurred and is continuing under Section 7.1(a), the Required Lenders as set forth above) shall appoint a successor agent as provided for above. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Agent as of the Resignation Effective Date), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Section 8 and Section 9.3 shall continue in effect for the benefit of such retiring or removed Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Agent was acting as Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity (other than in its capacity as a Lender) hereunder or under the other Loan Documents, including, without limitation, (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Secured Parties and (B) in respect of any actions taken in connection with transferring the agency to any successor Agent.

8.11 Collateral and Guarantee Matters. Each of the Lenders hereby irrevocably authorizes the Administrative Agent and the Collateral Agent to, and the Administrative Agent and the Collateral hereby agree:

(a) to take such action and execute such documents as may be reasonably requested by any of the Loan Parties pursuant to Section 9.14 to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (i) upon the payment in full of the Obligations (other than Obligations in respect of Cash Management Obligations and contingent reimbursement and indemnification obligations) and termination of all Commitments, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, (iii) that is or becomes an Excluded Asset or (iv) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 9.2;

(b) to subordinate any Lien on any property granted to or held by the Collateral Agent on behalf of the Secured Parties under any Loan Document as set forth in the applicable Intercreditor Agreement; and

(c) to take such action and execute such documents as may be reasonably requested by any of the Loan Parties pursuant to Section 9.14 to release any Guarantor from its Guarantee Obligations and other obligations under the Loan Documents, and to release any Liens granted by it under the Loan Documents, if such Person ceases to be a Subsidiary or is or becomes an Excluded Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's and the Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantee Obligations or Liens pursuant to this Section 8.11. In each case as specified in this Section 8.11, the Administrative Agent and the Collateral Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement and to release the Liens granted by such Guarantor under the Loan Documents, in each case in accordance with the terms of this Section 8.11.

Neither the Administrative Agent nor the Collateral Agent shall be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent or the Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral, any security interests of the Administrative Agent or the Collateral Agent therein or any filings, registrations, or recordings made with respect thereto. Neither the Collateral Agent nor the Administrative Agent shall have any obligation whatsoever to any Lender or any other person to investigate, confirm or assure that the Collateral exists or is owned by any Loan Party or is insured or has been encumbered, or that the liens and security interests granted to the Collateral Agent pursuant hereto or any of the Loan Documents or otherwise have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority.

8.12 Appointment of Borrower. Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrower may execute such documents and provide such authorizations on behalf of such Loan Parties as the Borrower deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent or a Lender to the Borrower shall be deemed delivered to each Loan Party and (c) the Administrative Agent, or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrower on behalf of each of the Loan Parties.

8.13 Administrative Agent or Collateral Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, including during the pendency of the Chapter 11 Cases, each of the Administrative Agent and Collateral Agent (irrespective of whether the principal of any Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent or Collateral Agent shall have made any demand on the Loan Parties) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, Administrative Agent and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, Administrative Agent, Collateral Agent and their respective agents and counsel and all other amounts due Lenders, Administrative Agent and Collateral Agent hereunder) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to pay to Administrative Agent or Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent, Collateral Agent and their respective agents and counsel, and any other amounts due Administrative Agent or Collateral Agent hereunder. To the extent that the payment of any such compensation, expenses, disbursements and advances of Administrative Agent, Collateral Agent and their respective agents and counsel, and any other amounts due Administrative Agent or Collateral Agent under this Agreement out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

8.14 Agent Duties. If any of the rights, responsibilities or duties of the Agents conflict with such Agents' rights, responsibilities or duties under the Prepetition ABL Agreement, this Agreement shall supersede the Prepetition ABL Agreement.

8.15 Arranger. Anything herein to the contrary notwithstanding, the Arranger shall have no duties or responsibilities hereunder in its capacity as such.

8.16 The Collateral Agent. The Collateral Agent shall be entitled to all rights, protections, immunities and indemnities granted to it in the Security Documents as if set forth herein.

## SECTION 9. MISCELLANEOUS

9.1 Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent electronically or by facsimile, as follows:

- (i) if to Parent or the Borrower, to it at:

General Nutrition Centers, Inc.  
300 Sixth Avenue  
Pittsburgh, PA 15222  
Attention: Tricia Tolivar  
Telephone: (412) 288 4641  
Email: [Tricia-Tolivar@gnc-hq.com](mailto:Tricia-Tolivar@gnc-hq.com)

with copies (which shall not constitute notice) to:

Michèle O. Penzer  
Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022  
Facsimile: (212) 751-4864  
Telephone: (212) 906-1245  
Email: [michele.penzer@lw.com](mailto:michele.penzer@lw.com)

and

Latham & Watkins LLP  
330 North Wabash, Suite 2800  
Chicago, IL 60611  
Attention: Rick Levy and Caroline Reckler  
Telephone: (312) 876-7692 (Rick Levy); (312) 876-7663 (Caroline Reckler)  
Email: [Richard.Levy@lw.com](mailto:Richard.Levy@lw.com); [Caroline.Reckler@lw.com](mailto:Caroline.Reckler@lw.com)

- (ii) if to the Administrative Agent :

JPMorgan Chase Bank, N.A.  
 Loan and Agency Services Group  
 500 Stanton Christiana Rd.  
 NCC5 / 1<sup>st</sup> Floor  
 Newark, DE 19713  
 Attention: Mark Postupack  
 Telephone: 302-634-1005  
 Email: [mark.postupack@chase.com](mailto:mark.postupack@chase.com)

with a copy to:

JPMorgan Chase Bank, N.A.  
 270 Park Avenue, 43<sup>rd</sup> Floor  
 New York, New York 10017  
 Attention: James A. Knight  
 Facsimile: 917-464-7000  
 Telephone: 212-622-8486  
 Email: [james.a.knight@jpmorgan.com](mailto:james.a.knight@jpmorgan.com)

- (iii) if to any Lender, to it at its address (or facsimile number or email address) set forth in its Administrative Questionnaire
- (iv) notices and other communications delivered under any Loan Document to all Lenders shall also be delivered to (but which delivery shall not constitute delivery to any Lender):

Milbank LLP  
 2029 Century Park East, 33rd Floor  
 Los Angeles, California 90067-3019  
 Attention: Mark Shinderman  
 Telephone: (424) 386-4411  
 Email: [MShinderman@Milbank.com](mailto:MShinderman@Milbank.com)

and

Paul, Weiss, Rifkind, Wharton & Garrison, LLP  
 1285 Avenue of the Americas  
 New York, New York 10019-6064  
 Attention: Andrew Rosenberg; Jacob Adlerstein  
 Telephone: (212) 373-3158 (Andrew Rosenberg); (212) 373-3142 (Jacob Adlerstein)  
 Email: [arosenberg@paulweiss.com](mailto:arosenberg@paulweiss.com); [jadlerstein@paulweiss.com](mailto:jadlerstein@paulweiss.com)

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the



Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent, the Collateral Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(d) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, other than for direct or actual damages to the extent resulting from the gross negligence, bad faith or willful misconduct of such party or its Related Parties as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) The Administrative Agent, the Collateral Agent and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the Collateral Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party in accordance with Section 9.3. All telephonic notices to and other telephonic communications with the Administrative Agent or the Collateral Agent may be recorded by the Administrative Agent or the Collateral Agent, as applicable, and each of the parties hereto hereby consents to such recording.

9.2 Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the Collateral Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or

any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by Parent or the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, the Collateral Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly and adversely affected thereby (except in connection with the waiver of applicability of any post-default increase in interest rates (which waiver shall be effective with the consent of the Required Lenders)), (ii) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment without the written consent of each Lender directly and adversely affected thereby (it being understood that a waiver of any condition precedent set forth in Section 4.1, Section 4.2 or the waiver of any Default, mandatory prepayment or mandatory reduction of Commitments shall not constitute a postponement of the scheduled date of expiration of any Commitment of any Lender), (iii) change Section 2.21(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby or the “waterfall” contained therein without the written consent of each Lender directly and adversely affected thereby, (iv) change any of the provisions of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or grant any consent hereunder, or release all or substantially all of the Collateral or release Guarantors from their guarantee obligations under the Guarantee and Collateral Agreement and the Canadian Guarantee and Collateral Agreement representing all or substantially all of the value of such guarantees, taken as a whole, in each case, without the written consent of each Lender directly and adversely affected thereby, (v) increase the advance rates set forth in the definition of “Borrowing Base” without the consent of the Lenders holding at least 66  $\frac{2}{3}$ % of the aggregate amount of FILO Term Loans, (vi) change the definition of the “Borrowing Base” without the consent of the Lenders holding at least 66  $\frac{2}{3}$ % of the aggregate amount of FILO Term Loans, (vii) amend the Exit ABL Term Sheet or the conditions precedent to Exit Conversion set forth in Section 2.24, in each case without the consent of the Lenders holding at least 66  $\frac{2}{3}$ % of the aggregate amount of FILO Term Loans (provided that consent of each Lender directly and adversely affected thereby shall be required with respect to modifications of the terms of Exit FILO Loans that would require the consent of each directly and adversely affected Lender if such Exit FILO Loans were FILO Term Loans), (viii) permit the incurrence by any Loan Party of Indebtedness for borrowed money that is secured by (A) Liens on ABL Priority

Collateral that rank senior in priority to or *pari passu* with the Liens thereon in favor of the Lenders or (B) Liens on Term Priority Collateral that rank senior in priority to the Liens thereon in favor of the Lenders, in each case without the consent of the Lenders holding at least 66 ⅔% of the aggregate amount of FILO Term Loans, (ix) permit the Bankruptcy Court DIP Order to be amended or modified to change the priority, as between the Lenders and the Term Loan Lenders, of their respective claims or of the Liens on the ABL Priority Collateral or the Term Priority Collateral in a manner materially adverse to the Lenders without the consent of the Lenders holding at least 66 ⅔% of the aggregate amount of FILO Term Loans, or (x) permit the Bankruptcy Court DIP Order to be amended or modified in a manner materially adverse to the FILO Ad Hoc Group or the Lenders taken as a whole without the consent of the Lenders holding at least 66 ⅔% of the aggregate amount of FILO Term Loans; provided that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent in a manner adverse to the Administrative Agent or the Collateral Agent, respectively, without the prior written consent of the Administrative Agent or the Collateral Agent, as the case may be.

(c) Notwithstanding anything to the contrary contained in this Section 9.2, the Administrative Agent and the Borrower, in their discretion, may amend, modify or supplement any provision of this Agreement or any other Loan Document to (i) cure any ambiguity, omission, mistake, error, defect or inconsistency, so long as such amendment, modification or supplement does not directly and adversely affect the rights or obligations of any Lender, (ii) to permit additional affiliates of the Borrower to guarantee the Obligations and/or provide Collateral therefor and (iii) to add covenants and other terms for the benefit of the Lenders as provided herein. Subject to Section 1.5, such amendments shall become effective without any further action or consent of any other party to any Loan Document.

(d) Notwithstanding anything to the contrary contained in this Section 9.2 or any other Loan Document, guarantees, collateral security documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Requirements of Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement or any other Loan Documents.

9.3 Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by each Agent and its Affiliates, including the reasonable and documented out-of-pocket fees, charges and disbursements of the Ad Hoc Committee Advisors and of legal counsel for the Administrative Agent and the other Agents in connection with the preparation and administration of this Agreement or any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the Collateral Agent, or all Lenders collectively, including the reasonable and documented out-of-pocket fees, charges and disbursements of the Ad Hoc Committee Advisors and of legal counsel for the Administrative Agent and the Collateral Agent, or all Lenders collectively, in connection with the enforcement

or protection of its rights in connection with this Agreement, including its rights under this Section, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; provided that the Borrower's obligations under this Section 9.3(a) for fees and expenses of legal counsel shall be limited to fees and expenses of (x) (I) one outside legal counsel for each Agent and its Affiliates, taken as a whole, and (II) one outside legal counsel for all Indemnitees described in clauses (i) and (ii) above, taken as a whole, (y) in the case of any conflict of interest, one outside legal counsel for such affected Indemnitee or group of Indemnitees and (z) if necessary, (I) one local or foreign legal counsel in each relevant jurisdiction for each Agent and its Affiliates, taken as a whole, and (II) one local or foreign legal counsel in each relevant jurisdiction for all other Indemnitees described in clauses (i) and (ii) above, taken as a whole.

(b) The Borrower shall indemnify the Administrative Agent, each other Agent, the Arranger, each Lender and the Required Lender Representative, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee"), against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable and documented out-of-pocket expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of (i) one outside legal counsel to the Administrative Agent and one outside legal counsel to the other Indemnitees taken as a whole, (ii) in the case of any conflict of interest, one outside legal counsel for the affected Lender or group of Lenders and (iii) if necessary, one local or foreign legal counsel in each relevant jurisdiction), which may at any time be imposed on, incurred by or asserted or awarded against any such Indemnitee arising out of, in connection with, or as a result of (w) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or any other transactions contemplated hereby, (x) any Loan or the use of the proceeds therefrom, (y) any actual or alleged presence or release of Hazardous Materials at, on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability of the Borrower or any of its Subsidiaries, or (z) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (1) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or material breach of its obligations under the Loan Documents or willful misconduct of such Indemnitee or its Primary Related Parties, (2) arise out of any claim, litigation, investigation or proceeding that does not involve an act or omission by the Borrower or any of its Affiliates and that is brought by an Indemnitee against any other Indemnitee (provided that in the event of such a claim, litigation, investigation or proceeding involving a claim or proceeding brought against the Arranger (in its capacity as such), the Administrative Agent (in its capacity as such) or the Collateral Agent (in its capacity as such) by other Indemnitees, the Arranger (in its capacity as such), the Administrative Agent (in its capacity as such) or the Collateral Agent (in its capacity as such) shall be entitled (subject to the other limitations and exceptions set forth above) to the benefit of the indemnities set forth above) or (3) are in respect of indemnification payments made pursuant to Section 8.7, to the extent the Borrower would not have been or was not required to make such indemnification payments directly pursuant to the provisions of this Section 9.3(b). This Section 9.3 shall not apply to Taxes, except any Taxes that represent losses,

claims, damages or liabilities arising from a non-Tax claim. As used herein, the “Primary Related Parties” of an Indemnitee are its Affiliates with direct involvement in the negotiation of the Facilities under this Agreement and such Indemnitee’s and Affiliates’ respective directors, officers and employees.

(c) To the extent permitted by applicable law, none of Parent, the Borrower nor any Indemnitee shall assert, and Parent, the Borrower and each Indemnitee hereby waives, any claim against Parent, the Borrower or any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any agreement or instrument contemplated hereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and, to the extent permitted by applicable law, Parent, the Borrower and each Indemnitee hereby waive, release and agree not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that nothing contained in this paragraph shall limit the obligations of the Borrower under Section 9.3(b) in respect of any such damages claimed against the Indemnitees by Persons other than Indemnitees.

(d) All amounts due under this Section shall be payable not later than thirty days after written demand therefor.

9.4 Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) subject to Section 6.4, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) 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.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender or if an Event of Default has occurred and is continuing under Section 7.1(a), to any other Eligible Assignee; and provided, further, that the Borrower shall be deemed to have consented to any such assignment unless the Borrower shall have objected thereto by written notice to the Administrative Agent not later than the tenth

Business Day following the date the Borrower acknowledges its receipt of notice of the proposed assignment; and

(B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a FILO Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

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

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Loans, the amount of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default under Section 7.1(a) has occurred and is continuing;

(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;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with (unless waived by the Administrative Agent in its sole discretion) a processing and recordation fee of \$3,500;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws;

(E) no such assignment shall be made to a natural person; and

(F) such assignment does not violate Section 9.4(g).

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its

obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.18, 2.19, 2.20 and 9.3). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.4 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.4(b)(vi).

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and principal amount and stated interest of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and, if an Event of Default has occurred and is continuing, any Lender (but only with respect to the entries related to such Lender), at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section (unless waived by the Administrative Agent in its sole discretion) and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.21(d) or 8.7, the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) Subject to compliance with Section 9.4(g), any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement 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, modification or waiver described in the first proviso to Section 9.2(b) that (1) requires the consent of each Lender or each directly and adversely affected Lender and (2) directly and adversely affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.18, 2.19 and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.8 as though it were a Lender, provided such Participant agrees to be subject to Section 2.21(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Loans, or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Loan or other obligation is in registered form under Section 5f.103-1(c) and Proposed Section 1.163-5(b) (and any amended or successor version) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. The portion of the Participant Register relating to any Participant requesting payment from the Borrower under the Loan Documents shall be made available to the Borrower upon request.

(vii) A Participant shall not be entitled to receive any greater payment under Section 2.18, 2.19 or 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless (A) the Borrower is notified of the participation sold to such Participant and the sale of the participation to such Participant is made with the Borrower's prior written consent or (B) such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.20 unless such Participant agrees, for the benefit of the Borrower, to comply (and actually complies) with Section 2.20(e) as though it were a Lender.

(c) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.



(d) [Reserved].

(e) [Reserved].

(f) [Reserved].

(g) No assignment or participation shall be made to any Person that is a Disqualified Institution to the extent the list thereof has been provided to any Lender requesting the same as of the date (the “Trade Date”) on which such Lender entered into a binding agreement to sell and assign or participate all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any Assignee that becomes a Disqualified Institution after the applicable Trade Date, (x) such Assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Acceptance with respect to such Assignee will not by itself result in such Assignee no longer being considered a Disqualified Institution. Any assignment in violation of this paragraph (g) shall not be void, but the other provisions of this paragraph (g) shall apply.

(h) If any assignment or participation is made to any Disqualified Institution without the Borrower’s prior written consent in violation of clause (g)(i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.4), all of its interest, rights and obligations under this Agreement to one or more Assignees at the lower of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations.

(i) Notwithstanding anything to the contrary contained in this Agreement, (A) Disqualified Institutions will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, any other Loan Party, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any plan of reorganization, each Disqualified Institution party hereto hereby agrees (1) not to vote on such plan of reorganization, (2) if such Disqualified Institution does vote on such plan of reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has

accepted or rejected such plan of reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(j) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to provide the list of Disqualified Institutions to each Lender requesting the same and to post such list to the Platform. Each Lender shall have the right, and the Borrower hereby authorizes each Lender, to provide the list of Disqualified Institutions to any of such Lender's actual or prospective transferees (including any actual or prospective assignee or participant).

(k) The Administrative Agent, in its capacity as such, shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions; provided that without limiting the generality of the foregoing, the Administrative Agent, in its capacity as such, shall not (a) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Institution or (b) have any liability with respect to or arising out of any assignment or participation of loans, or disclosure of confidential information in connection therewith, to any Disqualified Institution; it being agreed that the foregoing shall not relieve the Administrative Agent, to the extent constituting a Lender, from its obligations in respect of Disqualified Institutions in connection with assignments and participations, and disclosure of confidential information in connection therewith, by it.

9.5 Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement (excluding Obligations in respect of Cash Management Obligations and contingent reimbursement and indemnification obligations that are not then due and payable at the time all other Obligations hereunder are discharged) is outstanding and unpaid. The provisions of Sections 2.18, 2.19, 2.20 and 9.3 and Section 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans or the termination of this Agreement or any provision hereof.

#### 9.6 Counterparts; Integration; Electronic Signatures.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and

supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.1), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an “Ancillary Document”) that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower and each Loan Party hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Borrower and the Loan Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (ii) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (iii) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (iv) waives any claim against any Indemnitee for any losses, claims (including intraparty claims), demands, damages or liabilities of any kind arising solely from the Administrative Agent’s and/or any Lender’s reliance on or use of Electronic Signatures and/or

transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any losses, claims (including intraparty claims), demands, damages or liabilities of any kind arising as a result of the failure of the Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

9.7 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

9.8 Right of Setoff. Subject to the terms of the Bankruptcy Court DIP Order, the Canadian Court DIP Recognition Order and the Carve Out, if an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time with the prior written consent of the Administrative Agent, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) (excluding payroll, tax withholding and trust accounts maintained in the ordinary course of business) at any time held and other obligations at any time owing by such Lender to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmaturing. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have but subject to the terms of the Bankruptcy Court DIP Order, the Canadian Court DIP Recognition Order and the Carve Out. Each Lender shall notify the Administrative Agent and the Borrower promptly after any such setoff.

9.9 Governing Law; Jurisdiction; Consent to Service of Process. (a) EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY CODE, THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE BANKRUPTCY COURT. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE BANKRUPTCY COURT AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH HEREIN. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE ADMINISTRATIVE AGENT AND THE LENDERS

TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN SUCH COURT AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(c) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.1. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(d) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

9.12 Confidentiality. (a) Each of the Administrative Agent, the Arranger and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (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), (ii) to the extent requested by any regulatory authority claiming jurisdiction over it, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (provided that the applicable Agent or such Lender, as applicable, shall notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority claiming jurisdiction over it) unless such notification is prohibited by applicable law, rule or regulation), (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) to any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to the Borrower and its obligations (provided, such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this Section 9.12 or other provisions at least as restrictive as this Section 9.12), (vii) with the prior written consent of the Borrower or (viii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section 9.12 or (B) becomes available other than as a result of a breach of this Section 9.12 to the Administrative Agent, the Arranger or any Lender on a nonconfidential basis from a source other than the Borrower or any of its Affiliates. For the purposes of this Section, "Information" means all information received from Parent, the Borrower or any of their Affiliates relating to Parent or the Borrower or any of its Subsidiaries or businesses, other than any such information that is available other than as a result of a breach of this Section 9.12 to the Administrative Agent, the Arranger or any Lender on a nonconfidential basis prior to disclosure by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section 9.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information which shall in no event be less than commercially reasonable care. To the extent the list of Disqualified Institutions has been provided to any Lender requesting the same, Information shall not be disclosed to a Disqualified Institution that constitutes a Disqualified Institution at the time of such disclosure without the Borrower's prior written consent.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

**(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS AND WARRANTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.**

9.13 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”) and the Administrative Agent and the Collateral Agent (in each case for themselves and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Act, it may be required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or such Agent, as applicable, to identify the Borrower in accordance with the Act.

9.14 Release of Liens and Guarantees. (a) In the event that any Loan Party conveys, sells, leases, assigns, transfers or otherwise Disposes of all or any portion of any of the Capital Stock or assets of any Loan Party to a Person that is not (and is not required hereunder to become) a Loan Party in a transaction permitted under this Agreement, the Liens created by the Loan Documents in respect of such Capital Stock or assets shall automatically terminate and be released without the requirement for any further action by any Person, and the Administrative Agent and the Collateral Agent shall promptly (and the Lenders hereby authorize the Administrative Agent and the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower’s expense to further document and evidence such termination and release of Liens created by any Loan Document in respect of such Capital Stock or assets, and, in the case of a transaction permitted under this Agreement the result of which is that a Loan Party would cease to be a Subsidiary or would become an Excluded Subsidiary, the Guarantee Obligations created by the Loan Documents in respect of such Loan Party (and all security interests granted by such Guarantor under the Loan Documents) shall automatically terminate and be released without the requirement for any further action by any Person, and the Administrative Agent and the Collateral Agent shall promptly (and the Lenders hereby authorize the Administrative Agent and the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower’s expense to further document and evidence such termination and release of such security interests and such Loan Party’s Guarantee Obligations in respect of the Obligations (including, without limitation, its Guarantee Obligations under the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement). Any representation, warranty or covenant contained in any Loan Document relating to any such Capital Stock, asset or subsidiary of any Loan Party shall no longer be deemed to be made with respect thereto once such Capital Stock or asset or Subsidiary is so conveyed, sold, leased, assigned, transferred or disposed of.

(b) Upon the payment in full of the Obligations (excluding Obligations in respect of Cash Management Obligations and contingent reimbursement and indemnification obligations that are not then due and payable), all Liens created by the Loan Documents shall automatically terminate and be released without the requirement for any further action by any Person, and the Collateral Agent shall promptly (and the Lenders hereby authorize the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower's expense to further document and evidence such termination and release of Liens created by the Loan Documents, and the Guarantee Obligations created by the Loan Documents in respect of the Guarantors shall automatically terminate and be released without the requirement for any further action by any Person, and the Collateral Agent shall promptly (and the Lenders hereby authorize the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by Parent or the Borrower and at the Borrower's expense to further document and evidence such termination and release of the Guarantors' Guarantee Obligations in respect of the Obligations (including, without limitation, the Guarantee Obligations under the Guarantee and Collateral Agreement or the Canadian Guarantee and Collateral Agreement).

9.15 Enforcement Matters. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against Parent, the Borrower, any of its Restricted Subsidiaries or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 7.1 for the benefit of the Required Lenders; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 9.8 (subject to the terms of Section 2.21(c)), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then the Required Lenders (and no other Person) shall have the rights otherwise ascribed to the Administrative Agent at the instruction of the Required Lenders pursuant to Section 7.1.

9.16 No Fiduciary Duty. Each Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the "Lender Parties") may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender Parties, on the one hand, and such Loan Party, its stockholders or its affiliates, on the other. The Loan Parties acknowledge and agree that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lender Parties, on the one hand, and the Loan Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender Parties have assumed any advisory, agent (other than to the extent set forth in Section 9.4(b)(iv)) or fiduciary responsibility in favor of any Loan Party, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with



respect thereto) or the process leading thereto (irrespective of whether any Lender Parties have advised, are currently advising or will advise any Loan Party, its stockholders or its Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents, (y) the Administrative Agent, the Collateral Agent, their respective Affiliates and the Lenders may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Collateral Agent, any of their respective Affiliates nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates and (z) the Lender Parties are acting solely as principals and not as the agents or fiduciaries of any Loan Party, its management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate, that it is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party agrees that it will not claim that the Lender Parties have rendered advisory services of any nature or respect, or owe a fiduciary or similar duty to such Loan Party, in connection with such transaction or the process leading thereto. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Collateral Agent, any of their respective Affiliates or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

9.17 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or any Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

9.18 Security Documents and Intercreditor Agreements. The parties hereto acknowledge and agree that any provision of any Loan Document to the contrary notwithstanding, prior to the discharge in full of all “Obligations” (as defined in the Term Loan DIP Credit Agreement and in the Prepetition Term Loan Agreement), the Loan Parties shall not be required to act or refrain from acting under any Security Document with respect to the Term Loan Priority Collateral in any manner that would result in a “Default” or “Event of Default” (as defined in the Term Loan DIP Credit Agreement and the Prepetition Term Loan Agreement) under the terms and provisions of the “Loan Documents” (as defined in the Term Loan DIP Credit Agreement and the Prepetition Term Loan Agreement). Additionally, each Lender hereunder:

(a) consents to the subordination of Liens provided for in the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order; and

(b) agrees that it will be bound by and will take no actions contrary to the provisions of the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order.

The foregoing provisions are intended as an inducement to the lenders under the Term Loan DIP Credit Agreement to enter into the Term Loan DIP Credit Agreement and such lenders are intended third party beneficiaries of such provisions.

9.19 Canadian Anti-Money Laundering Legislation. (a) Each Loan Party acknowledges that, pursuant to Canadian Anti-Money Laundering Legislation and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws (collectively, including any guidelines or orders thereunder, “AML Legislation”), the Lenders may be required to obtain, verify and record information regarding the Loan Parties and their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Loan Parties, and the transactions contemplated hereby. Each Loan Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any prospective assignee or participant of a Lender or any Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(b) If the Administrative Agent has ascertained the identity of any Loan Party or any authorized signatories of the Loan Parties for the purposes of applicable AML Legislation, then the Administrative Agent:

(i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a “written agreement” in such regard between each Lender and the Administrative Agent within the meaning of the applicable AML Legislation; and

(ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that neither the Administrative Agent nor any other Agent has any obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any Loan Party or any such authorized signatory in doing so.

9.20 Judgment Currency. If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the “Original Currency”) into another currency (the “Second Currency”), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. The Borrower agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged

only to the extent that, on the Business Day following the date the Administrative Agent receives payment of any sum so adjudged to be due hereunder in the Second Currency, the Administrative Agent may, in accordance with normal banking procedures, purchase, in the New York foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency, the Borrower agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify the Administrative Agent against such loss; and if the amount of the Original Currency so purchased or could have been so purchased is greater than the amount originally due in the Original Currency, the Administrative Agent agrees to remit such excess amount to the Borrower. The term “rate of exchange” in this Section 9.19 means the spot rate at which the Administrative Agent, in accordance with normal practices, is able on the relevant date to purchase the Original Currency with the Second Currency, and includes any premium and costs of exchange payable in connection with such purchase.

9.21 Electronic Execution. The words “delivery,” “execute,” “execution,” “signed,” “signature,” and words of like import in any Loan Document or any other document executed in connection herewith shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, 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, physical delivery thereof 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; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided further, without limiting the foregoing, upon the request of the Administrative Agent, any electronic signature shall be promptly followed by such manually executed counterpart.

9.22 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(b) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(c) the effects of any Bail-in Action on any such liability, including (without limitation), if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

9.23 Conflicts. If any provision in this Agreement or any other Loan Document expressly conflicts with any provision in the Interim DIP Order or Final DIP Order, the provisions in the Bankruptcy Court DIP Order shall govern and control.

9.24 Revolver Termination. The parties hereto acknowledge and agree that the Revolver Termination has been consummated notwithstanding that the Borrower provided fewer than the three Business Days' notice specified for termination of commitments and prepayment of loans in Sections 2.11 and 2.13 of the Prepetition ABL Agreement.

9.25 Amendment and Restatement. This Agreement constitutes an amendment to and restatement of the Prepetition ABL Agreement. The parties hereto hereby agree to the terms of this Agreement and in furtherance thereof, further agree that, on the Closing Date, this Agreement shall be amended and restated as set forth herein. The FILO Term Loan Lenders (as defined in the Prepetition ABL Agreement) holding at least 66 ⅔% of the FILO Term Loans (as defined in the Prepetition ABL Agreement) hereby authorize and instruct the Administrative Agent and the Collateral Agent to execute and deliver the other Loan Documents contemplated to be executed and delivered on the date hereof, and shall be deemed to have consented to, approved or accepted or to be satisfied with each such Loan Document or other matter required thereunder to be consented to, approved or accepted or satisfactory to the FILO Term Loan Lenders (as defined in the Prepetition ABL Agreement) holding at least 66 ⅔% of the FILO Term Loans (as defined in the Prepetition ABL Agreement).

9.26 Termination of Certain Provisions of that certain Second Amendment, dated as of May 15, 2020, and that certain Third Amendment, dated as of June 12, 2020. Section 2 and Section 3 of that certain Second Amendment, dated as of May 15, 2020, and Section 2 of that certain Third Amendment, dated as of June 12, 2020, in each case to the Prepetition ABL Agreement are hereby deleted and of no further force or effect.

9.27 Operating Account. The parties hereto acknowledge and agree that the Operating Account does not constitute (a) ABL Priority Collateral or (b) Collateral for the Obligations.

## SECTION 10. SECURITY AND PRIORITY

### 10.1 Collateral; Grant of Lien and Security Interest.

(a) Pursuant to, and otherwise subject to the terms of, the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order and in accordance with the terms thereof and subject to the Carve Out, as security for the full and timely payment and performance

of all of the Obligations, the Loan Parties hereby pledge and grant to the Collateral Agent (for the benefit of the Secured Parties), a security interest in and to, and a Lien on, all of the Collateral.

(b) Notwithstanding anything herein to the contrary (i) all proceeds received by the Collateral Agent and the Lenders from the Collateral subject to the Liens granted in this Section 10.1 and in each other Loan Document and by the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order shall be subject in all respects to the Carve Out and (ii) no Person entitled to amounts in respect of the Carve Out shall be entitled to sell or otherwise dispose, or seek or object to the sale or other disposition, of any Collateral.

#### 10.2 Priority and Liens Applicable to Loan Parties.

(a) Upon entry of the Interim DIP Order or Final DIP Order and subject to the terms thereof, as the case may be, the Obligations, Liens and security interests in favor of the Secured Parties shall, subject in all respects to the Carve Out, at all times, pursuant to the Bankruptcy Code, be secured by a perfected Lien on and security interest in all of the Collateral of the Loan Parties.

(b) The relative priorities of the Liens with respect to the Collateral shall be as set forth in the Interim DIP Order (and, when entered, the Final DIP Order).

(c) Each Loan Party hereby confirms and acknowledges that, pursuant to the Interim DIP Order (and, when entered, the Final DIP Order), the Liens in favor of the Collateral Agent on behalf of and for the benefit of the Secured Parties in all of the Collateral shall be created and perfected, to the maximum extent permitted by law, without the execution or the recordation or filing in any land records or filing offices of, any mortgage, assignment, security agreements, mortgages, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Collateral Agent of, or over, any Collateral, as set forth in the Interim DIP Order (and, when entered, the Final DIP Order).

10.3 Grants, Rights and Remedies. The Liens and security interests granted pursuant to Section 10.1 hereof and the administrative claim priority and lien priority granted pursuant to Section 10.2 hereof may be independently granted in the Loan Documents. This Agreement, the Bankruptcy Court DIP Order and such other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Agents and the Lenders hereunder and thereunder are cumulative; provided that to the extent of conflict the Bankruptcy Court DIP Order controls.

10.4 No Filings Required. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim DIP Order or the Final DIP Order, as the case may be, and entry of the Interim DIP Order shall have occurred on or before the date of the initial Borrowing hereunder. The Collateral Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, take possession or control of any Collateral, or take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, the Interim DIP Order or the Final DIP Order, as the case may be, or any other Loan Document.

10.5 Survival. Except as set forth in the Bankruptcy Court DIP Order and the Canadian Court DIP Recognition Order, the Liens, lien priority, administrative priorities and other rights and remedies granted to the Collateral Agent and the Lenders pursuant to this Agreement, the Bankruptcy Court DIP Orders and the other Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the Borrower (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever.

*(signature pages follow)*

**Exhibit J<sup>1</sup>**

**NEW REVOLVER BASKET AND EXIT FILO FACILITY TERM SHEET**

Set forth below is a summary of the principal terms and conditions for the New Revolver Facility and the Exit FILO Facility (each as defined below). Unless otherwise noted below, capitalized terms used but not defined in this Exhibit J shall have the meanings set forth in the Restructuring Support Agreement or the Debtor-in-Possession ABL Credit Agreement (the “DIP ABL FILO Credit Agreement”), to which this Exhibit J is attached.

**Summary of Principal Terms and Conditions**

**Borrower:** Either (i) a new entity as contemplated by the Restructuring Support Agreement or (ii) reorganized General Nutrition Centers, Inc., a Delaware corporation, formerly a debtor and debtor-in-possession in the Chapter 11 Cases (the “Company” or the “Borrower”); *provided* that the Borrower shall be the same as the borrower under Exit Term Loan Facility (as defined in the Restructuring Support Agreement).

**Guarantors:** Either (i) new entities as contemplated by the Restructuring Support Agreement or (ii) each of the entities listed on Exhibit A-1 hereof (collectively, the “Guarantors” and, together with the Borrower, the “Loan Parties”); *provided* that the Guarantors shall be the same as the guarantors under the Exit Term Loan Facility. All obligations of the Borrower under the Exit FILO Facility will be unconditionally guaranteed on a joint and several basis by the Guarantors. [In addition, [TaxFilerCo] shall provide a limited guarantee and security agreement pledging Tax Refunds (as defined below) to the Agent for the benefit of the Secured Parties, or alternatively, shall enter into an exit tax sharing agreement.]

For the avoidance of doubt, each of the affiliates of the Borrower listed on Exhibit A-2 hereof will not be a Guarantor.

**New Revolver Facility Basket:** A secured revolving credit facility on a “first-out” basis (the “New Revolver Facility”) of new money revolving loans and letter of credit obligations (collectively, the “New Revolver Loans”, and the lenders thereof, the “New Revolver Lenders”). Such facility will be on market terms, will have the same lien priority on the Collateral (as defined below) as the Exit FILO Facility (as defined below) and will be paid prior to the Exit FILO Facility in the payment waterfall.

For the avoidance of doubt, the consummation of the New Revolver Facility shall not be a condition precedent to the effectiveness and consummation of the Plan (as defined below), the Exit FILO Facility or the Exit Term Loan Facility. The New Revolver Facility shall operate as a basket for future debt of the Company, it being understood that the Borrower shall be permitted, whether at the Exit Date or thereafter, to add the New Revolver Facility if, after giving effect thereto, (a) the New Revolver Facility availability (not

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<sup>1</sup> This Term Sheet will also be Exhibit B to the Exit Term Loan Facility Term Sheet.

the commitments therefor) does not exceed the remainder of (x) the Borrowing Base (without giving effect to the Availability Cushion (as defined below)) less (y) the aggregate principal amount of Exit FILO Loans then outstanding and (b) as a condition to drawing on such New Revolver Facility, the Borrower shall be in compliance with the Borrowing Base (without giving effect to the Availability Cushion) after giving effect to such borrowing.

**Exit FILO Facility:** A \$275 million secured term loan credit facility (the “Exit FILO Facility”) comprised of FILO Term Loans (as defined in the DIP ABL FILO Credit Agreement) (the “DIP FILO Loans”) converted on a dollar-for-dollar basis on the Exit Date (as defined below) (the “Exit FILO Loans”, and the lenders thereof, the “Exit FILO Lenders”). The Exit FILO Loans will be incurred on a “last out” basis with payment priority behind the New Revolver Facility (at any time that a New Revolver Facility is in effect). For the avoidance of doubt, the Exit FILO Loans shall include all unpaid amounts due and payable (including interest and fees) in respect of the DIP FILO Loans (the “DIP FILO Unpaid Amounts”).

The “Plan” means the Chapter 11 Plan of Reorganization and the related disclosure statement of the Debtors to be filed with the Bankruptcy Court, in form and substance reasonably satisfactory to the Required FILO Lenders (as defined below). The reorganization contemplated by the Plan is referred to herein as the “Reorganization.”

**Conversion of Claims and Use of Proceeds:** On the Exit Date, the DIP FILO Loans and the DIP FILO Unpaid Amounts will be converted dollar-for-dollar into Exit FILO Loans.

**Exit Date:** The date (the “Exit Date”) on which the Exit FILO Loans are issued under the Exit FILO Facility and all Closing Conditions (as defined below) have been satisfied or waived by lenders holding more than 66 2/3% of the loans under the Exit FILO Facility (the “Required FILO Lenders”).

**Maturity:** With respect to the Exit FILO Loans, the date that is four (4) years after the Exit Date.

**Collateral:** The New Revolver Facility and the Exit FILO Facility will both be secured by a perfected lien on, with the priority described below under the caption “Priority,” substantially all of the Loan Parties’ tangible and intangible assets (collectively, the “Collateral”), including owned and ground leased real property, tax refunds, the equity interests of the Guarantors and other majority owned subsidiaries (subject to customary exclusions) and all deposit and security accounts (which shall be subject to control agreements to the extent set forth in the Pre-Existing FILO Facility Documentation (as defined below)), with materiality thresholds and exceptions to be agreed.

**Priority:** The New Revolver Facility and the Exit FILO Facility will both have (i) a first priority lien on ABL Priority Collateral, subject to certain customary baskets and exceptions to be agreed (“Permitted Liens”), and (ii) a second priority lien on Term Priority Collateral, subject to Permitted Liens, which ABL Priority Collateral and Term Priority Collateral shall be as defined in and subject to ranking and intercreditor arrangements substantially



consistent with the Prepetition Intercreditor Agreement or otherwise reasonably satisfactory to the Required FILO Lenders, subject to any agreed post-closing perfection requirements and subject to thresholds, exceptions and exclusions substantially identical to the Pre-Existing FILO Facility Documentation.

The Exit Term Loan Facility will have (i) a first priority lien on Term Priority Collateral, subject to Permitted Liens, and (ii) a second priority lien on ABL Priority Collateral, subject to Permitted Liens.

**Exit FILO Facility Documentation:**

The loan documents governing the Exit FILO Facility shall contain terms substantially similar to the terms of that certain ABL Credit Agreement dated as of February 28, 2018, (as amended by that certain First Amendment dated as of March 20, 2018 and as in effect on such date) among GNC Corporation, a Delaware corporation, as parent, General Nutrition Centers, Inc., a Delaware corporation, as borrower, each other borrower from time to time party thereto, the several banks and other financial institutions or entities from time to time parties thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (the “Pre-Existing FILO Facility Documentation”), with modifications to reflect this term sheet and other adjustments reasonably satisfactory to the Borrower and the Required FILO Lenders (such loan documents, the “Exit FILO Facility Documentation”).

**Conditions to Closing:**

Limited to the following (collectively, the “Closing Conditions”):

- A. The negotiation, execution and delivery of the Exit FILO Facility Documentation by the Loan Parties.
- B. The following documents shall be reasonably satisfactory to the Borrower and the Required FILO Lenders:
  - the Plan;
  - the terms of the Exit Term Loan Facility, which terms shall be deemed reasonably satisfactory to the Required FILO Lenders if substantially consistent with the Exit Term Loan Facility Term Sheet in the form attached hereto as Exhibit B; and
  - the confirmation order with respect to the Plan, and corresponding recognition order of the Canadian Court.
- C. To the extent that the Borrower or any Guarantor is a new entity formed as contemplated by the Restructuring Support Agreement, all assets that are to be owned by such new entity under the Plan shall have been transferred to such new entity pursuant to documentation in form and substance reasonably acceptable to the Agent.
- D. Substantial consummation (as defined in Section 1101 of the Bankruptcy Code) of the Plan (all conditions precedent set forth therein having been satisfied or waived in accordance with the terms thereof).
- E. Immediately after the Exit Date, the Loan Parties shall have outstanding no indebtedness for borrowed money other than indebtedness outstanding under the New Revolver Facility (if any), the

Exit FILO Facility, the Exit Term Loan Facility and indebtedness contemplated by the Plan.

- F. Accuracy in all material respects (or, in the case of representations and warranties that are qualified by materiality, in all respects) on the Exit Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date) of representations and warranties contained in the Exit FILO Facility Documentation which shall be no more burdensome to the Company than those set forth in the Pre-Existing FILO Facility Documentation and absence of an Event of Default under the Exit FILO Facility Documentation.
- G. Compliance with customary documentation conditions for a facility of this size, type, and purpose, including the delivery of customary legal opinions and closing certificates (including a customary solvency certificate in substantially the form provided under the Pre-Existing FILO Facility Documentation), good standing certificates and certified organizational documents, in each case, in form and substance reasonably satisfactory to the Required FILO Lenders.
- H. The Agent shall have a perfected lien on the Collateral of the Loan Parties, subject to Permitted Liens and any post-closing perfection requirements, with the priority set forth under the heading “Priority” hereunder; *provided* that security interests will not be required to be perfected on the Exit Date other than by (A) filings of UCC and PPSA financing statements in the office of the secretary of state or provincial ministry (or similar central filing office) of the Loan Parties, and (B) delivery to the Agent, for the benefit of the secured parties, of promissory notes representing material intercompany indebtedness for borrowed money and equity certificates (other than equity issued by GNC Holdings, Inc.) representing equity issued by Loan Parties, in each case, together with customary transfer powers executed in blank.
- I. Receipt by the Agent of reasonably satisfactory results of customary lien searches.
- J. The Loan Parties shall have used commercially reasonable efforts to obtain a public corporate credit rating (but not a specific rating) from either Standard & Poor’s, a division of S&P Global, Inc., or Moody’s Investors Service, Inc. in respect of the Exit FILO Facility.
- K. All requisite governmental and material third party approvals shall have been obtained, and there shall be no litigation, governmental, administrative or judicial action against the Loan Parties, in each case, the failure to obtain or existence of which would reasonably be expected to restrain, prevent or impose materially burdensome restrictions on the substantial consummation of the Plan or the Exit FILO Facility.
- L. Delivery of all documentation and other information required by bank regulatory authorities under applicable “know-your-customer”, anti-money laundering rules and regulations, and the Patriot Act that has

been reasonably requested by the Exit FILO Lenders at least ten (10) business days prior to the closing date of the Exit FILO Facility.

- M. Payment by the Borrower on the Exit Date of all reasonable and documented out-of-pocket costs, fees and expenses owed or otherwise required to be paid pursuant to the Exit FILO Facility to the Agent and Lenders (including reasonable and documented fees and expenses of counsel and one financial advisor (which shall be Alix Partners for the FILO Ad Hoc Group); *provided*, that legal fees shall be limited to the reasonable and documented fees and disbursements of one counsel for the Agent and one U.S. counsel for the FILO Ad Hoc Group (which shall be Paul, Weiss, Rifkind, Wharton & Garrison LLP) and, in addition, local counsel for each in each appropriate jurisdiction), including reasonable and documented out-of-pocket costs and expenses of (a) the Agent administering the Exit FILO Facility and (b) preparing all documents relating to the Exit FILO Facility.
- N. The Company shall file with the SEC a Form 15 to deregister the outstanding securities of the Company under the Exchange Act and will not be a reporting company under the Exchange Act immediately following the effective date of the Plan.

**Interest Rate:**

With respect to the Exit FILO Loans, (i) initially, LIBOR + 9.00% *per annum* paid in cash and (ii) upon elimination of the Availability Cushion, LIBOR + 7.00% *per annum* paid in cash.

LIBOR will be subject to a 1.00% “floor”.

During the continuance of a payment or bankruptcy Event of Default, past due amounts under the Exit FILO Facility will bear interest at an additional 2.00% *per annum* above the interest rate otherwise applicable.

The Borrower shall also have the right to elect that the Exit FILO Loans bear interest at a rate determined by reference to an “alternate base rate”, and the interest rate margin with respect to Exit FILO Loans bearing interest at the alternate base rate shall be reduced by 1.00% *per annum*.

**Borrowing Base:**

On the Exit Date, to be substantially identical (including with respect to advance rates, reserves and cash dominion) to the DIP ABL FILO Credit Agreement, including the component of the Borrowing Base thereunder consisting of an amount equal to \$17.5 million (the “Availability Cushion”), which Availability Cushion shall be eliminated beginning July 1, 2021. The Borrower may, at its option elect to reduce the Availability Cushion, in whole or in part and on one or more occasions, earlier than set forth in the preceding sentence (the date that the Availability Cushion is reduced to zero is referred to herein as the “Availability Cushion Termination Date”). The Exit FILO Facility shall not include “cash dominion” provisions. Any “reserves” shall (i) prior to the occurrence of the Availability Cushion Termination Date, be calculated as set forth in the DIP ABL FILO Credit Agreement, and (ii) on and after the occurrence of the Availability Cushion Termination Date, be calculated as set forth in the Pre-Existing FILO Facility Documentation.

**Financial Covenant:** None.

**Agency Fees:** As agreed with the Agent.

**Scheduled Amortization:** None.

**Call Protection:** None.

**Lender Voting:** To be substantially identical to the Pre-Existing FILO Facility Documentation, with such modifications as may be reasonably agreed by the Required FILO Lenders and the Company. For the avoidance of doubt, modifications with respect to customary sacred rights provisions shall require consent of each affected lender and modifications with respect to the Borrowing Base (including advance rates and components thereof) shall require supermajority lenders consent.

**Covenants:** To be substantially identical to the Pre-Existing FILO Facility Documentation (including, without limitation, a covenant to use commercially reasonable efforts to obtain a public rating for the Exit FILO Facility (but no requirement to obtain or maintain a specific rating)), except that baskets based on “payment conditions” or “distribution conditions” will be replaced by the baskets that were included in the Prepetition Term Loan Documents (but were not included in the Pre-Existing FILO Facility Documentation), with such modifications as may be reasonably agreed by the Required FILO Lenders and the Company.

**Events of Default:** To be substantially identical to the Pre-Existing FILO Facility Documentation (collectively, the “Events of Default”).

**Mandatory Prepayments:** Mandatory prepayments of the borrowings under the Exit FILO Facility shall be made at par, without premium or penalty, subject to certain provisions, including rights with respect to Term Priority Collateral, substantially similar to those under the Pre-Existing FILO Facility Documentation and others to be agreed, modified as appropriate to reflect the proposed exit facility, including, subject to the following paragraph, with respect to receipt of tax refunds by the Loan Parties (the “Tax Refunds”) at the end of the fiscal quarter in which such proceeds are received; *provided* that (1) the amount of such Tax Refunds prepayment at such quarter end shall be limited to the lesser of (x) the amount of net cash proceeds so received and (y) the amount that would not cause Liquidity (as defined below) (after giving effect to such prepayment and any prepayment of the Exit Term Loan Facility) to be less than \$75 million (the difference between clauses (x) and (y), the “Holdback Amount”; and the difference between clause (x) and the Holdback Amount, the “Refund Prepayment”) and (2) if there is a Holdback Amount, then at the end of each subsequent fiscal quarter a mandatory prepayment shall be made in an amount equal to the lesser of (i) the Holdback Amount less any portion of the Holdback Amount so applied pursuant to this clause (2) in prior fiscal quarters and (ii) the amount that would not cause Liquidity (after giving effect to such prepayment and any prepayment of the Exit Term Loan Facility) to be less than \$75 million (any such prepayment pursuant to this clause (2), a

“Holdback Prepayment”; and Holdback Prepayments and Refund Prepayments are collectively referred to herein as “Tax Prepayments”).

Any mandatory prepayment relating to Tax Prepayments shall be applied as follows: a percentage to be agreed to prepay loans under the Exit Term Loan Facility; and a percentage to be agreed to prepay the Exit FILO Loans (but not the New Revolver Loans) (with such percentages to be agreed among the Borrower, the Required FILO Lenders and the “Required Exit Lenders” (as defined the Exit Term Loan Facility Term Sheet)).

Mandatory prepayments and the application of such proceeds at all times will be subject to the intercreditor arrangements consistent with the Prepetition Intercreditor Agreement, the Pre-Existing FILO Facility Documentation, and the Prepetition Term Loan Documents, or otherwise reasonably satisfactory to the Borrower, the Required FILO Lenders and the “required lenders” under the Exit Term Loan Facility.

For purposes hereof, “Liquidity” shall mean unrestricted cash of the Loan Parties and their restricted subsidiaries (other than cash held by foreign subsidiaries that are not Guarantors, cash included in the Borrowing Base and cash supporting letters of credit) and amounts available to be drawn under any revolving credit facility.

**Application of Payments:**

To be substantially similar to the Pre-Existing FILO Facility Documentation as reasonably agreed by the Required FILO Lenders and the Company, with the New Revolver Loans taking the position of the Revolving Credit Exposure (as defined in the Prepetition ABL Agreement) and the Exit FILO Loans taking the position of the FILO Term Loan (as defined in the Prepetition ABL Agreement) and subject to the terms and conditions of the intercreditor arrangements between the New Revolver Lenders and the Exit FILO Lenders.

**Voluntary Prepayments:**

Voluntary prepayments of the borrowings under the Exit FILO Facility will be permitted at any time at par, without premium or penalty, subject to the reimbursement of the Exit FILO Lenders’ redeployment costs in the case of a prepayment of LIBOR borrowings other than on the last day of the relevant interest period.

**Governing Law:**

State of New York.

**Agent:**

To be agreed between the Borrower and the Required FILO Lenders.

**Expenses and Indemnification:**

To be substantially consistent with the Pre-Existing FILO Facility Documentation.

EXHIBIT A-1  
TO  
NEW REVOLVER BASKET AND EXIT FILO FACILITY TERM SHEET

Guarantor Entities\*

\* To be supplemented by adding the names of affiliates that provide collateral under the DIP FILO.

GNC Holdings, Inc.

GNC Parent LLC

GNC Corporation

General Nutrition Corporation

General Nutrition Investment Company

Lucky Oldco Corporation

GNC Funding, Inc.

GNC International Holdings, Inc.

GNC Canada Holdings, Inc.

General Nutrition Centres Company

GNC Government Services, LLC

GNC Headquarters LLC

Gustine Sixth Avenue Associates, Ltd.

GNC China Holdco LLC

GNC Puerto Rico Holdings, Inc.

GNC Puerto Rico, LLC

EXHIBIT A-2  
TO  
NEW REVOLVER BASKET AND EXIT FILO FACILITY TERM SHEET

Non-Guarantor Entities

Nutra Insurance Company

GNC Korea Limited

GNC Hong Kong Limited

GNC (Shanghai) Trading Co., Ltd.

GNC China JV Holdco Limited

GNC (Shanghai) Food Technology Limited

GNC South Africa (Pty) Ltd.

GNC Jersey One Limited

GNC Jersey Two Unlimited

THSD

GNC Live Well Ireland

GNC Colombia SAS

GNC Newco Parent, LLC

Nutra Manufacturing, LLC

GNC Supply Purchaser, LLC

GNC Intermediate IP Holdings, LLC

GNC Intellectual Property Holdings, LLC

EXHIBIT B  
TO  
NEW REVOLVER BASKET AND EXIT FILO FACILITY TERM SHEET

Exit Term Loan Facility Term Sheet

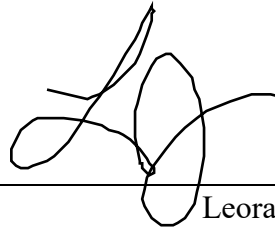
[Intentionally Omitted]





TAB FF

THIS IS **EXHIBIT “FF”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

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Leora Jackson

Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**MOTION OF DEBTORS FOR AN  
ORDER ESTABLISHING CERTAIN NOTICE  
AND HEARING PROCEDURES FOR TRANSFERS OF, OR  
WORTHLESSNESS DEDUCTIONS WITH RESPECT TO, COMMON  
STOCK AND CONVERTIBLE PREFERRED STOCK OF GNC HOLDINGS, INC.**

The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seeks entry of interim and final orders in the form attached hereto as **Exhibit A** (the “*Proposed Interim Order*”) and **Exhibit B** (the “*Proposed Final Order*,” and together with the Proposed Interim Order, the “*Proposed Orders*”) establishing certain notice and hearing procedures that must be satisfied before certain shareholders may make transfers of, or worthlessness deductions with respect to, common stock and Series A convertible preferred stock in GNC Holdings, Inc. (“*GNC*”) (respectively,

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

the “*Common Stock*” and the “*Convertible Preferred Stock*”). These procedures will generally apply to any person or shareholder who owns, directly or indirectly, more than a certain percentage of Common Stock or Convertible Preferred Stock.

### **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 362(a)(3), and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended (the “*Bankruptcy Code*”) and Rules 3001 and 3002 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”),

### **BACKGROUND**

3. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions in this Court commencing cases (the “*Chapter 11 Cases*”) for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under Bankruptcy Code Sections 1107 and 1108. No trustee or examiner has been requested in these cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies' Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day Declaration**")<sup>2</sup> filed contemporaneously herewith, which is fully incorporated herein by reference. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

#### **TAX ATTRIBUTES**

6. The relief sought by this Motion will allow the Debtors to monitor certain transfers of, and certain worthlessness deductions with respect to, Common Stock and Convertible Preferred Stock so that the Debtors can act expeditiously to prevent such transfers or deductions, if necessary, and preserve the potential value of potential net operating losses ("**NOLs**"), disallowed business interest expense under Section 163(j) of the Internal Revenue Code of 1986, as amended (the "**Tax Code**") ("**Excess Interest Expense**"), potential built-in losses with respect to the Debtors' assets and certain other built-in items ("**Built-in Losses**"),<sup>4</sup> and certain other tax attributes (the potential NOLs, collectively with the potential Built-in

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court's website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors' proposed claims and noticing agent, Prime Clerk, at <https://cases.primeclerk.com/gnc>.

<sup>4</sup> The amount of the Debtors' potential Built-in Losses will depend, among other things, on the extent to which the Debtors' assets have an aggregate tax basis in excess of their aggregate fair market value.

Losses, Excess Interest Expense and certain other tax attributes, the “*Tax Attributes*”). This will allow the Debtors the flexibility to develop a chapter 11 plan of reorganization that will maximize the use and value of their Tax Attributes. Immediate entry of the Proposed Interim Order is necessary to preserve the status quo in this regard.

7. The Debtors’ Tax Attributes are valuable assets of the Debtors’ estates because the Tax Code generally permits a corporation to carry forward such corporation’s NOLs, Excess Interest Expense and certain other Tax Attributes to offset future taxable income or directly offset federal income tax liability in future periods.<sup>5</sup> Depending upon future operating results of the Debtors and absent any intervening limitations prior to the effective date of the Debtors’ chapter 11 plan of reorganization, the Debtors’ Tax Attributes could allow the Debtors to significantly reduce their future U.S. federal income tax liability, including by offsetting any taxable income that may result from transactions completed in connection with the Debtors’ chapter 11 plan of reorganization. These savings could substantially enhance the Debtors’ value and contribute to the Debtors’ efforts toward a successful reorganization.

8. The ability of a corporation to use its Tax Attributes to reduce future U.S. federal income tax liability is subject to certain limitations under Section 382 of the Tax Code (“*Section 382*”). In general, if a corporation undergoes an “ownership change,” Section 382 imposes an annual limitation on the corporation’s ability to use its Tax Attributes to offset future taxable income. Under Section 382, an ownership change occurs when the percentage (by value) of a corporation’s equity held by one or more “5-percent shareholders” (as such term is defined in Section 382) increases by more than fifty (50) percentage points over the lowest percentage of stock owned by such shareholders at any time during the preceding three-year rolling testing

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<sup>5</sup> See 26 U.S.C. §§ 39, 163(j), 172.

period or since the last ownership change, as applicable (the “*Testing Period*”).<sup>6</sup>

9. For purposes of determining an ownership change under Section 382, a corporation’s equity not only includes the common stock of the corporation but also any convertible preferred stock of the corporation. In 2018 and 2019, GNC issued and sold, in three tranches, Convertible Preferred Stock for a purchase price of \$1,000 per share (“*Stated Value*”), or an aggregate of approximately \$300 million, to Harbin Pharmaceutical Group Co., Ltd. (“*Harbin*”). Convertible Preferred Stock ranks senior to Common Stock, and each share of Convertible Preferred Stock is convertible at any time, at the option of Harbin, into a number of shares of Common Stock equal to the liquidation preference as of the conversion date divided by the conversion price (*i.e.*, \$5.35 per share as adjusted). Harbin, as the sole holder of shares of Convertible Preferred Stock, is entitled to receive cumulative preferential dividends, payable quarterly in arrears, at an annual rate of 6.5% of the Stated Value, subject to increase in connection with the payment of dividends in kind. Such dividends are payable at GNC’s option: (a) in cash from legally available funds or (b) in kind by issuing additional shares of Convertible Preferred Stock with a stated value equal to the amount of payment being made or by increasing the Stated Value of the outstanding Convertible Preferred Stock by the amount per share of the dividend or in a combination thereof. Upon any liquidation, each share of Convertible Preferred Stock is entitled to receive the Stated Value of the share plus (i) any accumulated but unpaid

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<sup>6</sup> For example, assume (i) an individual (“*A*”) owns 50.1% of the stock of corporation XYZ (“*XYZ*”) and (ii) *A* sells her 50.1% interest in XYZ to another individual (“*B*”), who currently owns 5% of XYZ’s stock. Under Section 382, an ownership change has occurred upon *B*’s acquisition of *A*’s 50.1% interest in XYZ because the percentage of XYZ stock held by *B* has increased more than fifty (50) percentage points (from 5% to 55.1%) during the Testing Period. The same result would follow even if *B* owned no XYZ stock prior to the transaction with *A* because *B* both becomes a “5-percent shareholder” and increases the percentage of XYZ stock *B* holds by more than fifty (50) percentage points during the Testing Period. To be clear, a “5-percent shareholder” increasing its holding by 50 percent (*i.e.*, from 5% to 7.5%) as opposed to 50 percentage points would not, in and of itself, result in an “ownership change” under Section 382. Any subsequent ownership change with respect to XYZ would be determined based only on equity transfers that occur subsequent to the ownership change resulting from the transaction between *A* and *B* described immediately above.

dividends and (ii) the per share amount of all cash, securities or other property to be distributed in respect of a share of Common Stock on an as-converted basis. As a result of the liquidation preference and dividends rights, Convertible Preferred Stock could represent the vast majority of GNC's equity (by value), and thus, to preserve the Debtors' Tax Attributes, the Debtors request for the application of a prudent approach with respect to Convertible Preferred Stock for preventing an ownership change under Section 382 by merely implementing notice and hearing procedures for transfers of, or the taking of worthlessness deductions with respect to, Convertible Preferred Stock by certain shareholders.

10. Section 382 imposes an annual limitation on the amount of taxable income that can be offset by pre-change-of-ownership Tax Attributes to an amount equal to the long-term tax exempt bond rate (as published monthly by the United States Treasury), as of the ownership change date, multiplied by the value of the stock of the corporation immediately before the ownership change (a "*Section 382 Limitation*").<sup>7</sup> Under certain circumstances, built-in losses recognized during the five-year period after the ownership change date are subject to similar annual limitations. Accordingly, an ownership change under Section 382 prior to the effective date of a chapter 11 plan of reorganization may hinder or significantly reduce the ability of the Debtors to use their Tax Attributes on a reorganized basis, thereby resulting in a loss of potential value to the Debtors and the Debtors' estates.

11. Similarly, an ownership change may result if a shareholder who beneficially owns

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<sup>7</sup> For ownership changes occurring in June 2020, the applicable long-term tax-exempt rate is 1.09 percent. If a corporation has a "net unrealized built-in gain" ("*NUBIG*") in its assets as of the time of the ownership change, the Section 382 Limitation may be increased in certain circumstances. If a corporation has a "unrealized built-in loss" ("*NUBIL*") in assets as of the time of the ownership change, any recognized built-in losses during the five-year period beginning on the date of the ownership change will be subject to the Section 382 Limitation. The Debtors are in the process of analyzing whether they currently have a NUBIL or a NUBIG in their assets and can't predict whether they will have a NUBIL or a NUBIG as of the effective date of their chapter 11 plan of reorganization.



50-percent or more of Common Stock or Convertible Preferred Stock were, for income tax purposes, to treat the Common Stock or Convertible Preferred Stock held by such shareholder as becoming worthless (*i.e.*, taking a worthless stock deduction with respect to such stock) for any tax year ending prior to the Debtors emerging from chapter 11 protection. Under Section 382(g)(4)(D) of the Tax Code, such shareholder would be treated as having transferred such stock, which could trigger an ownership change, and thus could adversely affect the Debtors' ability to fully utilize their Tax Attributes.<sup>8</sup>

### **RELIEF REQUESTED**

12. The Debtors seek authorization to protect and preserve their Tax Attributes by (a) establishing certain notification and hearing procedures regarding the transfer of Common Stock and Convertible Preferred Stock that must be complied with before transfers of such stock become effective and (b) establishing similar notice and hearing procedures regarding the taking of any worthlessness deduction, for income tax purposes, with respect to Common Stock and Convertible Preferred Stock.

#### **I. EQUITY TRANSFERS**

13. By establishing procedures for continuously monitoring the transfers of Common Stock and Convertible Preferred Stock, the Debtors can preserve their ability to seek substantive relief at the appropriate time, particularly if it appears that additional transfers may jeopardize the Debtors' ability to fully utilize their Tax Attributes. Accordingly, the Debtors request that the Court enter an order establishing the following procedures for the transfer of Common Stock

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<sup>8</sup> For example, if a person with 50 percent of a corporation's stock claims a worthless stock deduction with respect to the 2019 tax year, but does not sell such stock, that person is treated: (a) as not having owned the stock at the end of 2019, and (b) as having purchased the stock on January 1, 2020. That deemed purchase would cause an ownership change because the 50-percent shareholder would be deemed to have a 50-percentage point increase in its stock ownership.

and Convertible Preferred Stock (the “*Equity Transfer Procedures*”):

- (a) Any person or entity (as defined in Treasury Regulations section 1.382-3(a)) who currently is or hereafter becomes a Substantial Shareholder (as such term is defined in paragraph (e) below) must file with the Court, and serve upon (i) the Debtors and counsel for the Debtors and (ii) counsel to the Ad Hoc Group of Crossover Lenders, a notice of such status, in substantially the form attached hereto as Exhibit C, on or before the later of (i) twenty (20) calendar days after entry of the Proposed Interim Order or (ii) ten (10) days after becoming a Substantial Shareholder.
- (b) At least twenty (20) calendar days prior to effectuating any transfer<sup>9</sup> of Common Stock (including options to acquire Common Stock, as defined in paragraph (e) below) or Convertible Preferred Stock that would result in an increase in the amount of Common Stock or Convertible Preferred Stock beneficially owned by a Substantial Shareholder, or would result in a person or entity becoming a Substantial Shareholder, such Substantial Shareholder, person or entity must file with the Court, and serve upon the Debtors and counsel for the Debtors, an advance written notice of the intended transfer of Common Stock or Convertible Preferred Stock, in substantially the form attached hereto as Exhibit D (each a “*Notice of Intent to Purchase, Acquire, or Otherwise Accumulate*”).
- (c) At least twenty (20) calendar days prior to effectuating any transfer of Common Stock (including options to acquire Common Stock) or Convertible Preferred Stock that would result in a decrease in the amount of Common Stock or Convertible Preferred Stock beneficially owned by a Substantial Shareholder, or would result in a person or entity ceasing to be a Substantial Shareholder, such Substantial Shareholder, person or entity must file with the Court, and serve upon the Debtors and counsel for the Debtors, an advance written notice of the intended transfer of Common Stock or Convertible Preferred Stock, in substantially the form attached hereto as Exhibit E (each a “*Notice of Intent to Sell, Trade, or Otherwise Transfer*” and, collectively with each Notice of Intent to Purchase, Acquire, or Otherwise Accumulate, a “*Notice of Proposed Transfer*”).
- (d) The Debtors shall have fifteen (15) calendar days after receipt of a

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<sup>9</sup> For purposes of this Motion, a “*transfer*” includes any conversion of shares of Convertible Preferred Stock into shares of Common Stock.

Notice of Proposed Transfer, and after consultation with the Ad Hoc Group of Crossover Lenders, to file with the Court and serve upon such Substantial Shareholder, person or entity an objection to any proposed transfer of Common Stock or Convertible Preferred Stock described in the Notice of Proposed Transfer on the grounds that such transfer might adversely affect the Debtors' ability to utilize their Tax Attributes. If the Debtors file an objection, such transfer would not be effective unless approved by a final and non-appealable order of the Court. If the Debtors do not object within such 15-day period, such transfer shall be permitted to proceed solely as set forth in the Notice of Proposed Transfer. Further transfers within the scope of this paragraph (d) shall be the subject of additional notices as set forth herein, with additional 15-day waiting periods.

- (e) For purposes of these procedures: (i) a “**Substantial Shareholder**” is any person or entity that beneficially owns in excess of: (A) 4,018,926 shares of Common Stock (representing approximately 4.75%<sup>10</sup> of all issued and outstanding shares of Common Stock); or (B) 14,247 shares of Convertible Preferred Stock (representing approximately 4.75% of all issued and outstanding shares of Convertible Preferred Stock),<sup>11</sup> (ii) “**beneficial ownership**” of equity interests means beneficial ownership for U.S. federal income tax purposes as determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (A) direct and indirect, actual and constructive, beneficial ownership (for example, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (B) ownership by such holder's family members and other related persons and persons acting in concert with such holder to make a

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<sup>10</sup> In general, under Section 382(g)(4)(A) of the Tax Code, all shareholders who, individually, beneficially own less than 5% of the stock of a corporation are deemed to be a single 5-percent shareholder throughout the Testing Period, and transfers between such shareholders are disregarded for purposes of determining whether an ownership change has occurred (the “**Public Group Rule**”). Thus, so long as 50% or more of the stock of such corporation is beneficially owned by less than 5-percent shareholders throughout the Testing Period, there generally will be no change of ownership due to the Public Group Rule. Accordingly, the Debtors do not seek to impose the notice and hearing procedures on transfers by shareholders beneficially owning less than 4.75% of Common Stock or Convertible Preferred Stock; *provided, however*, that such shareholders do not intend to accumulate a 4.75% or greater block of such stock or add or sell shares to or from such a block. Using 4.75% instead of 5% to calculate the threshold amount allows for a prudent margin of error.

<sup>11</sup> Based on approximately 84,608,976 shares of Common Stock or 299,950 shares of Convertible Preferred Stock outstanding as of the Petition Date.

coordinated acquisition of stock, and (C) ownership of shares which such holder has an option to acquire, and (iii) an “*option*” to acquire stock includes any option, contingent purchase, warrant, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

- (f) Effective as of the Petition Date and until further order of the Court to the contrary, any purchase, sale, or other transfer of beneficial ownership of Common Stock, including options to acquire Common Stock, or Convertible Preferred Stock in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under Bankruptcy Code Sections 362 and 105(a).

## II. WORTHLESS STOCK DEDUCTIONS

14. The Debtors also request that the Court enter an order establishing similar notice and hearing procedures restricting the ability of shareholders that beneficially own or have beneficially owned 50% or more, by value, of Common Stock or Convertible Preferred Stock to take worthless stock deductions on their income tax returns for a tax year ending before the Debtors’ emergence from chapter 11 protection. Under Section 382(g)(4)(D) of the Tax Code, any stock held by such a shareholder would be treated as being transferred if such shareholder takes a worthlessness deduction with respect to such stock. It is therefore essential that shareholders that beneficially own or have beneficially owned 50% or more of Common Stock or Convertible Preferred Stock defer taking such worthlessness deductions until a tax year ending after the Debtors have emerged from bankruptcy.

15. By restricting 50-percent Shareholders from taking worthless stock deductions for any tax year ending prior to the Debtors’ emergence from chapter 11 protection, the Debtors can preserve their ability to seek substantive relief at the appropriate time. Accordingly, the Debtors request that the Court enter an order establishing the following procedures (the “*Worthless Stock Deduction Procedures*”):

- (a) Any person or entity that currently is or becomes a 50-percent Shareholder (as such term is defined in paragraph (d) below) must file with the Court, and serve upon (i) the Debtors and counsel for the Debtors and (ii) counsel to the Ad Hoc Group of Crossover Lenders, a notice of such status, in substantially the form attached hereto as Exhibit F, on or before the later of (i) twenty (20) calendar days after entry of the Proposed Interim Order or (ii) ten (10) days after becoming a 50-percent Shareholder.
- (b) At least twenty (20) calendar days prior to filing any income tax return, or any amendment to such a return, taking any worthlessness deduction with respect to Common Stock or Convertible Preferred Stock for a tax year ending before the Debtors' emergence from chapter 11 protection, such 50-percent Shareholder must file with the Court, and serve upon the Debtors and counsel for the Debtors, an advance written notice of the intended worthlessness deduction, in substantially the form attached hereto as Exhibit G (each a "*Notice of Intent to Take a Worthless Stock Deduction*").
- (c) The Debtors shall have fifteen (15) calendar days after receipt of a Notice of Intent to Take a Worthless Stock Deduction, and after consultation with the Ad Hoc Group of Crossover Lenders, to file with the Court and serve upon such 50-percent Shareholder an objection to any proposed worthlessness deduction described in the Notice of Intent to Take a Worthless Stock Deduction on the grounds that such deduction might adversely affect the Debtors' ability to utilize their Tax Attributes. If the Debtors file an objection, the filing of the income tax return with such deduction would not be permitted or effective unless approved by a final and non-appealable order of the Court. If the Debtors do not object within such 15-day period, the filing of the income tax return with such deduction shall be permitted as set forth in the Notice of Intent to Take a Worthless Stock Deduction. Additional income tax returns within the scope of this paragraph (c) shall be the subject of additional notices as set forth herein, with additional 15-day waiting periods.
- (d) For purposes of these procedures: (i) a "*50-percent Shareholder*" is any person or entity that at any time during the three-year period ending on the Petition Date has had beneficial ownership of 50% or more of Common Stock or Convertible Preferred Stock or is otherwise considered a 50-percent shareholder of GNC within the

meaning of Section 382(g)(4)(D) of the Tax Code,<sup>12</sup> (ii) “*beneficial ownership*” of equity interests means beneficial ownership for U.S. federal income tax purposes as determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (A) direct and indirect, actual and constructive, beneficial ownership (for example, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (B) ownership by such holder’s family members and other related persons and persons acting in concert with such holder to make a coordinated acquisition of stock, and (C) ownership of shares which such holder has an option to acquire, and (iii) an “*option*” to acquire stock includes any option, contingent purchase, warrant, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

- (e) In the event that a 50-percent Shareholder takes a worthlessness deduction with respect to Common Stock or Convertible Preferred Stock in violation of the procedures set forth herein, such worthlessness deduction shall be null and void *ab initio* as an act in violation of the automatic stay under Bankruptcy Code Sections 362 and 105(a), and such 50-percent Shareholder shall be required to file an amended income tax return, as applicable, revoking such worthlessness deduction.

16. The Debtors request that the Court order that any purchase, sale, or other transfer of, or the taking of any worthlessness deduction with respect to, Common Stock or Convertible Preferred Stock in violation of these procedures be null and void *ab initio* as an act in violation of the automatic stay under Bankruptcy Code Sections 362 and 105(a).

17. The Debtors also request that the Court enter the Proposed Interim Order and the Proposed Final Order permitting the Debtors to waive, in writing and in consultation with the Ad Hoc Group of Crossover Lenders, any and all restrictions, stays, and notification procedures

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<sup>12</sup> Beneficial ownership of 50% or more of (i) Common Stock currently is equivalent to owning approximately 42,304,488 or more shares based on 84,608,976 shares of Common Stock outstanding as of the Petition Date or (ii) Convertible Preferred Stock currently is equivalent to approximately 149,975 or more shares based on 299,950 shares of Convertible Preferred Stock outstanding as of the Petition Date.

contained in this Motion or in any order entered with respect hereto.

18. To ensure parties in interest receive appropriate notice of the Equity Transfer Procedures and the Worthless Stock Deduction Procedures, the Debtors request that the Court approve of their proposal to send a notice, in substantially the form attached hereto as **Exhibit H** (the “*Notice of Order*”), to the Initial Notice Parties (as defined in this Motion).

### **BASIS FOR RELIEF**

#### **I. THE SIGNIFICANCE OF THE DEBTORS’ TAX ATTRIBUTES**

19. The Debtors have incurred, and are expecting to incur, NOLs and significant Excess Interest Expense. The Debtors believe that, as of December 31, 2019, they have Excess Interest Expense totaling approximately \$80 million and state NOLs totaling approximately \$345 million.<sup>13</sup> The Debtors are experiencing significant operational losses that may well generate consolidated federal and additional state NOLs in 2020, which may include losses arising from the restructuring transaction, and additional Excess Interest Expense may be generated prior to the effective date of the Debtors’ chapter 11 plan of reorganization.<sup>14</sup> The Debtors’ Tax Attributes could translate into significant potential future tax savings for the Debtors. The value of the Debtors’ Tax Attributes therefore will inure to the benefit of all the Debtors’ future stakeholders.

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<sup>13</sup> As of the date of this Motion, the Debtors have not filed their tax returns with respect to the tax year ending December 31, 2019. These estimates described herein are subject to change upon finalization of such tax returns, including with respect to analyzing the impact of the recently enacted Coronavirus Aid, Relief, and Economic Security Act (“*CARES Act*”).

<sup>14</sup> The CARES Act generally permits NOLs generated in the 2018, 2019 and 2020 tax years to be carried back to offset taxable income in each of the five preceding taxable years. The Debtors currently expect to carry back their NOLs generated in the 2020 tax year to offset taxable income in the 2015 tax year. However, the House of Representatives recently passed the Health and Economic Recovery Omnibus Emergency Solutions Act (“*HEROES Act*”), which would limit the Debtors ability to carry back such NOLs to the 2018 and 2019 tax years. If the HEROES Act or similar legislation were to be enacted, the Debtors ability to carryback such NOLs could be substantially limited, in which case the Debtors may, in some circumstance, carry forward such NOLs to post-emergence tax years.

20. Subject to certain limitations, Section 172(b) and Section 163(j) of the Tax Code permit a corporation to carry forward NOLs and Excess Interest Expense, respectively, to offset future taxable income, thereby potentially resulting in both a significant reduction in U.S. federal income tax liability and an improvement in such corporation's cash position.<sup>15</sup> In addition, built-in tax losses can be generated on taxable disposition of the Debtors' assets or through other circumstances, such as depreciation and amortization. The Debtors' Tax Attributes are valuable assets of their estates that, if available, could help facilitate the Debtors' successful reorganization and serve to improve creditor recoveries. The termination or limitation of the Tax Attributes could be materially detrimental to all parties in interest. The Debtors' ability to use their pre-change-of-ownership Tax Attributes, however, could be severely limited under Section 382 as a result of the transfer of, or any worthlessness deduction with respect to, Common Stock or Convertible Preferred Stock prior to the consummation of a chapter 11 plan of reorganization.

## **II. THE PROVISIONS OF SECTION 382**

21. As described above, Section 382 imposes an annual limitation on the amount of taxable income a corporation can offset using its Tax Attributes if the corporation undergoes an ownership change. If an ownership change were to, for example, occur during the course of the Chapter 11 Cases, Section 382 would impose an annual limitation on the amount of taxable income that the Debtors could offset by pre-change-of-ownership Tax Attributes to an amount equal to the long-term tax exempt bond rate (as published monthly by the United States Treasury), as of the ownership change date, multiplied by the value of the stock of the corporation immediately before the ownership change. This formulaic limitation under Section

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<sup>15</sup> The CARES Act generally increases the interest expense limitation under Section 163(j) for any taxable year beginning in 2019 or 2020. The Debtors are evaluating the impact of this change and thus the Debtors' estimates of Excess Interest Expense may be subject to change.



382 can severely restrict the ability to use pre-change-of-ownership Tax Attributes as the value of the stock of a distressed corporation may be quite low. Moreover, once an equity transfer takes place, it cannot be undone, and once a Section 382 Limitation is triggered, the Debtors' use of their pre-change-of-ownership Tax Attributes would be forever limited. The relief sought herein is necessary to avoid the potentially significant limitations on the Debtors' ability to fully utilize their Tax Attributes to offset taxable income on a reorganized basis, which would jeopardize savings that could substantially enhance the Debtors' value and contribute to the Debtors' plan for a successful reorganization. Otherwise, the unrestricted transfer of, and the taking of any worthlessness deduction with respect to, Common Stock or Convertible Preferred Stock would likely result in irreparable harm to the Debtors and the Debtors' estates.

### **III. RELIEF FROM THE PROVISIONS SECTION 382**

22. The limitations imposed by Section 382 are significantly more relaxed in the context of an ownership change pursuant to a confirmed chapter 11 plan of reorganization. First, the ownership change must occur pursuant to the consummation of the chapter 11 plan of reorganization, and not during the course of the Chapter 11 Cases prior to such consummation, in order for the Debtors to qualify for these Section 382 bankruptcy relief provisions—Sections 382(l)(5) or (l)(6) of the Tax Code. Under Section 382(l)(5) of the Tax Code, a Section 382 Limitation will not result from an ownership change arising from the consummation of a chapter 11 plan of reorganization, provided that, under such plan, a debtor's pre-change-of-ownership shareholders (*i.e.*, persons or entities who owned such debtor's stock immediately before such ownership change) and/or certain qualified creditors emerge from the reorganization owning at least 50% of such debtor's stock (measured by value and voting power) immediately after the ownership change due to such shareholders and/or qualified creditors being

shareholders and/or qualified creditors immediately prior to the ownership change. Section 382(l)(6) of the Tax Code provides that if a corporation undergoes an ownership change pursuant to a chapter 11 plan of reorganization and Section 382(l)(5) of the Tax Code does not apply (either because the corporation elects out of such provision or because such provision's requirements are not satisfied), then the value of such corporation's equity for purposes of calculating the Section 382 Limitation shall reflect the increase (if any) in value of such corporation's stock resulting from any surrender or cancellation of creditors' claims in the chapter 11 plan of reorganization. Thus, assuming the value of the equity of the Debtors increases as a result of a reorganization, Section 382(l)(6) of the Tax Code would provide for a higher annual limitation than would result under the general rules of Section 382 and could allow the Debtors to use a greater portion of their pre-change-of-ownership Tax Attributes to offset any post-change taxable income.

23. Second, preventing an ownership change prior to the consummation of the plan of reorganization may also benefit the Debtors and Debtors' estates by allowing the Debtors a greater use of their Tax Attributes to offset any taxable income that arises as a result of, or prior to, the effective date of such plan. Thus, in all circumstances, it is in the best interests of the Debtors and the Debtors' estates to grant the requested relief so as to prevent an ownership change prior to consummation of a chapter 11 plan of reorganization.

#### **IV. THE REQUESTED RELIEF IS NARROWLY TAILORED**

24. The requested relief does not *per se* bar all transfers of, or the taking of all worthlessness deductions with respect to, Common Stock and Convertible Preferred Stock. Rather, it merely implements notice and hearing procedures for such transfers and deductions. At this early juncture, the Debtors seek to establish procedures only to monitor those types of

transfers and restrict those types of worthless stock deductions that would pose a serious risk of resulting in a Section 382 Limitation upon the Debtors' pre-change-of-ownership Tax Attributes, so as to preserve the Debtors' ability to seek substantive relief if it appears that a proposed transfer or deduction will jeopardize the Debtors' ability to fully utilize their Tax Attributes. The procedures requested by the Debtors in this Motion would likely permit most transfers to continue, subject to applicable law. The restrictions on taking worthlessness deductions with respect to Common Stock and Convertible Preferred Stock would apply only to 50-percent Shareholders and, even then, would not prohibit such deductions entirely but would merely require them to be postponed to taxable years ending after the Debtors emerge from chapter 11 protection.

**V. THE REQUESTED RELIEF IS NECESSARY TO AVOID IRREPARABLE HARM TO THE DEBTORS**

25. Once a Tax Attribute is limited under Section 382, its use is limited forever, and once an equity interest is transferred, that transfer cannot be undone. The relief sought herein is necessary to avoid both the potentially significant limitations on the Debtors' ability to fully utilize their Tax Attributes to offset taxable income on a reorganized basis and the irreparable harm to the Debtors and the Debtors' estates which could be caused by the unrestricted transfer of, and the taking of worthlessness deductions with respect to, Common Stock and Convertible Preferred Stock.

26. Absent granting the relief requested herein on an immediate basis, the Debtors and the Debtors' estates could be irreparably harmed by the mere filing of this Motion. If the Debtors filed this Motion in accordance with the usual notice procedures set forth in the Bankruptcy Rules, the Debtors believe that transfers involving Common Stock or Convertible Preferred Stock may immediately follow and that such transfers may impact the Debtors' ability

to fully utilize their Tax Attributes. Parties holding such stock might rush to transfer their interests before the restrictions on transfers are imposed by the Court. Similarly, a 50-percent Shareholder could rush to take a worthlessness deduction with respect to Common Stock or Convertible Preferred Stock on such shareholder's income tax returns for a tax year ending before the Debtors' emergence from chapter 11 protection. Such unrestricted transfers and the taking of such worthless stock deductions could put the Debtors' Tax Attributes at risk of being subject to a Section 382 Limitation, as described above, and would therefore be counterproductive to the Debtors' objectives in seeking this relief. Accordingly, the Debtors respectfully request that the procedures described herein be approved.

## **VI. TAX ATTRIBUTES ARE PROPERTY OF THE DEBTORS' ESTATES AND ARE ENTITLED TO COURT PROTECTION**

27. Courts have uniformly held that a debtor's NOLs constitute property of a debtor's estate under Bankruptcy Code Section 541 and, as such, courts have authority to implement certain protective measures to preserve these Tax Attributes. The seminal case articulating this rule is *In re Prudential Lines, Inc.*, 107 B.R. 832 (Bankr. S.D.N.Y. 1989), *aff'd*, 119 B.R. 430 (S.D.N.Y. 1990), *aff'd*, 928 F.2d 565 (2d Cir. 1991), *cert. denied* 502 U.S. 821 (1991). In *Prudential Lines*, the Bankruptcy Court for the Southern District of New York enjoined a parent corporation from taking a worthless stock deduction with respect to its wholly owned debtor subsidiary on the grounds that doing so would destroy its debtor-subsidary's NOLs. In issuing the injunction, the court held that a "debtor's potential ability to utilize [net operating losses] is property of [the] estate." 107 B.R. at 838. In addition, "the taking of a worthless stock deduction is an exercise of control over a debtor's [net operating losses]," 107 B.R. at 842, and thus was properly subject to the automatic stay provisions of Bankruptcy Code Section 362. *See In re Grossman's, Inc.*, Case No. 97-695 (PJW) (Bankr. D. Del. Oct. 9, 1997) (noting that the

debtors' net operating loss carry-forwards are property of the debtors' estates protected by the automatic stay provisions of the Bankruptcy Code); *In re White Metal Rolling & Stamping Corp.*, 222 B.R. 417, 424 (Bankr. S.D.N.Y., 1998) ("It is beyond peradventure that [net operating loss] carry-backs and carry[-forwards] are property of the estate of the loss corporation that generated them.").

28. Similar to NOLs, other Tax Attributes constitute property of a debtor's estate under Bankruptcy Code Section 541 and, as such, courts have authority to implement certain protective measures to preserve them as well. *See, e.g., In re Quicksilver Res. Inc.*, Case No. 15-10585 (LSS) (Bankr. D. Del. April 17, 2015); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005) (finding that tax credit carryforwards are property of the debtors' estates and subsequently approving notification procedures and restrictions on certain transfers of claims against and interests in the debtors to protect, among other things, the tax credit carryforwards).

29. Accordingly, because the Debtors' Tax Attributes are property of their estates, the Court has the authority under Bankruptcy Code Section 362 to enforce the automatic stay by restricting the transfer of, and the taking of any worthlessness deduction with respect to, Common Stock and Convertible Preferred Stock that could jeopardize the Debtors' ability to fully utilize these valuable assets.

30. Courts have routinely restricted transfers of equity interests and/or the taking of worthless stock deductions, or otherwise issued injunctive relief to protect a debtor against the possible loss of their Tax Attributes. *See, e.g., In re Akorn, Inc.*, Case No. 20-11777 (KBO) (Bankr. D. Del. May 22, 2020) (approving NOL trading restriction for public corporation's securities); *In re Exide Holdings, Inc.*, Case No. 20-11157 (CSS) (Bankr. D. Del. May 21, 2020)

(approving NOL trading restriction for private corporation's securities); *In re Cloud Peak Energy Inc.*, Case No. 19-11047 (KG) (Bankr. D. Del. May 14, 2019) (approving NOL trading restriction for public corporation's securities); *In re Samson Res. Corp.*, Case No. 15-11934 (CSS) (Bankr. D. Del. Oct. 14, 2015); *In re Quicksilver Res. Inc.*, Case No. 15-10585 (LSS) (Bankr. D. Del. April 17, 2015); *In re Sabine Oil & Gas Corp.*, Case No. 15-11835 (SCC) (Bankr. S.D.N.Y. Aug. 10, 2015).

31. The Debtors' Tax Attributes are valuable assets that could inure to the benefit of the Debtors' estates and stakeholders and facilitate the Debtors' reorganization. Unrestricted transfers of Common Stock or Convertible Preferred Stock with no advance warning of such transfers or the unrestricted taking of worthlessness deductions with respect to Common Stock or Convertible Preferred Stock could jeopardize and impair the Debtors' ability to utilize these valuable assets. The requested relief imposes a minimal burden to achieve a substantial benefit for the Debtors, their estates, their creditors and other interested parties. Accordingly, the Court should grant the requested relief and establish a notice and hearing procedure governing the transfers of Common Stock and Convertible Preferred Stock and the taking of worthlessness deductions with respect to Common Stock and Convertible Preferred Stock.

#### **RESERVATION OF RIGHTS**

32. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to

Bankruptcy Code Section 365; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

### **NOTICE OF MOTION**

33. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; (p) the Substantial Shareholders; (q) the transfer agents for the Common Stock and the Convertible Preferred Stock; and (r) all parties requesting notice pursuant to Bankruptcy Rule 2002 (the "***Initial Notice Parties***"). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Orders, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Kara Hammond Coyle

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*Proposed Counsel for Debtors and Debtors in Possession*



**EXHIBIT A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
	)	Case No. 20-11662 (___)
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ___

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**INTERIM ORDER ESTABLISHING CERTAIN  
NOTICE AND HEARING PROCEDURES FOR TRANSFERS OF,  
OR WORTHLESSNESS DEDUCTIONS WITH RESPECT TO, COMMON  
STOCK AND CONVERTIBLE PREFERRED STOCK OF GNC HOLDINGS, INC.**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an order establishing certain notice and hearing procedures that must be satisfied before certain shareholders may make transfers of, or worthlessness deductions with respect to, common stock and Series A convertible preferred stock in GNC Holdings, Inc. (“*GNC*”) (respectively, the “*Common Stock*” and the “*Convertible Preferred Stock*”); and the Court having reviewed the Motion and the First Day Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, the Debtors’ estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby:

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein on an interim basis.
2. The purchase, sale, or other transfer of, or the taking of any worthlessness deduction with respect to, Common Stock and Convertible Preferred Stock in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under Bankruptcy Code Sections 362 and 105(a).
3. The following procedures and notices are approved and shall apply to transfers of Common Stock and Convertible Preferred Stock (the “*Equity Transfer Procedures*”):

- (a) Any person or entity (as defined in Treasury Regulations section 1.382-3(a)) who currently is or hereafter becomes a Substantial Shareholder (as such term is defined in paragraph (e) below) must file with the Court, and serve upon (i) the Debtors and counsel for the Debtors and (ii) counsel to the Ad Hoc Group of Crossover Lenders, a notice of such status, in substantially the form attached to the Motion as Exhibit C, on or before the later of (i) twenty (20) calendar days after entry of this Interim Order or (ii) ten (10) days after becoming a Substantial Shareholder.
- (b) At least twenty (20) calendar days prior to effectuating any transfer<sup>3</sup> of Common Stock (including options to acquire Common Stock, as defined in paragraph (e) below) or Convertible Preferred Stock that would result in an increase in the amount of Common Stock or Convertible Preferred Stock beneficially owned by a Substantial Shareholder, or would result in a person or entity becoming a Substantial Shareholder, such Substantial Shareholder, person or entity must file with the Court, and serve upon the Debtors and counsel for the Debtors, an advance written notice of the intended transfer of Common Stock or Convertible Preferred Stock, in substantially the form attached to the Motion as

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<sup>3</sup> For purposes of this Interim Order, a “*transfer*” includes any conversion of shares of Convertible Preferred Stock into shares of Common Stock.

Exhibit D (each a “*Notice of Intent to Purchase, Acquire, or Otherwise Accumulate*”).

- (c) At least twenty (20) calendar days prior to effectuating any transfer of Common Stock (including options to acquire Common Stock) or Convertible Preferred Stock that would result in a decrease in the amount of Common Stock or Convertible Preferred Stock beneficially owned by a Substantial Shareholder, or would result in a person or entity ceasing to be a Substantial Shareholder, such Substantial Shareholder, person or entity must file with the Court, and serve upon the Debtors and counsel for the Debtors, an advance written notice of the intended transfer of Common Stock or Convertible Preferred Stock, in substantially the form attached to the Motion as Exhibit E (each a “*Notice of Intent to Sell, Trade, or Otherwise Transfer*” and, collectively with each Notice of Intent to Purchase, Acquire, or Otherwise Accumulate, a “*Notice of Proposed Transfer*”).
- (d) The Debtors shall have fifteen (15) calendar days after receipt of a Notice of Proposed Transfer, and after consultation with the Ad Hoc Group of Crossover Lenders, to file with the Court and serve upon such Substantial Shareholder, person or entity an objection to any proposed transfer of Common Stock or Convertible Preferred Stock described in the Notice of Proposed Transfer on the grounds that such transfer might adversely affect the Debtors’ ability to utilize their Tax Attributes. If the Debtors file an objection, such transfer would not be effective unless approved by a final and non-appealable order of the Court. If the Debtors do not object within such 15-day period, such transfer shall be permitted to proceed solely as set forth in the Notice of Proposed Transfer. Further transfers within the scope of this paragraph (d) shall be the subject of additional notices as set forth herein, with additional 15-day waiting periods.
- (e) For purposes of these procedures: (i) a “*Substantial Shareholder*” is any person or entity that beneficially owns in excess of: (A) 4,018,926 shares of Common Stock (representing approximately 4.75% of all issued and outstanding shares of Common Stock); or (B) 14,247 shares of Convertible Preferred Stock (representing approximately 4.75% of all issued and outstanding shares of Convertible Preferred Stock), (ii) “*beneficial ownership*” of equity interests means beneficial ownership for U.S. federal income tax purposes as determined in accordance with applicable rules under Section 382 of the Internal Revenue Code of 1986, as amended (the “*Tax Code*”), Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time

shall include, without limitation, (A) direct and indirect, actual and constructive, beneficial ownership (for example, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (B) ownership by such holder's family members and other related persons and persons acting in concert with such holder to make a coordinated acquisition of stock, and (C) ownership of shares which such holder has an option to acquire, and (iii) an "**option**" to acquire stock includes any option, contingent purchase, warrant, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

- (f) Effective as of the Petition Date and until further order of the Court to the contrary, any purchase, sale, or other transfer of beneficial ownership of Common Stock or Convertible, including options to acquire Common Stock, or Convertible Preferred Stock in violation of these procedures shall be null and void *ab initio* as an act in violation of the automatic stay under Bankruptcy Code Sections 362 and 105(a).

4. The following restrictions shall apply to taking worthlessness deductions, for income tax purposes, with respect to Common Stock and Convertible Preferred Stock (the "**Worthless Stock Deduction Procedures**"):

- (a) Any person or entity that currently is or becomes a 50-percent Shareholder (as such term is defined in paragraph (d) below) must file with the Court, and serve upon (i) the Debtors and counsel for the Debtors and (ii) counsel to the Ad Hoc Group of Crossover Lenders, a notice of such status, in substantially the form attached to the Motion as Exhibit F, on or before the later of (i) twenty (20) calendar days after entry of this Interim Order or (ii) ten (10) days after becoming a 50-percent Shareholder.
- (b) At least twenty (20) calendar days prior to filing any income tax return, or any amendment to such a return, taking any worthlessness deduction with respect to Common Stock or Convertible Preferred Stock for a tax year ending before the Debtors' emergence from chapter 11 protection, such 50-percent Shareholder must file with the Court, and serve upon the Debtors and counsel for the Debtors, an advance written notice of the intended worthlessness deduction, in substantially the form attached to the Motion as Exhibit G (each a "**Notice of Intent to Take a Worthless Stock Deduction**").

- (c) The Debtors shall have fifteen (15) calendar days after receipt of a Notice of Intent to Take a Worthless Stock Deduction, and after consultation with the Ad Hoc Group of Crossover Lenders, to file with the Court and serve upon such 50-percent Shareholder an objection to any proposed worthlessness deduction described in the Notice of Intent to Take a Worthless Stock Deduction on the grounds that such deduction might adversely affect the Debtors' ability to utilize their Tax Attributes. If the Debtors file an objection, the filing of the income tax return with such deduction would not be permitted or effective unless approved by a final and non-appealable order of the Court. If the Debtors do not object within such 15-day period, the filing of the income tax return with such deduction shall be permitted as set forth in the Notice of Intent to Take a Worthless Stock Deduction. Additional income tax returns within the scope of this paragraph (c) shall be the subject of additional notices as set forth herein, with additional 15-day waiting periods.
- (d) For purposes of these procedures: (i) a “**50-percent Shareholder**” is any person or entity that at any time during the three-year period ending on the Petition Date has had beneficial ownership of 50% or more of Common Stock or Convertible Preferred Stock or is otherwise considered a 50-percent shareholder of GNC within the meaning of Section 382(g)(4)(D) of the Tax Code; (ii) “**beneficial ownership**” of equity interests means beneficial ownership for U.S. federal income tax purposes as determined in accordance with applicable rules under Section 382 of the Tax Code, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (A) direct and indirect, actual and constructive, beneficial ownership (for example, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (B) ownership by such holder's family members and other related persons and persons acting in concert with such holder to make a coordinated acquisition of stock, and (C) ownership of shares which such holder has an option to acquire, and (iii) an “**option**” to acquire stock includes any option, contingent purchase, warrant, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.
- (e) In the event that a 50-percent Shareholder takes a worthlessness deduction with respect to GNC common stock in violation of these procedures, such worthlessness deduction shall be null and void *ab initio* as an act in violation of the automatic stay under Bankruptcy Code Sections 362 and 105(a), and such 50-percent Shareholder

shall be required to file an amended income tax return, as applicable, revoking such worthlessness deduction.

5. The Debtors may waive, in writing and in their sole and absolute discretion, any and all restrictions, stays, and notification procedures contained in this Interim Order.

6. Within three (3) business days of entry of this Interim Order, the Debtors shall serve a notice in substantially the form attached to the Motion as Exhibit H (the “*Notice of Order*”) to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors’ postpetition financing facility; (c) counsel to the Ad Hoc Group of Crossover Lenders; (d) counsel to the Ad Hoc FILO Term Lender Group; (e) counsel to the agent under the Debtors’ secured term and asset-based financing facilities; (f) the indenture trustee for the Debtors’ prepetition convertible notes; (g) the parties included on the Debtors’ consolidated list of thirty (30) largest unsecured creditors; (h) the United States Attorney’s Office for the District of Delaware; (i) the attorneys general for all 50 states and the District of Columbia; (j) the United States Department of Justice; (k) the Internal Revenue Service; (l) the Securities and Exchange Commission; (m) the United States Drug Enforcement Agency; (n) the United States Food and Drug Administration; (o) any directly registered and record holders of outstanding Common Stock and Convertible Preferred Stock (with instructions to serve down to beneficial holders, as applicable); (p) the transfer agents for the Common Stock and the Convertible Preferred Stock; and (q) all parties requesting notice pursuant to Bankruptcy Rule 2002 (the “*Initial Notice Parties*”). No further notice of entry of this Interim Order need be served by the Debtor.

7. The requirements set forth in this Interim Order are in addition to the requirements of Bankruptcy Rules 3001 and 3002 and all applicable securities, corporate and other laws, and do not waive compliance or excuse non-compliance therewith.

8. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

9. This Interim Order and the Equity Transfer Procedures and the Worthless Stock Deduction Procedures approved herein shall remain in full force and effect until such time as the Court enters a final order with respect to the Motion.

10. Objections, if any, to approval of the Motion on a final basis must be in writing and timely filed in accordance with the requirements set forth in the Notice of Order and served upon the Debtors and counsel to the Debtors.

11. A hearing to consider entry of an order granting the Motion on a final basis (the “*Final Hearing*”) shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_\_\_\_.m. (prevailing Eastern time). Any objections or responses to the entry of such an order must be filed on or before 4:00 p.m. (prevailing Eastern time) on \_\_\_\_\_, 2020, and served on (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (email: caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com), and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel (jeffrey.mispagel@lw.com); and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); (c) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny



(email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (d) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (e) counsel to the administrative agent under the DIP ABL FILO Facility, Simpson Thacher & Bartlett LLP, 425 Lexington Ave. New York, New York 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (email: squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); and (f) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: trigg.erin@dorsey.com and kohn.samuel@dorsey.com). In the event that no objections to entry of the Proposed Final Order on the Motion are timely received, this Court may enter such Proposed Final Order without need for the Final Hearing.

12. Entry of this Interim Order is without prejudice to the right to any party to seek to shorten any of the time periods for filing and serving any notices or objections required hereunder.

13. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket Nos. ___ & ___

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**FINAL ORDER ESTABLISHING CERTAIN  
NOTICE AND HEARING PROCEDURES FOR TRANSFERS OF,  
OR WORTHLESSNESS DEDUCTIONS WITH RESPECT TO, COMMON  
STOCK AND CONVERTIBLE PREFERRED STOCK OF GNC HOLDINGS, INC.**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an order establishing certain notice and hearing procedures that must be satisfied before certain shareholders may make transfers of, or worthlessness deductions with respect to, common stock and Series A convertible preferred stock in GNC Holdings, Inc. (“*GNC*”) (respectively, the “*Common Stock*” and the “*Convertible Preferred Stock*”); and the Court having reviewed the Motion and the First Day Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, the Debtors’ estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby:

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein on a final basis.
2. The purchase, sale, or other transfer<sup>3</sup> of, or the taking of any worthlessness deduction with respect to, Common Stock and Convertible Preferred Stock in violation of the procedures set forth in the Court's *Interim Order Establishing Certain Notice and Hearing Procedures for Transfers of, or Worthlessness Deductions with Respect to, Common Stock and Convertible Preferred Stock of GNC Holdings, Inc.*, entered on \_\_\_\_\_, 2020 (the "**Interim Order**") shall be null and void *ab initio* as an act in violation of the automatic stay under Bankruptcy Code Sections 362 and 105(a).
3. The restrictions and procedures set forth in the Interim Order remain and shall remain in full force and effect.
4. The Debtors may waive, in writing and in their sole and absolute discretion, any and all restrictions, stays, and notification procedures contained in this Final Order, including those set forth in the Interim Order.
5. The requirements set forth in this Final Order are in addition to the requirements of Bankruptcy Rules 3001 and 3002 and all applicable securities, corporate and other laws, and do not waive compliance or excuse non-compliance therewith.
6. The terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

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<sup>3</sup> For purposes of this Final Order, a "**transfer**" includes any conversion of shares of Convertible Preferred Stock into shares of Common Stock.

7. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT C**

**Notice of Status as a Substantial Shareholder**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ____

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**NOTICE OF STATUS AS A SUBSTANTIAL SHAREHOLDER**

**PLEASE TAKE NOTICE** that [Name of Substantial Shareholder] [is/has become] a Substantial Shareholder<sup>2</sup> with respect to the common stock or Series A convertible preferred stock in GNC Holdings, Inc. (“*GNC*”) (respectively, the “*Common Stock*” and the “*Convertible Preferred Stock*”), a debtor and debtor in possession in Case No. 20-11662 (\_\_\_\_) pending in the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”).

**PLEASE TAKE FURTHER NOTICE** that, as of [Date], [Name of Substantial Shareholder] beneficially owns [\_\_\_] shares of Common Stock and/or [\_\_\_] shares of Convertible Preferred Stock. The following table sets forth the date(s) on which [Name of Substantial

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> For purposes of these procedures: (a) a “*Substantial Shareholder*” is any person or entity that beneficially owns in excess of: (A) 4,018,926 shares of Common Stock (representing approximately 4.75% of all issued and outstanding shares of Common Stock); or (B) 14,247 shares of Convertible Preferred Stock (representing approximately 4.75% of all issued and outstanding shares of Convertible Preferred Stock), (b) “*beneficial ownership*” of equity interests means beneficial ownership for U.S. federal income tax purposes as determined in accordance with applicable rules under Section 382 of the Internal Revenue Code of 1986, as amended, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect, actual and constructive, beneficial ownership (for example, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by such holder’s family members and other related persons and persons acting in concert with such holder to make a coordinated acquisition of stock, and (iii) ownership of shares which such holder has an option to acquire, and (c) an “*option*” to acquire stock includes any option, contingent purchase, warrant, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.



Shareholder] acquired or otherwise became the beneficial owner of such Common Stock and/ Convertible Preferred Stock:

Type of Shares (Common Stock / Convertible Preferred Stock)	Number of Shares	Date Acquired

**PLEASE TAKE FURTHER NOTICE** that the taxpayer identification number of [Name of Substantial Shareholder] is [\_\_\_\_\_].

**PLEASE TAKE FURTHER NOTICE** that, under penalties of perjury, [Name of Substantial Shareholder] hereby declares that it has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments that purport to be part of this Notice, are true, correct, and complete in all respects.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain [Interim/Final] Order Establishing Certain Notice and Hearing Procedures for Transfers of, or Worthlessness Deductions With Respect to, Common Stock and Convertible Preferred Stock of GNC Holdings, Inc., this Notice is being (a) filed with the Bankruptcy Court, 824 Market Street, Wilmington, Delaware, 19801 and (b) served upon (i) the Debtors, GNC Holdings, Inc., 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, Attn.: Matthew Milanovich, (ii) counsel for the Debtors, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman, and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel, and (iii) counsel to the Ad Hoc Group of Crossover Lenders, Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny.

[Name of Substantial Shareholder]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT D**

**Notice of Intent to Purchase, Acquire, or Otherwise Accumulate**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ____

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**NOTICE OF INTENT TO PURCHASE, ACQUIRE, OR OTHERWISE ACCUMULATE**

**PLEASE TAKE NOTICE** that [Name of Prospective Acquirer] hereby provides notice of its intention to purchase, acquire, or otherwise accumulate<sup>2</sup> one or more shares of the common stock (the “*Common Stock*”), or an option with respect thereto, or Series A convertible preferred stock (the “*Convertible Preferred Stock*”) (the “*Proposed Transfer*”) of GNC Holdings, Inc. (“*GNC*”), a debtor and debtor in possession in Case No. 20-11662 (\_\_\_\_) pending in the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”).

**PLEASE TAKE FURTHER NOTICE** that, if applicable, on [Prior Date(s)], [Name of Prospective Acquirer] filed a Notice of Status as a Substantial Shareholder<sup>3</sup> with the Bankruptcy Court and served copies thereof on the Debtors and counsel for the Debtors.

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> For purposes of this Notice, “*purchase, acquire, or otherwise accumulate*” includes any conversion of shares of Convertible Preferred Stock into shares of Common Stock.

<sup>3</sup> For purposes of these procedures: (a) a “*Substantial Shareholder*” is any person or entity that beneficially owns in excess of: (A) 4,018,926 shares of Common Stock (representing approximately 4.75% of all issued and outstanding shares of Common Stock); or (B) 14,247 shares of Convertible Preferred Stock (representing approximately 4.75% of all issued and outstanding shares of Convertible Preferred Stock), (b) “*beneficial ownership*” of equity interests means beneficial ownership for U.S. federal income tax purposes as determined in accordance with applicable rules under Section 382 of the Internal Revenue Code of 1986, as amended, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect, actual and constructive, beneficial ownership (for example, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by such holder’s family members and other related persons and persons acting in concert with such holder to make a coordinated acquisition of stock, and

*(cont'd)*

**PLEASE TAKE FURTHER NOTICE** that [Name of Prospective Acquirer] currently beneficially owns [\_\_\_] shares of the Common Stock and/or [\_\_\_] shares of the Convertible Preferred Stock.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Proposed Transfer, [Name of Prospective Acquirer] proposes to purchase, acquire, or otherwise accumulate [\_\_\_] shares of the Common Stock, or an option with respect to [\_\_\_] shares of the Common Stock, and/or [\_\_\_] shares of the Convertible Preferred Stock. If the Proposed Transfer is permitted to occur, [Name of Prospective Acquirer] will beneficially own [\_\_\_] shares of the Common Stock and/or [\_\_\_] shares of the Convertible Preferred Stock after the transfer becomes effective.

**PLEASE TAKE FURTHER NOTICE** that the taxpayer identification number of [Name of Prospective Acquirer] is [\_\_\_\_\_].

**PLEASE TAKE FURTHER NOTICE** that, under penalties of perjury, [Name of Prospective Acquirer] hereby declares that it has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments that purport to be part of this Notice are true, correct and complete in all respects.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain *[Interim/Final] Order Establishing Certain Notice and Hearing Procedures for Transfers of, or Worthlessness Deductions With Respect to, Common Stock and Convertible Preferred Stock of GNC Holdings, Inc.*, this Notice is being (a) filed with the Bankruptcy Court, 824 Market Street, Wilmington, Delaware, 19801 and (b) served upon (i) the Debtors, GNC Holdings, Inc., 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, Attn.: Matthew Milanovich, and (ii) counsel for the Debtors, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman, and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have fifteen (15) days after receipt of this Notice to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer will not be effective unless approved by a final and non-appealable order of the Bankruptcy Court. If the Debtors do not object within such 15-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in the Notice.

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*(cont'd from previous page)*

(iii) ownership of shares which such holder has an option to acquire, and (c) an “*option*” to acquire stock includes any option, contingent purchase, warrant, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

**PLEASE TAKE FURTHER NOTICE** that any further transactions contemplated by [Name of Prospective Acquirer] that may result in [Name of Prospective Acquirer] purchasing, acquiring or otherwise accumulating additional shares of the Common Stock (or an option with respect thereto) or the Convertible Preferred Stock will each require an additional notice filed with the Court to be served in the same manner as this Notice.

[Name of Prospective Acquirer]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT E**

**Notice of Intent to Sell, Trade, or Otherwise Transfer**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ____

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**NOTICE OF INTENT TO SELL, TRADE, OR OTHERWISE TRANSFER**

**PLEASE TAKE NOTICE** that [Name of Prospective Seller] hereby provides notice of its intention to sell, trade, or otherwise transfer<sup>2</sup> shares of the common stock (the “*Common Stock*”), or an option with respect thereto, or Series A convertible preferred stock (the “*Convertible Preferred Stock*”) (the “*Proposed Transfer*”) of GNC Holdings, Inc. (“*GNC*”), a debtor and debtor in possession in Case No. 20-\_\_\_\_ (\_\_\_\_) pending in the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”).

**PLEASE TAKE FURTHER NOTICE** that, if applicable, on [Prior Date(s)], [Name of Prospective Seller] filed a Notice of Status as a Substantial Shareholder<sup>3</sup> with the Bankruptcy Court and served copies thereof on the Debtors and counsel for the Debtors.

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> For purposes of this Motion, “*sell, trade, or otherwise transfer*” includes any conversion of shares of Convertible Preferred Stock into shares of Common Stock.

<sup>3</sup> For purposes of these procedures: (a) a “*Substantial Shareholder*” is any person or entity that beneficially owns in excess of: (A) 4,018,926 shares of Common Stock (representing approximately 4.75% of all issued and outstanding shares of Common Stock); or (B) 14,247 shares of Convertible Preferred Stock (representing approximately 4.75% of all issued and outstanding shares of Convertible Preferred Stock), (b) “*beneficial ownership*” of equity interests means beneficial ownership for U.S. federal income tax purposes as determined in accordance with applicable rules under Section 382 of the Internal Revenue Code of 1986, as amended, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect, actual and constructive, beneficial ownership (for example, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by such holder’s family members and other related persons and persons acting in concert with such holder to make a coordinated acquisition of stock, and

*(cont'd)*

**PLEASE TAKE FURTHER NOTICE** that [Name of Prospective Seller] currently beneficially owns [\_\_\_] shares of the Common Stock and/or [\_\_\_] shares of the Convertible Preferred Stock.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Proposed Transfer, [Name of Prospective Seller] proposes to sell, trade, or otherwise transfer [\_\_\_] shares of the Common Stock, or an option with respect to [\_\_\_] shares of the Common Stock, and/or [\_\_\_] shares of the Convertible Preferred Stock. If the Proposed Transfer is permitted to occur, [Name of Prospective Seller] will beneficially own [\_\_\_] shares of the Common Stock and/or [\_\_\_] shares of the Convertible Preferred Stock after the transfer becomes effective.

**PLEASE TAKE FURTHER NOTICE** that the taxpayer identification number of [Name of Prospective Seller] is [\_\_\_\_\_].

**PLEASE TAKE FURTHER NOTICE** that, under penalties of perjury, [Name of Prospective Seller] hereby declares that it has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments that purport to be part of this Notice are true, correct and complete in all respects.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain [*Interim/Final*] *Order Establishing Certain Notice and Hearing Procedures for Transfers of, or Worthlessness Deductions With Respect to, Common Stock and Convertible Preferred Stock of GNC Holdings, Inc.*, this Notice is being (a) filed with the Bankruptcy Court, 824 Market Street, Wilmington, Delaware, 19801 and (b) served upon (i) the Debtors, GNC Holdings, Inc., 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, Attn.: Matthew Milanovich, and (ii) counsel for the Debtors, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman, and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have fifteen (15) days after receipt of this Notice to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer will not be effective unless approved by a final and non-appealable order of the Bankruptcy Court. If the Debtors do not object within such 15-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in the Notice.

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(cont'd from previous page)

(iii) ownership of shares which such holder has an option to acquire, and (c) an “*option*” to acquire stock includes any option, contingent purchase, warrant, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.



**PLEASE TAKE FURTHER NOTICE** that any further transactions contemplated by [Name of Prospective Seller] that may result in [Name of Prospective Seller] selling, trading, or otherwise transferring shares of the Common Stock (or an option with respect thereto) or the Convertible Preferred Stock will each require an additional notice filed with the Bankruptcy Court to be served in the same manner as this Notice.

[Name of Prospective Seller]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT F**

**Notice of Status as a 50-percent Shareholder**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ____

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**NOTICE OF STATUS AS A 50-PERCENT SHAREHOLDER**

**PLEASE TAKE NOTICE** that [Name of 50-percent Shareholder] [is/has become] a 50-percent Shareholder<sup>2</sup> with respect to the common stock (the “*Common Stock*”) or Series A convertible preferred stock (the “*Convertible Preferred Stock*”) of GNC Holdings, Inc. (“*GNC*”), a debtor and debtor in possession in Case No. 20-11662 (\_\_\_\_) pending in the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”).

**PLEASE TAKE FURTHER NOTICE** that, as of [Date], [Name of 50-percent Shareholder] beneficially owns [\_\_] shares of the Common Stock and/or [\_\_] shares of the Convertible Preferred Stock. The following table sets forth the date(s) on which [Name of 50-

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> For purposes of these procedures: (a) a “*50-percent Shareholder*” is any person or entity that at any time during the three-year period ending on the Petition Date has had beneficial ownership of 50% or more of the Common Stock or Convertible Preferred Stock or is otherwise considered a 50-percent shareholder of GNC within the meaning of Section 382(g)(4)(D) of the Internal Revenue Code of 1986, as amended (the “*Tax Code*”); (b) “*beneficial ownership*” of equity interests means beneficial ownership for U.S. federal income tax purposes as determined in accordance with applicable rules under Section 382 of the Tax Code, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect, actual and constructive, beneficial ownership (for example, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by such holder’s family members and other related persons and persons acting in concert with such holder to make a coordinated acquisition of stock, and (iii) ownership of shares which such holder has an option to acquire, and (c) an “*option*” to acquire stock includes any option, contingent purchase, warrant, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

percent Shareholder] acquired or otherwise became the beneficial owner of such Common Stock and/or Convertible Preferred Stock:

Type of Shares (Common Stock / Convertible Preferred Stock)	Number of Shares	Date Acquired

**PLEASE TAKE FURTHER NOTICE** that the taxpayer identification number of [Name of 50-percent Shareholder] is [\_\_\_\_\_].

**PLEASE TAKE FURTHER NOTICE** that, under penalties of perjury, [Name of 50-percent Shareholder] hereby declares that it has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments that purport to be part of this Notice are true, correct, and complete in all respects.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain *[Interim/Final] Order Establishing Certain Notice and Hearing Procedures for Transfers of, or Worthlessness Deductions With Respect to, Common Stock and Convertible Preferred Stock of GNC Holdings, Inc.*, this Notice is being (a) filed with the Bankruptcy Court, 824 Market Street, Wilmington, Delaware, 19801 and (b) served upon (i) the Debtors, GNC Holdings, Inc., 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, Attn.: Matthew Milanovich, (ii) counsel for the Debtors, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman, and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel, and (iii) counsel to the Ad Hoc Group of Crossover Lenders, Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny.

[Name of 50-percent Shareholder]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT G**

**Notice of Intent to Take a Worthless Stock Deduction**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ____

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**NOTICE OF INTENT TO TAKE A WORTHLESS STOCK DEDUCTION**

**PLEASE TAKE NOTICE** that [Name of Prospective Claimant] hereby provides notice of its intention to take a worthlessness deduction (the “**Proposed Worthless Claim**”) with respect to shares of the common stock (the “**Common Stock**”) or Series A convertible preferred stock (the “**Convertible Preferred Stock**”) of GNC Holdings, Inc. (“**GNC**”), a debtor and debtor in possession in Case No. 20-11662 (\_\_\_\_) pending in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

**PLEASE TAKE FURTHER NOTICE** that, if applicable, on [Prior Date(s)], [Name of Prospective Claimant] filed a Notice of Status as a 50-percent Shareholder<sup>2</sup> with the Bankruptcy Court and served copies thereof on the Debtors and counsel for the Debtors.

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> For purposes of these procedures: (a) a “**50-percent Shareholder**” is any person or entity that at any time during the three-year period ending on the Petition Date has had beneficial ownership of 50% or more of the Common Stock or Convertible Preferred Stock or is otherwise considered a 50-percent shareholder of GNC within the meaning of Section 382(g)(4)(D) of the Internal Revenue Code of 1986, as amended (the “**Tax Code**”); (b) “**beneficial ownership**” of equity interests means beneficial ownership for U.S. federal income tax purposes as determined in accordance with applicable rules under Section 382 of the Tax Code, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect, actual and constructive, beneficial ownership (for example, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by such holder’s family members and other related persons and persons acting in concert with such holder to make a coordinated acquisition of stock, and (iii) ownership of shares which such holder has an option to acquire, and (c) an “**option**” to acquire stock includes any option, contingent purchase, warrant, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

**PLEASE TAKE FURTHER NOTICE** that [Name of Prospective Claimant] currently beneficially owns [\_\_\_] shares of the Common Stock and/or [\_\_\_] shares of the Convertible Preferred Stock.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Proposed Worthless Claim, [Name of Prospective Claimant] proposes to declare for income tax purposes that [\_\_\_] shares of the Common Stock and/or [\_\_\_] shares of the Convertible Preferred Stock became worthless during the tax year ending [\_\_\_\_\_].

**PLEASE TAKE FURTHER NOTICE** that the taxpayer identification number of [Name of Prospective Claimant] is [\_\_\_\_\_].

**PLEASE TAKE FURTHER NOTICE** that, under penalties of perjury, [Name of Prospective Claimant] hereby declares that it has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments that purport to be part of this Notice are true, correct and complete in all respects.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain [*Interim/Final*] *Order Establishing Certain Notice and Hearing Procedures for Transfers of, or Worthlessness Deductions With Respect to, Common Stock and Convertible Preferred Stock of GNC Holdings, Inc.* (the “**Order**”), this Notice is being (a) filed with the Bankruptcy Court, 824 Market Street, Wilmington, Delaware, 19801 and (b) served upon (i) the Debtors, GNC Holdings, Inc., 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, Attn.: Matthew Milanovich, and (ii) counsel for the Debtors, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman, and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order, [Name of Prospective Claimant] acknowledges that it is enjoined from filing an income tax return with respect to the Proposed Worthless Claim unless and until [Name of Prospective Claimant] complies with the procedures set forth in the Order, but the undersigned 50-percent Shareholder otherwise reserves all rights regarding the Order or the motion granted prior thereto.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have fifteen (15) days after receipt of this Notice to object to the Proposed Worthless Claim described herein. If the Debtors file an objection, such Proposed Worthless Claim will not be permitted or effective unless approved by a final and non-appealable order of the Bankruptcy Court. If the Debtors do not object within such 15-day period, then after expiration of such period the Proposed Worthless Claim may proceed solely as set forth in this Notice.

**PLEASE TAKE FURTHER NOTICE** that any further transactions contemplated by [Name of Prospective Claimant] that may result in [Name of Prospective Claimant] filing an income tax return with respect to a Proposed Worthless Claim will each require an additional notice filed with the Court to be served in the same manner as this Notice.

[Name of Prospective Claimant]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT H**

**Notice of Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ____

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**NOTICE OF (I) NOTIFICATION PROCEDURES APPLICABLE TO  
SUBSTANTIAL SHAREHOLDERS AND 50-PERCENT SHAREHOLDERS OF GNC  
HOLDINGS, INC. COMMON STOCK AND CONVERTIBLE PREFERRED STOCK,  
(II) NOTIFICATION AND HEARING PROCEDURES FOR TRANSFERRING  
GNC HOLDINGS, INC. COMMON STOCK AND CONVERTIBLE PREFERRED  
STOCK, (III) NOTIFICATION AND HEARING PROCEDURES FOR TAKING A  
WORTHLESSNESS DEDUCTION WITH RESPECT TO GNC HOLDINGS, INC.  
COMMON STOCK AND CONVERTIBLE PREFERRED STOCK, AND  
(IV) ALLOWING A HEARING ON THE PROSPECTIVE APPLICATION THEREOF**

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**TO: CERTAIN PERSONS OR ENTITIES WITH COMMON STOCK AND  
CONVERTIBLE PREFERRED STOCK IN GNC HOLDINGS, INC.**

**PLEASE TAKE NOTICE** that on [ ● ], 2020 (the “*Petition Date*”), GNC Holdings, Inc. (“*GNC*”) and its above-captioned affiliates (collectively, the “*Debtors*”), commenced chapter 11 cases (the “*Chapter 11 Cases*”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “*Bankruptcy Code*”). Subject to certain exceptions, Bankruptcy Code Section 362 operates as a stay of any act to obtain possession of property of the Debtors’ estates or to exercise control over property of the Debtors’ estates.

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

**PLEASE TAKE FURTHER NOTICE** that on [ ● ], 2020, the Debtors filed a motion seeking entry of an order pursuant to Bankruptcy Code Sections 105(a), 362(a)(3), and 541 establishing certain notice and hearing procedures that must be satisfied before certain shareholders may make transfers of, or worthlessness deductions with respect to, common stock and Series A convertible preferred stock in GNC (respectively, the “*Common Stock*” and the “*Convertible Preferred Stock*”) (the “*Motion*”).

**PLEASE TAKE FURTHER NOTICE** that on \_\_\_\_\_, 2020, the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”) entered an interim order approving the procedures set forth in the Motion and below order to preserve the Debtors’ ability to fully utilize their Tax Attributes (as defined in the Motion) pursuant to Bankruptcy Code Sections 105(a), 362(a)(3), and 541 (the “*Interim Order*”). Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Interim Order, unless otherwise stated. Any purchase, sale, or other transfer of, or the taking of any worthlessness deduction with respect to, Common Stock and Convertible Preferred Stock in violation of the procedures set forth below shall be null and void *ab initio* as an act in violation of the automatic stay under Bankruptcy Code Sections 362 and 105(a).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Interim Order, the following procedures shall apply to owning and transferring Common Stock and Convertible Preferred Stock (the “*Equity Transfer Procedures*”):<sup>2</sup>

- (a) Any person or entity (as defined in Treasury Regulations section 1.382-3(a)) who currently is or hereafter becomes a Substantial Shareholder (as such term is defined in paragraph (e) below) must file with the Bankruptcy Court, and serve upon (i) the Debtors and counsel for the Debtors and (ii) counsel to the Ad Hoc Group of Crossover Lenders, a notice of such status (each a “*Notice of Status as Substantial Shareholder*”) on or before the later of (i) twenty (20) calendar days after entry of the Interim Order or (ii) ten (10) days after becoming a Substantial Shareholder.
- (b) At least twenty (20) calendar days prior to effectuating any transfer<sup>3</sup> of Common Stock (including options to acquire Common Stock, as defined in paragraph (e) below) or Convertible Preferred Stock that would result in an increase in the amount of Common Stock or Convertible Preferred Stock beneficially owned by a Substantial Shareholder, or would result in a person or entity becoming a Substantial Shareholder, such Substantial Shareholder,

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<sup>2</sup> This summary is qualified in its entirety by reference to the provisions of the Interim Order. To the extent any inconsistency exists between this Notice and the Interim Order, the terms of the Interim Order shall govern and control.

<sup>3</sup> For purposes of this Notice, a “*transfer*” includes any conversion of shares of Convertible Preferred Stock into shares of Common Stock.

person or entity must file with the Bankruptcy Court, and serve upon the Debtors and counsel for the Debtors, an advance written notice of the intended transfer of Common Stock or Convertible Preferred Stock (each a “*Notice of Intent to Purchase, Acquire, or Otherwise Accumulate*”).

- (c) At least twenty (20) calendar days prior to effectuating any transfer of Common Stock (including options to acquire Common Stock) or Convertible Preferred Stock that would result in a decrease in the amount of Common Stock or Convertible Preferred Stock beneficially owned by a Substantial Shareholder, or would result in a person or entity ceasing to be a Substantial Shareholder, such Substantial Shareholder, person or entity must file with the Bankruptcy Court, and serve upon the Debtors and counsel for the Debtors, an advance written notice of the intended transfer of Common Stock or Convertible Preferred Stock (each a “*Notice of Intent to Sell, Trade, or Otherwise Transfer*” and, collectively with each Notice of Intent to Purchase, Acquire, or Otherwise Accumulate, a “*Notice of Proposed Transfer*”).
- (d) The Debtors shall have fifteen (15) calendar days after receipt of a Notice of Proposed Transfer, and after consultation with the Ad Hoc Group of Crossover Lenders, to file with the Bankruptcy Court and serve upon such Substantial Shareholder, person or entity an objection to any proposed transfer of Common Stock or Convertible Preferred Stock described in the Notice of Proposed Transfer on the grounds that such transfer might adversely affect the Debtors’ ability to utilize their Tax Attributes. If the Debtors file an objection, such transfer would not be effective unless approved by a final and non-appealable order of the Bankruptcy Court. If the Debtors do not object within such 15-day period, such transfer shall be permitted to proceed solely as set forth in the Notice of Proposed Transfer. Further transfers within the scope of this paragraph (d) shall be the subject of additional notices as set forth herein, with additional 15-day waiting periods.
- (e) For purposes of these procedures: (i) a “*Substantial Shareholder*” is any person or entity that beneficially owns in excess of: (A) 4,018,926 shares of Common Stock (representing approximately 4.75% of all issued and outstanding shares of Common Stock); or (B) 14,247 shares of Convertible Preferred Stock (representing approximately 4.75% of all issued and outstanding shares of Convertible Preferred Stock), (ii) “*beneficial ownership*” of equity interests means beneficial ownership for U.S. federal income tax purposes as determined in accordance with applicable rules under Section 382 of the Internal Revenue Code of 1986, as amended (the “*Tax Code*”), Treasury Regulations

promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (A) direct and indirect, actual and constructive, beneficial ownership (for example, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (B) ownership by such holder's family members and other related persons and persons acting in concert with such holder to make a coordinated acquisition of stock, and (C) ownership of shares which such holder has an option to acquire, and (iii) an "*option*" to acquire stock includes any option, contingent purchase, warrant, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

- (f) Effective as of the Petition Date and until further order of the Court to the contrary, any purchase, sale, or other transfer of beneficial ownership of Common Stock, including options to acquire Common Stock, or Convertible Preferred Stock in violation of these procedures shall be null and void *ab initio* as an act in violation of the automatic stay under Bankruptcy Code Sections 362 and 105(a).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Interim Order, the following procedures shall apply to taking worthlessness deductions, for income tax purposes, with respect to GNC common stock (the "***Worthless Stock Deduction Procedures***"):<sup>4</sup>

- (a) Any person or entity that currently is or becomes a 50-percent Shareholder (as such term is defined in paragraph (d) below) must file with the Bankruptcy Court, and serve upon (i) the Debtors and counsel for the Debtors and (ii) counsel to the Ad Hoc Group of Crossover Lenders, a notice of such status (each a "***Notice of Status as a 50-percent Shareholder***") on or before the later of (i) twenty (20) calendar days after entry of the Interim Order or (ii) ten (10) days after becoming a 50-percent Shareholder.
- (b) At least twenty (20) calendar days prior to filing any income tax return, or any amendment to such a return, taking any worthlessness deduction with respect to Common Stock or Convertible Preferred Stock for a tax year ending before the Debtors' emergence from chapter 11 protection, such 50-percent Shareholder must file with the Bankruptcy Court, and serve upon the Debtors and counsel for the Debtors, an advance written notice

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<sup>4</sup> This summary is qualified in its entirety by reference to the provisions of the Interim Order. To the extent any inconsistency exists between this Notice and the Interim Order, the terms of the Interim Order shall govern and control.

of the intended worthlessness deduction (each a “*Notice of Intent to Take a Worthless Stock Deduction*”).

- (c) The Debtors shall have fifteen (15) calendar days after receipt of a Notice of Intent to Take a Worthless Stock Deduction, and after consultation with the Ad Hoc Group of Crossover Lenders, to file with the Bankruptcy Court and serve upon such 50-percent Shareholder an objection to any proposed worthlessness deduction described in the Notice of Intent to Take a Worthless Stock Deduction on the grounds that such deduction might adversely affect the Debtors’ ability to utilize their Tax Attributes. If the Debtors file an objection, the filing of the income tax return with such deduction would not be permitted or effective unless approved by a final and non-appealable order of the Bankruptcy Court. If the Debtors do not object within such 15-day period, the filing of the income tax return with such deduction shall be permitted as set forth in the Notice of Intent to Take a Worthless Stock Deduction. Additional income tax returns within the scope of this paragraph (c) shall be the subject of additional notices as set forth herein, with additional 15-day waiting periods.
- (d) For purposes of these procedures: (i) a “*50-percent Shareholder*” is any person or entity that at any time during the three-year period ending on the Petition Date has had beneficial ownership of 50% or more of Common Stock or Convertible Preferred Stock or is otherwise considered a 50-percent shareholder of GNC within the meaning of Section 382(g)(4)(D) of the Tax Code; (ii) “*beneficial ownership*” of equity interests means beneficial ownership for U.S. federal income tax purposes as determined in accordance with applicable rules under Section 382 of the Tax Code, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (A) direct and indirect, actual and constructive, beneficial ownership (for example, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (B) ownership by such holder’s family members and other related persons and persons acting in concert with such holder to make a coordinated acquisition of stock, and (C) ownership of shares which such holder has an option to acquire, and (iii) an “*option*” to acquire stock includes any option, contingent purchase, warrant, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.
- (e) In the event that a 50-percent Shareholder takes a worthlessness deduction with respect to Common Stock or Convertible Preferred

Stock in violation of these procedures, such worthlessness deduction shall be null and void *ab initio* as an act in violation of the automatic stay under Bankruptcy Code Sections 362 and 105(a), and such 50-percent Shareholder shall be required to file an amended income tax return, as applicable, revoking such worthlessness deduction.

**PLEASE TAKE FURTHER NOTICE** that, upon written request, the Debtors' notice and claims agent, Prime Clerk LLC ("*Prime Clerk*"), will provide a form of each of the required notices described above.

**PLEASE TAKE FURTHER NOTICE** that Prime Clerk can be contacted online at <https://cases.primeclerk.com/GNC>, or by calling 1-844-974-2132 (for domestic callers) or 1-347-505-7137 (for international callers).

**FAILURE TO FOLLOW THE PROCEDURES SET FORTH IN THIS NOTICE OF ORDER OR THE INTERIM ORDER SHALL CONSTITUTE A VIOLATION OF THE AUTOMATIC STAY PROVISIONS OF BANKRUPTCY CODE SECTION 362.**

**ANY PROHIBITED PURCHASE, SALE, TRADE, OR OTHER TRANSFER OF, OR THE TAKING OF ANY WORTHLESSNESS DEDUCTION WITH RESPECT TO, COMMON STOCK AND CONVERTIBLE PREFERRED STOCK IN VIOLATION OF THE INTERIM ORDER BE NULL AND VOID *AB INITIO* AND MAY BE PUNISHED BY CONTEMPT OR OTHER SANCTIONS IMPOSED BY THE BANKRUPTCY COURT.**

**PLEASE TAKE FURTHER NOTICE** that the requirements set forth in this Notice of Order are in addition to the requirements of Bankruptcy Rules 3001 and 3002 and all applicable securities, corporate and other laws, and do not waive compliance or excuse non-compliance therewith.

**PLEASE TAKE FURTHER NOTICE** that if no written objections to the Motion are timely filed, served and received in accordance with the requirements set forth below, a final order will be submitted which will provide that the Motion shall be granted in its entirety on a final basis. If timely written objections are filed, served and received, a hearing (the "*Hearing*") to consider approval of the Motion on a final basis will be held at \_\_:\_\_ \_\_.m. prevailing Eastern Time on \_\_\_\_\_, 2020 before Judge \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to final approval of the Motion must (a) be in writing, (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Rules for the United States Bankruptcy Court for the District of Delaware, (c) be filed on or before 5:00 p.m. prevailing Eastern Time on \_\_\_\_\_, 2020 (the "*Objection Deadline*") with the Clerk for the United States Bankruptcy Court for the District of Delaware, and (d) be served on the following parties so as to be **ACTUALLY RECEIVED** on or before the Objection Deadline: (x) the Debtors, GNC Holdings, Inc., 300 Sixth Avenue, Pittsburgh,

Pennsylvania 15222, Attn.: Matthew Milanovich, (y) counsel for the Debtors, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman, and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel, and (z) counsel to the Ad Hoc Group of Crossover Lenders, Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny.

**PLEASE TAKE FURTHER NOTICE** that only those objections made in writing and timely filed and received by the Objection Deadline will be considered by the Bankruptcy Court at the Hearing, and that if no objections to the Motion are timely filed and served in accordance with the procedures set forth herein, then the Bankruptcy Court may enter a final order granting the Motion **without further notice**.

Dated: \_\_\_\_\_, 2020

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ \_\_\_\_\_.

Michael R. Nestor (No. 3526)  
Kara Hammond Coyle (No. 4410)  
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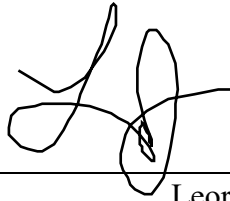
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jeffrey.mispagel@lw.com





TAB GG

THIS IS **EXHIBIT “GG”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to be 'LJ', written over a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
	)	Case No. 20-11662 (___)
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**DEBTORS' FIRST (1<sup>ST</sup>) OMNIBUS MOTION FOR ENTRY OF AN  
ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES  
EFFECTIVE AS OF THE PETITION DATE AND (B) GRANTING RELATED RELIEF**

**PARTIES RECEIVING THIS MOTION SHOULD LOCATE THEIR  
NAMES AND THEIR LEASE LISTED ON SCHEDULE 1 TO THE  
PROPOSED ORDER ATTACHED HERETO AS EXHIBIT A.**

The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Order*”): (a) authorizing the rejection of certain unexpired leases and subleases, including any guaranties, amendments or modifications thereof (each, a “*Rejection Lease*,” and collectively, the “*Rejection Leases*”), a list of which is annexed as **Schedule 1** to **Exhibit A**, effective as of the Petition Date (as defined below), and (b)

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

authorizing the Debtors to abandon the personal property located at the premises related to the Rejection Leases (collectively, the “*Premises*”) as of the Petition Date.

### **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 365(a) and 554(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “*Bankruptcy Code*”), and Rules 6006 and 6007 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

### **BACKGROUND**

3. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies' Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day Declaration**")<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

### **MOTION SPECIFIC BACKGROUND**

6. As described in detail in the First Day Declaration, the Debtors have today filed these Chapter 11 Cases amid an unprecedented health crisis with difficult social, political and economic implications. While the Debtors would have preferred to wait out the current instabilities of the financial markets and retail industry, they simply could not afford to do so. The relief sought in this Motion is critical to preserve liquidity and maintain the Debtors' viability as a going concern.

#### **I. THE REJECTION LEASES**

7. As of the Petition Date, the Debtors are parties to approximately 3,616 real property leases in the United States, Canada and Puerto Rico, 772 of which are subleased to 330 franchisees. As part of their ongoing restructuring efforts, the Debtors are engaging in a comprehensive review

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court's website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors' proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

and analysis of their lease portfolio. After careful evaluation, the Debtors have identified 100 stores to be rejected (the “*Rejection Stores*”). As such, the Debtors have determined, in the exercise of their business judgment, that it is in the best interests of their estates to seek authority to reject the Rejection Leases associated with the Rejection Stores as of the Petition Date. Rejecting the Rejection Leases will allow the Debtors to avoid the accrual of unnecessary administrative expenses with no foreseeable benefits to the Debtors’ estates. Moreover, given the obligations under the Rejection Leases and current market conditions, the Debtors have concluded, in consultation with their advisors, that the Rejection Leases are not marketable and are unlikely to generate material value for the Debtors’ estates.

8. On June 18, 2020, the Debtors sent letters to each landlord counterparty (the “*Landlords*”) to the Rejection Leases, which were delivered no later than the Petition Date, notifying them that the Debtors were unequivocally surrendering possession of the Premises and abandoning any Debtor-owned personal property in conjunction therewith as of such time.

## **II. REMAINING PROPERTY**

9. Certain Rejection Stores store property that belongs to the Debtors, including, but not limited to, inventory, books and records, equipment, fixtures, furniture and other personal property (the “*Remaining Property*”). Before the Debtors vacated the Premises, the Debtors evaluated the Remaining Property located at the Premises and determined that (a) the Remaining Property is of inconsequential value or (b) the cost of removing and storing the Remaining Property for future use, marketing, or sale exceeded its value to the Debtors’ estates. Because the Debtors have no intent to operate the stores at the Premises, the Remaining Property will no longer be necessary for the administration of the Debtors’ estates.

10. Accordingly, to reduce postpetition administrative costs and in the exercise of the Debtors' sound business judgment, the Debtors believe that the abandonment of the Remaining Property is appropriate and in the best interests of the Debtors, their estates, and their creditors.

### **BASIS FOR RELIEF**

#### **I. REJECTION OF THE REJECTION LEASES REFLECTS THE DEBTORS' SOUND BUSINESS JUDGMENT.**

11. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The purpose behind section 365(a) is "to permit the trustee or debtor-in-possession to use valuable property of the estate and to renounce title to and abandon burdensome property." *In re Republic Airways Holdings Inc.*, 547 B.R. 578, 582 (Bankr. S.D.N.Y. 2016) (quoting *In re Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993)); *see also In re Exide Techs.*, 607 F.3d 957, 967 (3d Cir. 2010) ("Courts may use § 365 to free a [debtor] from burdensome duties that hinder its reorganization."); *N.L.R.B. v. Bildisco and Bildisco (In re Bildisco)*, 465 U.S. 513, 528 (1984) ("[t]he authority to reject an executory contract is vital to the basic purpose to a Chapter 11 reorganization, because rejection can release the debtor's estate from burdensome obligations that can impede a successful reorganization."). Pursuant to Bankruptcy Rule 6006(f), a trustee or debtor in possession may file a motion for the authority to reject multiple leases. Fed. R. Bankr. P. 6006(f).

12. The standard applied by courts to determine whether the assumption or rejection of an unexpired nonresidential lease should be authorized is the "business judgment" test, which requires a debtor to have determined that the requested assumption or rejection would be beneficial to its estate. *See Grp. Of Institutional Inv'rs v. Chi., Milwaukee St. Paul & Pac. R.R.*, 318 U.S. 523, 550 (1943) (noting that "the question whether a lease should be rejected...is one of business

judgment”); *In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff’d*, 465 U.S. 513 (“The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.”); *accord In re HQ Glob. Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003).

13. In applying the business judgment standard, bankruptcy courts give deference to a debtor’s decision to assume or reject leases. *See, e.g., Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989) (affirming the rejection of a service agreement as a sound exercise of the debtor’s business judgment when the bankruptcy court found that such rejection would benefit the debtors’ estate); *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001) (“[A] debtor’s decision to reject an executory contract must be summarily affirmed unless it is the product of bad faith, or whim, or caprice.”).

14. Rejection of the Rejection Leases is well within the Debtors’ business judgment and will serve to maximize the value of their estates. The Debtors seek authority to reject the Rejection Leases to avoid the incurrence of any additional unnecessary expenses related to the Rejection Leases and the maintenance of the Rejection Stores. The Debtors have concluded that the cost of maintaining the Rejection Stores outweighs any revenues that the Rejection Stores currently generate or are likely to generate in the future.

15. After evaluation and analysis, the Debtors have determined, in the exercise of their sound business judgment, that there is no net benefit that is likely to be realized from the Debtors’ continued efforts to retain and potentially market the Rejection Leases and that there is little, if any, likelihood that the Debtors will be able to realize value from the Rejection Leases. Accordingly, the Debtors have concluded that rejection of the Rejection Leases is in the best interest of the Debtors’ estates, their creditors, and other parties in interest.



**II. THE COURT SHOULD DEEM THE REJECTION LEASES REJECTED EFFECTIVE AS OF THE PETITION DATE AND AUTHORIZE DEBTORS TO ABANDON THE REMAINING PROPERTY.**

16. Section 365 of the Bankruptcy Code does not restrict a bankruptcy court from applying rejection retroactively. *See In re Jamesway Corp.*, 179 B.R. 33, 37 (S.D.N.Y. 1995) (stating that section 365 does not include “restrictions as to the manner in which the court can approve rejection”); *see also In re CCI Wireless, LLC*, 297 B.R. 133, 138 (D. Colo. 2003) (noting that section 365 “does not prohibit the bankruptcy court from allowing the rejection of leases to apply retroactively”).

17. Courts have held that a bankruptcy court may, in its discretion, authorize rejection retroactively to a date prior to entry of an order authorizing such rejection where the balance of equities favors such relief. *See In re Thinking Machs. Corp.*, 67 F.3d 1021, 1029 (1st Cir. 1995) (stating that “rejection under section 365(a) does not take effect until judicial approval is secured, but the approving court has the equitable power, in suitable cases, to order a rejection to operate retroactively”); *In re Chi-Chi’s, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (stating “the court’s power to grant retroactive relief is derived from the bankruptcy court’s equitable powers so long as it promotes the purposes of § 365(a)”; *In re CCI Wireless, LLC*, 297 B.R. at 140 (holding that a “court has authority under section 365(d)(3) to set the effective date of rejection at least as early as the filing date of the motion to reject”).

18. Here, the equities of these Chapter 11 Cases favor the Court’s approval of the retroactive rejection of the Rejection Leases to the Petition Date. Without such relief, the Debtors will potentially incur unnecessary administrative expenses related to the Rejection Leases—agreements that provide no benefit to the Debtors’ estates in light of their goal to maximize value of the business as a going concern. *See* 11 U.S.C. § 365(d)(3).

19. Moreover, the Landlords will not be unduly prejudiced if the Rejection Leases are rejected effective as of the Petition Date because the Debtors have served this Motion on the Landlords and/or their agents or representatives by electronic mail and/or facsimile, on the date hereof, and by overnight mail, the following day, stating that the Debtors intend to reject the Rejection Leases effective as of the Petition Date. Furthermore, the Debtors have, on or before the date hereof, turned over the keys to the Premises to the Landlords or their representatives and abandoned the Premises, and in conjunction therewith indicated that they were unequivocally surrendering possession of the Premises as a result thereof. Therefore, based on the Debtors' desire to eliminate the potential for administrative claims against their estates, and to avoid the potential accrual of any further obligations under the Rejection Leases, the Debtors respectfully submit that the retroactive rejection of the Rejection Leases as of the Petition Date is appropriate.

20. Further, the abandonment of the Remaining Property is appropriate and authorized by the Bankruptcy Code. *See* 11 U.S.C. § 554(a). Section 554(a) provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” *Id.* Courts generally give a debtor in possession great deference to its decision to abandon property. *See In re Vel Rey Props., Inc.*, 174 B.R. 859, 867 (Bankr. D.D.C. 1994) (“Clearly, the court should give deference to the trustee’s judgment in such matters.”). Unless certain property is harmful to the public, once a debtor has shown that it is burdensome or of inconsequential value to the estate, a court should approve the abandonment. *Id.*

21. Before deciding to abandon any Remaining Property, the Debtors determined that the costs of moving and storing such Remaining Property outweighed any benefit to the Debtors’

estates. Further, any efforts by the Debtors to move or market the Remaining Property would have unnecessarily delayed the Debtors' rejection of the Rejection Leases.

22. Accordingly, the Debtors respectfully submit that the Court deem the Rejection Leases rejected effective as of the Petition Date and authorize the Debtors to abandon the Remaining Property as of such date.

### **RESERVATION OF RIGHTS**

23. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (f) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

### **NOTICE**

24. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange

Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; (p) the counterparties to the Rejection Leases (via overnight mail) and (q) all parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank.]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Order, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Joseph M. Mulvihill

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*Proposed Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

---

In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ____

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**FIRST (1<sup>ST</sup>) OMNIBUS ORDER  
(A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES  
EFFECTIVE AS OF THE PETITION DATE AND (B) GRANTING RELATED RELIEF**

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Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for an order (this “**Order**”), (a) authorizing the Debtors to reject certain unexpired leases of real property (each, a “**Rejection Lease**,” and collectively, the “**Rejection Leases**”), a list of which is annexed as **Schedule 1** hereto, effective as of the Petition Date; and (b) authorizing the Debtors to abandon the Remaining Property located at the Premises as of the Petition Date; and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the First Day Declaration and all of the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and Bankruptcy Rule 6006, the Rejection Leases identified in **Schedule 1** attached hereto, to the extent not already terminated in accordance with their applicable terms or upon agreement of the parties, are hereby rejected effective as of the Petition Date.
3. The Debtors are authorized, but not directed, to abandon the Remaining Property that is owned by the Debtors and located on the Premises and all such property is deemed abandoned effective as of the Petition Date. The Landlords to each Rejection Lease are authorized to dispose of the abandoned Remaining Property without liability to the Debtors or any third party and, to the extent applicable, the automatic stay is modified to allow such disposition.
4. Nothing herein shall prejudice any party's rights to assert that the Rejection Leases are not, in fact, executory within the meaning of section 365 of the Bankruptcy Code.



5. Any proofs of claim for damages in connection with the rejection of the Rejection Leases, if any, shall be filed on or before the later of (a) the claims bar date established by the Court in these Chapter 11 Cases, if any, and (b) thirty (30) days after entry of this Order.

6. Nothing in the Motion or this Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any particular claim would constitute an allowed claim. Nothing contained in this Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

7. The requirements set forth in Bankruptcy Rules 6006 and 6007 are satisfied.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**Schedule 1**

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
1.	16	Monte Plaza Shopping Center, LLC Monterey Investors 5426 Martway Mission, KS 66205	General Nutrition Corporation	Hy Vee Shops 4000 W 6th Street Lawrence, KS
2.	20	Mount Vernon Associates LLC Mountain Development 3 Garrett Mt. Plaza Woodland Park, NJ 7424	General Nutrition Corporation	Eastfield Mall Boston Rd Springfield, MA
3.	29	CBL & Associates Properties Inc. CBL Center 2030 Hamilton Place Boulevard, Suite 500 Chattanooga, TN 37421	General Nutrition Corporation	Monroeville Mall Monroeville, PA
4.	57	Washington Prime Group Inc. 180 East Broad Street, 21st Floor Columbus, OH 43215	General Nutrition Corporation	Chautauqua Mall 318 East Fairmont Lakewood, NY
5.	91	Wilmorite Inc. Eastview Mall LLC 1265 Scottsville Road Rochester, NY 14624	General Nutrition Corporation	Eastview Mall 7979 Victor-Pittsford Roa Victor, NY
6.	101	Rural King Realty Rural King Realty LLC Attn: RE Manager 4216 Dewitt Ave Mattoon, IL 61938	General Nutrition Corporation	Cross County Mall 700 Broadway East Mattoon, IL
7.	113	Namdar Realty Group 150 Great Neck Road, Suite 304 Great Neck, NY 11021	General Nutrition Corporation	Northland Mall 2900 E Lincolnway Sterling, IL
8.	125	Waterford Assc Waterloo Center LLC c/o Namdar Realty Group 150 Great Neck Road, Suite 304	General Nutrition Corporation	Crossroads Center 2060 Crossroads Blvd Waterloo, IA

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
		Great Neck, NY 11021		
9.	161	Namdar Realty Group 150 Great Neck Road, Suite 304 Great Neck, NY 11021	General Nutrition Corporation	Bangor Mall 663 Stillwater Avenue Bangor, ME
10.	239	Unplugged Wireless, LLC UP Fieldgate US Investments Fashion Square LLC 1045 Tulloss Road Franklin, TN 37067	General Nutrition Corporation	Orlando Fashion Square 3451 E Colonial Drive Orlando, FL
11.	242	Brookfield Property Partners L.P. 350 N. Orleans Street, Suite 300 Chicago, IL 60654	General Nutrition Corporation	Staten Island Mall 2655 Richmond Avenue Staten Island, NY
12.	249	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Oxford Valley Mall 2300 E Lincoln Highway Langhorne, PA
13.	264	Universal Realty, LLC University Mall Soho Owner LLC c/o CBRE 2200 E. Fowler Ave Tampa, FL 33612	General Nutrition Corporation	University Mall 12232 University Square C Tampa, FL
14.	284	Investment Concepts, Inc Walpoole Mall Associates LLC 1801 S. La Cienega Blvd., Suite 301 Los Angeles, CA 90035	General Nutrition Corporation	Walpole Mall 90 Providence Hwy East Walpole, MA
15.	289	Brookfield Property Partners L.P. 350 N. Orleans Street, Suite 300 Chicago, IL 60654	General Nutrition Corporation	Four Seasons Town Center 346 Four Seasons Mall Greensboro, NC
16.	307	Preit Services, LLC The Bellevue 200 South Broad Street, Third Floor Philadelphia, PA 19102	General Nutrition Corporation	Springfield Mall 1200 Baltimore Pike Springfield, PA

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
17.	328	Levin Management Corporation Levis Commons LLC 3201 Levis Common Blvd Perrysburg, OH 43551	General Nutrition Corporation	The Town Center At Levis 4135 Levis Commons Blvd Perrysburg, OH
18.	351	Elliot Associates, Inc. Ellis Partners LLC 111 Sutter Street, Suite 800 San Francisco, CA 94104	General Nutrition Corporation	Town & Country Village 855 El Camino Real Palo Alto, CA
19.	385	American Assets, Inc. AAT Del Monte LLC c/o American Assets Trust Management LLC 11455 El Camino Real, Suite 200 San Diego, CA 92130	General Nutrition Corporation	Del Monte Shopping Center 350 Del Monte S.C. Monterey, CA
20.	394	Brookfield Property Partners L.P. 350 N. Orleans Street, Suite 300 Chicago, IL 60654	General Nutrition Corporation	Neshaminy Mall 707 Neshaminy Mall Cornwell Heights, PA
21.	395	CW Capital Asset Management LLC CW Capital Asset Management LLC 7501 Wisconsin Avenue Bethesda, MD 20814	General Nutrition Corporation	Southland Mall 1215 East Shelby Drive Memphis, TN
22.	431	Washington Prime Group Inc. 180 East Broad Street, 21st Floor Columbus, OH 43215	General Nutrition Corporation	Dayton Mall 2700 Miamensburg Centerville Dayton, OH
23.	477	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Haywood Mall 700 Haywood Road Greenville, SC
24.	485	Macerich 401 Wilshire Blvd, Suite 700 Santa Monica, CA 90401	General Nutrition Corporation	Vintage Faire Mall 3401 Dale Road Modesto, CA
25.	486	Cafaro Company, The Sandusky Mall Company c/o The Cafaro Company	General Nutrition Corporation	Sandusky Mall 4314 Milan Road Sandusky, OH

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
		5577 Youngstown Warren Road Niles, OH 44446		
26.	496	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Lehigh Valley Mall 215 Lehigh Valley Mall Whitehall, PA
27.	507	RPAI US Management LLC The Shoppes at Union Hill LLC c/o Stanbery Development LLC Attn: Property Management 328 Civic Center Drive Columbus, OH 43215	General Nutrition Corporation	The Shoppes At Union Hill 3056 State Route 10 Denville, NJ
28.	554	New Realty Advisors (2) 849 E. Commerce Drive, Suite 895 San Antonio, TX 78205	General Nutrition Corporation	Rivercenter Mall 849 East Commerce Street San Antonio, TX
29.	601	Hull Property Group C-III Asset Management 5221 N. O'Connor Blvd, Suite 600 Irving, TX 75039	General Nutrition Corporation	Quintard Mall 700 Quintard Drive Oxford, AL
30.	612	SVN Vanguard Commercial Real Estate Advisors New KOA LLC 8308 On the Mall Buena Park, CA 90620	General Nutrition Corporation	Buena Park Mall 8312 On The Mall Buena Park, CA
31.	639	Penmark Properties Penmark Clearfield Holdings LLC 1000 Germantown Pike, Suite A-2 Plymouth Meeting, PA 19462	General Nutrition Corporation	Clearfield Mall 1800 Daisy Street Clearfield, PA
32.	648	Mid-America Real Estate Group 135 S LaSalle Street, Suite 1625 Chicago, IL 60604	General Nutrition Corporation	Miami Valley Centre 987 E. Ash Street Piqua, OH
33.	689	THF Realty THF Chesterfield Development LLC	General Nutrition Corporation	Chesterfield Commons 204 Thf Blvd

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
		c/o THF Realty Inc. 2127 Innerbelt Business Center Drive, Suite 200 St. Louis, MO 63114		Chesterfield, MO
34.	766	Cypress Equities Managed Services LP (2) Cypress Equities 8144 Walnut Hill Lane, Suite 1200 Dallas, TX 75231	General Nutrition Corporation	Flagstaff Mall 4650 E 2 N Hwy 89 Flagstaff, AZ
35.	831	CCM Capital Partners LLC Condado 6 LLC c/o CIAC LLC 1519 Ponce de Leon San Juan, PR 00919	General Nutrition Corporation	Centro Gran Caribe Carretera #2 Km 29.7 Vega Alta, PR
36.	859	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Barton Creek Square 2901 Capital Of Texas Hwy Austin, TX
37.	967	Cafaro Company 5577 Youngstown-Warren Road Niles, OH 44446	General Nutrition Corporation	Asbury Plaza 2565 Northwest Arterial Dubuque, IA
38.	1020	JJ Gumberg Co. 1051 Brinton Road Pittsburgh, PA 15221	General Nutrition Corporation	Clearview Mall Route 8 Butler, PA
39.	1090	Oberstein Properties OC Group LC 201 South Clinton Street, Suite 300 Iowa City, IA 52240	General Nutrition Corporation	Old Capitol Center 201 Clinton Street Iowa City, IA
40.	1230	Katz Properties Management LLC Excel Trust LP 17140 Bernardo Center Drive, 300 San Diego, CA 92128	General Nutrition Corporation	Brandywine Crossing 15902 E Crain Hwy Brandywine, MD

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
41.	1234	Macerich 401 Wilshire Blvd Suite 700 Santa Monica, CA 90401	General Nutrition Corporation	Green Acres Mall 1134 Green Acres Mall Valley Stream, NY
42.	1249	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Dover Mall 1365 N. Dupont Highway Dover, DE
43.	1514	CBL & Associates Properties, Inc. CBL & Associates Management Inc. CBL Center 2030 Hamilton Place Boulevard, Suite 500 Chattanooga, TN 37421	General Nutrition Corporation	York Galleria 2899 Whiteford Rd York, PA
44.	1534	Woodmont Company The Woodmont Company Attn: Fred Meno 2100 West 7th Street Fort Worth, TX 76107	General Nutrition Corporation	West Ridge Mall 1801 Wanamaker Rd. Topeka, KS
45.	1542	QIC Property 1233 Rancho Vista Blvd. Palmdale, CA 93551	General Nutrition Corporation	Antelope Valley Mall 1233 Rancho Vista Blvd Palmdale, CA
46.	1720	Stony Island LLC Principal Real Estate Investors LLC 801 Grand Avenue Des Moines, IA 50392	General Nutrition Corporation	Stony Island Plaza 1623 E 95th St Chicago, IL
47.	1840	Mid-America Real Estate Group 135 S LaSalle Street, Suite 1625 Chicago, IL 60604	General Nutrition Corporation	Country Club Plaza 4285 W 167th St Country Club, IL
48.	2017	RD Management LLC 810 Seventh Avenue, 10th Floor New York, NY 10019	General Nutrition Corporation	Midway Shopping Center 1470 University Ave W St. Paul, MN

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
49.	2087	RMS Properties Inc Standard Property Group LP c/o Robb Real Estate Company 5816 Forbes Ave Pittsburg, PA 15217	General Nutrition Corporation	Hyde Park Plaza 451 Hyde Park Road Leechburg, PA
50.	2099	Metro Commercial Mgmt. Services, Inc. Willingboro Town Center South LLC Parkway Plaza 200 Campbell Drive, Suite 200 Willingboro, NJ 08046-1068	General Nutrition Corporation	Willingsboro Plaza 4364 Route 130 North Willingboro, NJ
51.	2168	CBL & Associates Properties, Inc. CBL Center 2030 Hamilton Place Boulevard, Suite 500 Chattanooga, TN 37421	General Nutrition Corporation	Burnsville Center 1030 Burnsville Center Burnsville, MN
52.	2312	Gilford Route 11 Realty Trust c/o WS Asset Management Inc. 33 Boylston Street , Suite 3000 Chestnut Hill, MA 02467	General Nutrition Corporation	Walmart Plaza 1458 Lakeshore Rd Gilford, NH
53.	2320	Starbucks Corporation Crocker Park LLC 1350 West Third Street Cleveland, OH 44113	General Nutrition Corporation	Crocker Park 137 Market Street West Lake, OH
54.	2326	Arrowhead Towne Center, LLC 7700 West Arrowhead Towne Center Glendale, AZ 85308	General Nutrition Corporation	Arrowhead Town Center 7700 West Arrowhead Towne Glendale, AZ
55.	2424	Unison Hunt River, LLC The Wilder Companies 800 Boylston Street, Suite 1300 Boston, MA 02199	General Nutrition Corporation	Hunt River Commons 72 Frenchtown Road North Kingston, RI
56.	2562	Midland Atlantic Development Company LLC 9000 Keystone Crossing, Suite 850 Indianapolis, IN 46240	General Nutrition Corporation	Heritage Crossing 3113 Heritage Green Monroe, OH



	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
57.	3149	RH Johnson Co Rhus Palumbo & Susan Palumbo 858 Lullwater Park Court Atlanta, GA 30306	General Nutrition Corporation	Diamond Springs 41 Diamond Spring Rd. Denville, NJ
58.	3158	QIC Property US, Inc 12505 North Mainstreet, Suite 200 Rancho Cucamongo, CA 91739	General Nutrition Corporation	Victoria Gardens 12379 S Main St Rancho Cucamonga, CA
59.	3263	Fulcrum Property Group Katz Kirkpatrick Properties 1731 E. Roseville Parkway, Suite 270 Roseville, CA 95661	General Nutrition Corporation	Red Bluff S.C. 925 South Main Street Red Bluff, CA
60.	3532	THF Realty THF Steamboat Springs Development LLC c/o THF Management Inc. 211 N. Stadium Blvd., Suite 201 Columbia, MO 65203	General Nutrition Corporation	Central Park Plaza 1809 Central Park Dr. Steamboat Springs, CO
61.	3589	Urban Retail Properties, LLC Attn: Joseph McCarthy 925 South Federal Highway Boca Raton, FL 33432	General Nutrition Corporation	The Mall @ Stonecrest 8000 Mall Parkway Lithonia, GA
62.	3608	RMC Property Group Searstown Partners Ltd. 1283 S. Missouri Ave Clearwater, FL 34616	General Nutrition Corporation	Clearwater Plaza 1283 S. Missouri Ave. Clearwater, FL
63.	3795	The Soni Building, Inc. 2764 Pleasant Road Fort Mill, SC 29708	General Nutrition Corporation	Shoppes At Stonecrest 1149 Stonecrest Blvd Tega Cay, SC
64.	3990	Yale Macon LLC c/o Yale Realty Services Corporation 10 New King Street White Plains, NY 10604	General Nutrition Corporation	Walnut Creek Plaza 1475 Gray Highway Macon, GA

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
65.	4009	Unionville Square Shopping Centres Limited 700 Applewood Crescent Suite 200 Vaughn, ON L4K 5X3	General Nutrition Centres Company	Markham Town Centre 8601 Warden Ave Markham, ON
66.	4040	Skyline Real Estate Acquisitions, Inc. 45 Vogell Road Richmond Hill, ON L4B 3P6	General Nutrition Centres Company	Westside Market Village 520 Riddell Road Orangeville, ON
67.	4076	RioCan Holdings, Inc. c/o RioCan Real Estate Investment Trust 2300 Yonge Street, Suite 500 Toronto, ON M4P 1E4	General Nutrition Centres Company	Georgian Mall 509 Bayfield Street Barrie, ON
68.	4093	Markham Steeles Realty Inc. c/o M & R Holdings 3520 Pharmacy Avenue, Unit 1 Toronto, ON M1W 2T8	General Nutrition Centres Company	Markham Steeles Sc 5981 Steeles Avenue East Scarborough, ON
69.	4102	Robert Bosa Investment Partnership 1201-838 West Hastings Street Vancouver, BC V6C 0A6	General Nutrition Centres Company	Dawson Mall 11000 8th Street Dawson Creek, BC
70.	4105	RioCan Yonge Eglinton Centre c/o RioCan Real Estate Investment Trust 2300 Yonge Street, Suite 500 Toronto, ON M4P 1E4	General Nutrition Centres Company	Colussus Centre 31 Colussus Dr Vaughan, ON
71.	4126	Cataraqui Holdings, Inc. c/o The Cadillac Fairview Corporation Limited 20 Queen Street , Fifth Floor West Toronto, ON M5H 3R4	General Nutrition Centres Company	Cataraqui Town Center 945 Gardiners Rd Kingston, ON
72.	4147	St. Clair Runnymede Developments Inc 1858 Avenue Road, Suite 300 Toronto, Ontario M5M 3Z5	General Nutrition Centres Company	St Claire & Runnymede Rd 2555 St Clair Ave West Toronto, ON

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
73.	4152	Eagle Landing Development c/o Gulf Pacific 351 Bewicke Ave North Vancouver, BC V7M 3E9	General Nutrition Centres Company	Eagle Landing Sc 706-8249 Eagle Landing Pk Chilliwack, BC
74.	4165	Ivanhoe Cambridge (Place Laurier Holdings Inc.) c/o Centre CDP Capital 1001 Square Victoria, Suite 500 Montreal, Quebec H2Z 2B5	General Nutrition Centres Company	Laurier Quebec 2700 Laurier Boulevard Quebec, PQ
75.	4167	1500 Dundas East Holdings, Inc c/o Fieldgate Commercial Properties Limited 5400 Young Street, 5th Floor Toronto , Ontario M2N 5R5	General Nutrition Centres Company	Creekside Crossing 1560 Dundas St E Mississauga, ON
76.	4175	Hoop Realty Inc. c/o Morguard Investments Limited #200-1033 Barry Downe Road Sudbury , Ontario P3A 5Z9	General Nutrition Centres Company	New Sudbury Centre 1349 Lasalle Blvd Sudbury, ON
77.	4231	Morguard Real Estate Investment Trust 55 City Center Drive, Suite 1000 Mississauga , Ontario L5B 1M3	General Nutrition Centres Company	Brandon Shoppers 1570-18th St Unit 87 Brandon, MB
78.	4238	585562 B.C. Ltd., c.o Morguard Investments Limited Administrative Office 32900 South Fraser Way Abbotsford , British Columbia V2S 5A1	General Nutrition Centres Company	Sevenoaks Shopping Centre 32900 South Fraser Way Abbotsford, BC
79.	4254	NA (LPM) LP by its general partner, NADG(LPM) GP Ltd. and I.G. Investment Management, Ltd. as trustee for Investors Real Property Fund c/o Centre Corp. Management Service Limited 2851 John Street, Suite One Markham , Ontario L3R 5R7	General Nutrition Centres Company	Lynden Park Mall 84 Lynden Road Brantford, ON

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
80.	4298	Complex Jules-Dallaire-T3 2820 Laurier Blvd., Suite 850 Quebec, Quebec G1V 0CI	General Nutrition Centres Company	Galerie Rive Nord 100 Boulevard Brien Repentingy, PQ
81.	5067	Security National Properties 1340 East 9th Street Realty Corp. 184 New Egypt Road Lakewood, NJ 08701	General Nutrition Corporation	Five Lakes Center 334 South State St Fairmont, MN
82.	5208	Terramar Retail Center, LLC La Costa Town Center LLC 5973 Avenida Encinas, Suite 300 Carlsbad, CA 92008	General Nutrition Corporation	La Costa Town Square 7615 Via Campanile Suite Carlsbad, CA
83.	5256	Jordon Perlmutter Attention: Jonathan Perlmutter 1601 Blake Street, suite 600 Denver, CO 80202-1329	General Nutrition Corporation	Larkridge Sc 16560 N. Washington St Thornton, CO
84.	5308	PREIT Services, LLC 200 South Broad Street Philadelphia, PA 19102	General Nutrition Corporation	3097 Willow Grove Mall 2500 Moreland Road Willow Grove, PA
85.	5319	NGM Ownership Group LC Metro Commercial Management Services LLC 303 Fellowship road, Suite 202 Mount Laurel, NJ 08054	General Nutrition Corporation	South Mall 3300 Lehigh Street Allentown, PA
86.	5416	Ershig Properties, Inc. 1800 North Elm Street Henderson, KY 42420	General Nutrition Corporation	Three Star Shopping Cente 1410 Sparta Road Mcminnville, TN
87.	5546	First Washington Realty 4350 East West Highway, Suite 400 Bethesda, MD 20814	General Nutrition Corporation	Maple Avenue Shopping Ctr 335 Maple Avenue East Vienna, VA
88.	5568	Fletcher Bright Company 537 Market Street, Suite 400 Chattanooga, TN 37402	General Nutrition Corporation	Merchant's Square 414 South Main Street Swainsboro, GA

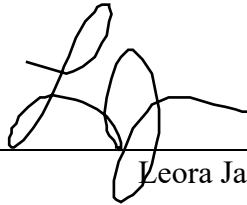
	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
89.	5572	Ramco HHF Nora Plaza, LLC 31500 Northwestern Highway, Suite 300 Farmington Hills, MI 48334	General Nutrition Corporation	Nora Plaza 1300 East 86th Street Indianapolis, IN
90.	5645	223 Grand Property, Inc. 1971 Western Ave , Suite 1122 Albany, NY 12203	General Nutrition Corporation	100 Elizabeth Street 100-106 Elizabeth St New York, NY
91.	5752	Horne Development, LP 1145 Tampa Avenue Northridge, CA 91326	General Nutrition Corporation	Seaside Factory Outlet 1111 North Roosevelt Seaside, OR
92.	6102	Cambridge Management, Ltd. 15941 S. Harlem Avenue, PMB 108 Tinley Park, IL 60477	General Nutrition Corporation	South Shoppes 2725 IL Route 26 S Freeport, IL
93.	6157	Carlisle Properties Inc. 7680 Goddard Street, Suite 115 Colorado Springs, CO 80920	General Nutrition Corporation	Woodland Park Plaza 1115 E US Hwy 24 Woodland Park, CO
94.	6164	Pacific Equity Ventures, L.P. Town Place LLC 15335 Calle Enrique, Suite 4 Morgan Hill, CA 95037	General Nutrition Corporation	Town Place 787 1st Street Gilroy, CA
95.	6217	Cafaro Company, The The Cafaro Northwest Partnership 5577 Youngstown Warren Road Niles, OH 44446	General Nutrition Corporation	Vancouver Plaza 7809 Vancouver Plaza #160 Vancouver, WA
96.	6505	The Soni Building, Inc. Ryer Landing Joint Venter LLC c/o Staenberg Group Inc. 2127 Innerbelt Business Center Drive, Suite 310 St. Louis, MO 63114	General Nutrition Corporation	River Landing 3480 Wolverine Dr Montrose, CO

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
97.	6684	TKG Management Monument Marketplace Shops LLC Attn: Richard Blevins 540 Elkton Drive, Suite 302 Colorado Springs, CO 80907	General Nutrition Corporation	Monument Marketplace 15954 Jackson Creek Pkwy Monument, CO
98.	6744	Beaumont Company Beauvoir LLC Broussard Village Shopping Center, 2108 Verot School Road Lafayette, LA 70508	General Nutrition Corporation	Broussard Village S.C. 1212 D Albertson Pkwy Broussard, LA
99.	6798	Durga LLC (2) Duty Free Shop Inc. PO Box 9023395 San Juan, PR 000902	General Nutrition Corporation	Condominio Reina De Casti 100 Paseo Gilberto San Juan, PR
100.	6895	G&A Group, Inc. 215 West Church Road King of Prussia , PA 19406	General Nutrition Corporation	Johnstown Mall 236 North Comrie Ave Johnstown, NY



TAB HH

THIS IS **EXHIBIT “HH”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', is positioned above a horizontal line. The signature is stylized and cursive.

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Leora Jackson  
Commissioner for Taking Affidavits



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

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**MOTION TO AUTHORIZE GNC HOLDINGS, INC.  
TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS**

The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of an order (the “*Proposed Order*”), authorizing Debtor GNC Holdings, Inc. (“*GNC Holdings*”) to: (a) act as the foreign representative of the Debtors; (b) seek recognition by the Canadian Court of the Chapter 11 Cases and of certain orders made by this Court in the Chapter 11 Cases from time to time; (b) request that the Canadian Court lend assistance to this Court and grant comity to the foreign representative; and (d) seek any other appropriate relief from the Canadian Court that is just and proper.

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

## JURISDICTION

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), 506(a), 507(a)(8), 541, and 1505 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”) and rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

## BACKGROUND

2. On June 23, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “**Chapter 11 Cases**”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.

3. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings*,

*Inc. in Support of Chapter 11 Petitions and First Day Pleadings (the “First Day Declaration”)*<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

4. The Debtors together with their non-Debtor affiliates (collectively, the “*Company*”) are a leading retailer of a premium assortment of health, wellness, and performance products with a worldwide network of approximately 7,500 company-owned and franchised locations worldwide, including in Canada. GNC Holdings, a publicly traded Delaware corporation, is the ultimate parent of the Company’s corporate group. Debtor General Nutrition Centres Company (“*GNC Canada*”) is the operating entity for the Debtors’ business in Canada. GNC Canada is an indirect wholly-owned subsidiary of GNC Holdings. All material decisions regarding GNC Canada and its operations are made by personnel located at the Company’s Pittsburgh headquarters, and substantially all of its books and records are located in the United States. Further, proposed co-counsel to the Debtors, Young, Conaway, Stargatt & Taylor LLP holds an approximately \$50,000 retainer from GNC Canada pursuant to its engagement letter with GNC Canada. As a result, the center of main interest for GNC Canada is located in the United States.

5. Following the filing of these Chapter 11 Cases, the Debtors intend to commence an ancillary proceeding (the “*Ancillary Proceeding*”) under Part IV of the *Companies’ Creditors Arrangement Act* (Canada), R.S.C. 1985, c. C-36 (as amended, the “*CCAA*”), in the Ontario

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court’s website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors’ proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

Superior Court of Justice (Commercial List) (the “*Canadian Court*”).<sup>4</sup> GNC Holdings, as the proposed foreign representative for the Debtors in the Ancillary Proceeding, intends to seek recognition of these Chapter 11 Cases and certain orders entered in the Chapter 11 Cases.

### **BASIS FOR RELIEF**

6. Section 1505 of the Bankruptcy Code allows a debtor in possession to obtain a court order recognizing the debtor in possession as the foreign representative of the debtor’s estate, in order to submit a petition to a foreign court requesting recognition of the debtor’s Chapter 11 case. Specifically, Section 1505 of the Bankruptcy Code provides:

A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

11 U.S.C. § 1505. Section 1505 only applies to cases filed under chapters other than Chapter 15 of the Bankruptcy Code because a Chapter 15 case does not create an estate under Section 541. For Chapter 11 Cases, authority to act as a foreign representative may be granted to the debtor in possession because a “trustee,” as defined by Section 1502(6) of the Bankruptcy Code, “includes... a debtor in possession in a case under any chapter of this title.” *Id.* § 1502(6).

7. The purpose of section 1505 is to allow a debtor to petition a foreign court for recognition of its chapter 11 case, and to request that the foreign court cooperate with and lend assistance to the debtor and the United States Bankruptcy Court in meeting the objectives of both chapter 15 of the Bankruptcy Code and the UNCITRAL Model Law on Cross-Border Insolvency

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<sup>4</sup> The Debtors intend to propose that FTI Consulting Canada Inc. be appointed by the Canadian Court as information officer in the CCAA proceedings (the “*Information Officer*”). The Information Officer will serve as an officer of the Canadian Court and report to the Canadian Court from time to time (including at the hearing on the initial application) on the status of these Chapter 11 Cases, the Debtors’ proposed restructuring, and any other information that may be material to the Canadian Court.

(the “*Model Law*”)<sup>5</sup>, on which Chapter 15 is based. These objectives are stated in section 1501 of the Bankruptcy Code:

- (a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—
  - (1) cooperation between—
    - (A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and
    - (B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
  - (2) greater legal certainty for trade and investment;
  - (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;
  - (4) protection and maximization of the value of the debtor’s assets; and
  - (5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

*Id.* § 1501.<sup>6</sup> Thus, the authority sought by a debtor under section 1505 is specific to seeking recognition of the debtor’s Chapter 11 case and fostering cooperation between the bankruptcy court and foreign courts.

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<sup>5</sup> The UNCITRAL Model Law on Cross Border Insolvency, together with the Guide to Enactment, can be found at <https://www.uncitral.org/pdf/english/texts/insolven/1997-Model-Law-Insol-2013-Guide-Enactment-e.pdf>.

<sup>6</sup> The preamble of the Model Law is virtually identical:

The purpose of this Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

- (a) Cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;
- (b) Greater legal certainty for trade and investment;
- (c) Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

8. An explicit grant of authority to act as the foreign representative is meant to facilitate the process of petitioning for recognition in a foreign court. For this reason, Article 5 of the Model Law provides that the person or body administering a reorganization or liquidation in a country that has enacted the Model Law (an “*Enacting State*”) “is authorized to act in a foreign State on behalf of a proceeding under . . . the laws of the enacting State relating to insolvency.” Model Law Art. 5. The Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency (the “*Guide to Enactment*”) <sup>7</sup> explains that

[t]he lack of such authorization in some States has proved to be an obstacle to effective international cooperation in cross-border cases. An [E]nacting State in which administrators are already equipped to act as foreign representatives may decide to forgo inclusion of article 5, although even such a[n Enacting] State might want to keep article 5 in order to provide clear statutory evidence of that authority.

See Guide to Enactment ¶ 84. Clear evidence of a Chapter 11 debtor’s authority to act in a foreign country is particularly necessary because a Chapter 11 case commences immediately upon the filing of a petition, with no order signed by the court that explicitly appoints the debtor as the fiduciary or trustee of the debtor’s estate. The fact that a Chapter 11 debtor has this authority by virtue of being a debtor in possession may not be persuasive to a foreign court.

9. Moreover, absent a court order, a Chapter 11 debtor may find it difficult to satisfy the requirements of a petition for recognition. These requirements are substantially similar in most countries that have adopted the Model Law, including Canada. Specifically, section 46 of the

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- (d) Protection and maximization of the value of the debtor’s assets; and
  - (e) Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

<sup>7</sup> The Guide to Enactment prepared by the Secretariat pursuant to the request of UNICTRAL is based on the deliberations and Commissions at the thirtieth session, when the Model Law was adopted, as well as on considerations of the Working Group on Insolvency Law, which conducted the preparatory work. The Guide is intended to “provide useful insight to those charged with interpretation and application of the Model Law, such as judges.”

CCAA (which is similar to chapter 15) provides that an application for recognition of a foreign proceeding made by a foreign representative<sup>8</sup> shall be accompanied by

(a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and

(c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

CCAA § 46. Because of the differences between Chapter 11 of the Bankruptcy Code and most other national insolvency laws, a Chapter 11 debtor generally does not have the type of evidence specified above. Congress therefore modified the text of Article 5 of the Model Law when incorporating it into section 1505 of the Bankruptcy Code. The legislative history to section 1505 explains the reason for this variance in the text as codified by Chapter 15:

While the Model Law automatically authorizes an administrator to act abroad, this section requires all trustees and debtors to obtain court approval before acting abroad. That requirement is a change from the language of the Model Law, but one that is purely internal to United States law. Its main purpose is to ensure that the court has knowledge and control of possibly expensive activities, but it will have the collateral benefit of providing further assurance to foreign courts that the United States debtor or representative is under judicial authority and supervision.

*See* H.R. Rep. No. 109-31, pt. 1, 108 (2005), as reprinted in 2005 U.S.C.C.A.N. 88, 171.

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<sup>8</sup> Under the CCAA, a person or entity must be duly authorized as a "foreign representative" to commence such an ancillary proceeding. Specifically, under section 45(1) of the CCAA, a "foreign representative" is defined as "a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding [in] respect of a debtor company, to (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or (b) act as a representative in respect of the foreign proceeding."

10. If the relief sought by this Motion is granted, GNC expects to immediately submit an application to the Canadian Court that seeks recognition of the Chapter 11 Cases as foreign main proceedings.

11. Consistent with one of the key objectives of the Model Law—to provide “[c]ooperation between the courts and other competent authorities . . . involved in cases of crossborder insolvency” (Model Law, preamble)—the application for recognition that GNC Holdings will file, if this Motion is granted, will seek to obtain the assistance of the Canadian Court. If the Canadian Court decides to recognize the Chapter 11 Cases as foreign main proceedings, the Debtors will benefit from the protection of an automatic stay against commencement or continuation of actions or proceedings concerning the Debtors’ assets, rights, obligations, and liabilities in Canada, which stay would be in addition to the discretion of the Canadian Court to otherwise order a stay under Canadian law. In addition, the foreign representative can seek a wide range of relief from the Canadian Court where it is necessary to protect the assets of the Debtors or the interests of its creditors in Canada. Based on the foregoing, the Debtors submit that there is sufficient statutory basis and ample justification for this Court to grant the relief requested.

12. Authorizing GNC Holdings to act as the foreign representative of the Debtors’ estates is appropriate. First, such relief permits the Debtors to seek recognition of their Chapter 11 Cases in Canada in order to protect and maximize the value of their global assets. Second, as a Debtor in these Chapter 11 Cases and as the ultimate parent of each Debtor, GNC Holdings is well-positioned to represent the Debtors in foreign proceedings and to serve as a conscientious foreign representative to ensure that the Ancillary Proceeding is well-coordinated with these



Chapter 11 Cases. Third, authorizing GNC Holdings to serve as the foreign representative will avoid the added expense of retaining a third party to act as such.

13. This Court is the proper venue in these Chapter 11 Cases because the majority of assets and back-office operations of each Debtor is in the United States. The Debtors' corporate office are located in Pittsburgh, Pennsylvania, and the majority of the Debtors' directors and officers, including all of the directors and officers of GNC Canada, reside in the United States.

#### **BANKRUPTCY RULE 6003 HAS BEEN SATISFIED**

14. Certain aspects of the relief requested herein are subject to Bankruptcy Rule 6003 which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant this relief on an expedited basis if it is necessary to avoid immediate and irreparable harm. The Debtors submit that because the Debtors cannot commence the Ancillary Proceeding under the CCAA until a foreign representative is appointed, the relief requested by this Motion is necessary to avoid immediate irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied. to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

#### **RESERVATION OF RIGHTS**

15. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or

(g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

### **NOTICE**

16. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) the indenture trustee for the Debtors' prepetition convertible notes; (g) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (h) the United States Attorney's Office for the District of Delaware; (i) the attorneys general for all 50 states and the District of Columbia; (j) the United States Department of Justice; (k) the Internal Revenue Service; (l) the Securities and Exchange Commission; (m) the United States Drug Enforcement Agency; (n) the United States Food and Drug Administration; and (o) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Orders, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Kara Hammond Coyle  
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*Proposed Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ____

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**ORDER AUTHORIZING GNC HOLDINGS, INC.  
TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS**

Upon the motion (the “*Motion*”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (collectively, the “*Debtors*”), pursuant to Section 1505 of the Bankruptcy Code, for authorization for GNC Holdings, Inc. to act as the foreign representative of the Debtors in Canada in order to seek recognition of the Chapter 11 Cases on behalf of the Debtors, and to request that the Ontario Superior Court of Justice (the “*Canadian Court*”) grant comity to the foreign representative and lend assistance to this Court in protecting the Debtors’ property, and to seek any other appropriate relief from the Canadian Court that the Canadian Court deems just and proper, all as more fully described in the Motion; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or the First Day Declaration, as applicable.

requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. GNC Holdings, Inc. is hereby authorized (a) to act as the foreign representative of the Debtors, (b) to seek recognition by the Canadian Court of the Chapter 11 Cases and of certain orders made by the Court in the Chapter 11 Cases from time to time, (c) to request that the Canadian Court lend assistance to this Court and grant comity to the foreign representative, and (d) to seek any other appropriate relief from the Canadian Court that the Debtors deem just and proper.
3. This Court requests the aid and assistance of the Canadian Court to recognize these Chapter 11 Cases as a “foreign main proceeding” and GNC Holdings, Inc. as a “foreign representative” pursuant to the Companies’ Creditors Arrangement Act and to recognize and give full force and effect to this Order in all provinces and territories of Canada.

4. This Court requests the assistance of the Canadian Court to act in aid of and be auxiliary to this Court in relation to the protection of the Debtors' assets in Canada, including by giving effect to the automatic stay under section 362(a) of the Bankruptcy Code in Canada.

5. The requirements set forth in Bankruptcy Rule 6003 are satisfied by the Motion or otherwise deemed waived.

6. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

7. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

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United States Bankruptcy Judge



# TAB II



THIS IS **EXHIBIT “II”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', positioned above a horizontal line.

---

Leora Jackson

Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**MOTION OF DEBTORS FOR ORDERS AUTHORIZING THE  
DEBTORS TO (A) PAY PREPETITION INSURANCE OBLIGATIONS  
AND PREPETITION BONDING OBLIGATIONS, AND (B) MAINTAIN  
THEIR POSTPETITION INSURANCE COVERAGE AND BONDING PROGRAM**

The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Interim Order*”) and **Exhibit B** (the “*Proposed Final Order*,” and together with the Proposed Interim Order, the “*Proposed Orders*”), respectively, authorizing, but not directing, the Debtors to: (a) pay prepetition claims arising under their ordinary course insurance program and bonding program; and (b) maintain their insurance program and bonding program in the ordinary course postpetition.

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

## JURISDICTION

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), 363(c), and 364(c) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”) and rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

## BACKGROUND

3. On June 23, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “**Chapter 11 Cases**”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies’ Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is

set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”)<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

### **THE DEBTORS’ INSURANCE PROGRAM**

6. In the ordinary course of business, the Debtors maintain certain insurance policies that are administered by multiple third-party insurance carriers (the “**Insurance Carriers**”), which provide coverage for, among other things, general liability, products liability, worker’s compensation,<sup>4</sup> fiduciary liability, executive risk liability, employment practices liability, business auto liability, crime liability, directors’ and officers’ liability, umbrella liability, international liability, property liability, stock through put, cyber liability, and aviation liability (collectively, the “**Insurance Policies**”). A detailed list of the Insurance Policies that are currently held by the Debtors is attached hereto as **Exhibit C**.<sup>5</sup> The Insurance Policies are essential to the preservation of the Debtors’ businesses, property, and assets, and, in some cases, the coverage may be required by various laws and regulations, as well as the terms of the Debtors’ various commercial contracts.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court’s website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors’ proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

<sup>4</sup> The Debtors have separately sought authorization to honor their obligations under their workers’ compensation programs as part of the contemporaneously filed *Motion of Debtors for Orders (A) Authorizing Payment of Certain Prepetition Workforce Obligations, (B) Authorizing Continuance of Workforce Programs, (C) Authorizing Payment of Withholding and Payroll-Related Taxes, and (D) Authorizing Payment of Prepetition Claims Owing to Workforce Program Administrators*. The Debtors, however, have additionally included hereunder reference to workers’ compensation insurance and the attendant premiums associated with that coverage out of an abundance of caution.

<sup>5</sup> The Debtors request authority to honor obligations and renew all insurance policies, as applicable, notwithstanding any failure of the Debtors to include a particular insurance policy on **Exhibit C**.

The Debtors believe the Insurance Policies provide coverage that is typical in scope and amount for businesses within the Debtors' industry.

7. Certain of the Debtors' Insurance Carriers permit the Debtors to defer payment of certain premiums, deductibles, and fees by providing the Insurance Carrier with security in the form of an irrevocable letter of credit. The Debtors have outstanding eight (8) letters of credit totaling approximately \$5.1 million. A list of the Debtors' irrevocable letters of credit issued by JPMorgan Chase Bank, N.A. for the benefit of certain Insurance Carriers is attached hereto as **Exhibit D**.

8. The Debtors typically obtain their Insurance Policies through Willis of Pennsylvania, Inc. (the "**Broker**"), pursuant to that certain Service Agreement covering the period through August 7, 2022 (the "**Broker Contract**").<sup>6</sup> The Broker assists the Debtors in obtaining comprehensive insurance coverage and providing related services. The Broker also assists with procuring and negotiating the Insurance Policies, enabling the Debtors to obtain the Insurance Policies on advantageous terms and at competitive rates. The Broker Contract provides for an annual fee to the Broker of \$365,000. These fees are in addition to the premium paid for the insurance policies purchased through the Broker and are payable in quarterly installments that commenced on August 7, 2019 – with net 60 day payments terms. For the August 2019 to August 2020 service year, the Debtors have paid to the Broker \$273,750, and have one quarterly payment of \$91,250 remaining as of the Petition Date, which is due by July 6, 2020.

9. Should the Broker terminate the Broker Contract, the Debtors would have to seek out their own insurance policies or find a new broker, potentially at greater expense, to assist the

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<sup>6</sup> Prior to the Petition Date the Debtors obtained renewals of certain Insurance Policies set to expire shortly after the Petition Date. The Debtors engaged CAC Specialty as a broker to obtain such extensions, and CAC Specialty was paid from the premiums for the policy extensions, and is not owed any prepetition claims.

Debtors in obtaining comprehensive insurance coverage and providing related services. Accordingly, maintaining their relationship with the Broker allows the Debtors to obtain the insurance coverage necessary to operate their businesses in a reasonable and prudent manner and to realize savings in the procurement of the policies. The Debtors, therefore, believe that it is in the best interests of their creditors and estates to continue their business relationship with the Broker.

10. The Debtors pay premiums for certain of their Insurance Policies through a premium financing agreement with BankDirect Capital Finance (“**Premium Financing Agreement**”). The Premium Financing Agreement was effective as of April 1, 2020, and the Debtors made a down payment of \$84,124.25. The Debtors’ remaining payment obligations under the Premium Financing Agreement, including interest, total \$106,451.22, which are to be paid in two quarterly installments of \$53,225.61.

11. The total amount paid in annual premiums and payments associated with all of the Insurance Policies is approximately \$6.2 million. The Debtors’ Insurance Policies renew at various times throughout each year. The majority of the Insurance Policies are paid in full, but certain policies are paid in monthly installments, and others are paid in installments under the Premium Financing Agreement. The Debtors are not aware of any pending requests for payment under the Insurance Policies. However, in the event that a request for payment of amounts attributable to the period prior to the Petition Date is outstanding or is received by the Debtors in connection with the Insurance Policies, including under the Premium Financing Agreement, the Debtors request authority to pay the prepetition amounts (the “**Prepetition Insurance Obligations**”). The Debtors further request authority to renew, revise, or extend the existing Insurance Policies or to obtain new insurance policies postpetition.

## THE DEBTORS' BONDING PROGRAM

12. In the ordinary course of business, the Debtors are required by certain applicable statutes, rules, and regulations to maintain bonds in favor of certain third parties to secure the Debtors' payment or performance of certain obligations, often to governmental units or other public agencies (the "**Bonding Program**"). The Bonding Program covers a range of obligations, including, among other things, obligations related to state programs, taxes, and utilities (the "**Covered Obligations**"). A detailed list of the bonds that are currently maintained by the Debtors is attached hereto as **Exhibit E**.<sup>7</sup> The Debtors believe that the Bonding Program provides coverage that is typical in scope and amount for businesses within the Debtors' industry.

13. As of the Petition Date, the Debtors have outstanding twenty-one (21) surety bonds (the "**Surety Bonds**") totaling approximately \$666,427. The Surety Bonds renew on a yearly basis at various points throughout the year, and the Surety Bond premium is paid on renewal. The total amount paid in annual premiums and payments associated with all of the surety bonds is approximately \$13,020.

14. Willis also serves as the Debtors' Broker for Surety Bonds and manages the Debtors' relationships with the Sureties. Among other things, the Broker assists the Debtors in selecting the appropriate Sureties (subject to the Debtors' approval) and represents the Debtors in negotiations with the Sureties. The Broker has allowed the Debtors to obtain the bonding coverage necessary to operate their businesses in a reasonable and prudent manner, and to realize savings in the procurement of such policies. The Broker is paid by commission for Surety Bond placements,

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<sup>7</sup> The Debtors request authority to honor obligations and renew all bonds, as applicable, notwithstanding any failure of the Debtors to include a particular bond on **Exhibit E**.

and such commissions are paid from the premium payments the Debtors make under the Bonding Program.

15. The issuance of a Surety Bond shifts the risk of the Debtors' nonperformance or nonpayment of their obligations covered by the Surety Bond from the beneficiary of the surety to the surety (each a "***Surety***"). If the Debtors fail to pay Covered Obligations, the applicable Surety will pay the Debtors' obligations up to a specified amount. Unlike an insurance policy, if a Surety incurs a loss on a Surety Bond, the surety is entitled to recover the full amount of that loss from the Debtors.

16. To continue their business operations, the Debtors must be able to provide financial assurances to federal and state governments, regulatory agencies, and other third parties. This in turn requires the Debtors to maintain the existing Bonding Program, including paying the premiums and any related fees as they come due, as well as renewing or potentially acquiring additional bonding capacity as needed in the ordinary course of their businesses, requesting releases from obsolete bonding obligations, and executing other agreements in connection with the Bonding Program. The success of the Debtors' efforts to operate effectively and efficiently will depend on the maintenance of the Bonding Program on an uninterrupted basis. No feasible alternative to maintaining the Bonding Program exists.

17. As of the Petition Date, the Debtors believe that all premium payments due and owing under the Bonding Program have been paid in full and the Debtors are not aware of any pending requests for payment by the Sureties. However, the Debtors request that they be authorized to maintain the Bonding Program in the same manner as they did prepetition and to pay any prepetition claims arising under the Bonding Program (the "***Prepetition Bonding Obligations***"). The Debtors further request authority to honor the current bonds in place and



revise, extend, supplement, or change the Bonding Program as needed, including through the issuance of new surety bonds, postpetition.

### **BASIS FOR RELIEF**

#### **I. PAYING PREPETITION INSURANCE OBLIGATIONS AND RENEWAL OF THE INSURANCE POLICIES IS NECESSARY TO COMPLY WITH VARIOUS LEGAL REQUIREMENTS AND GUIDELINES**

18. Maintaining insurance coverage under the various Insurance Policies on an uninterrupted basis is essential to the continued operation of the Debtors' businesses and, in some cases, is required under the United States Trustee's Operating Guidelines for Chapter 11 Cases (the "*Operating Guidelines*"), laws and regulations applicable to the Debtors' businesses, the laws of the various states in which the Debtors operate, and the Debtors' various contractual commitments. *See* Operating Guidelines Sec. 3 (requiring maintenance of appropriate insurance coverage).

19. The Debtors believe that the ordinary course maintenance of their insurance coverage, including paying all Prepetition Insurance Obligations, satisfying all postpetition commitments to the Insurance Carriers, renewing the Insurance Policies, entering into new insurance or premium financing arrangements, and paying any Broker's fees, without further order of the Court, is necessary and essential to the Debtors' achievement of their chapter 11 objectives, especially where, as here, the Debtors' failure to take all actions necessary to honor their obligations to and preserve their relationships with the Insurance Carriers could have disastrous consequences for the Debtors' estates.

#### **II. PAYING PREPETITION INSURANCE OBLIGATIONS AND PREPETITION BONDING OBLIGATIONS IS A SOUND EXERCISE OF BUSINESS JUDGMENT.**

20. The Debtors should be authorized to pay Prepetition Insurance Obligations and Prepetition Bonding Obligations under section 363(b) of the Bankruptcy Code. Section 363(b)

provides, in relevant part, that a debtor “may use, sell, or lease, other than in the ordinary course of business, property of the estate” after notice and a hearing. 11 U.S.C. § 363(b)(1). Generally, the debtor is only required to “show that a sound business purpose” justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (requiring “good business reason” for use under section 363(b) of the Bankruptcy Code). This standard generally bars other parties from second-guessing the debtor’s business judgment if the debtor has shown that a use of property will benefit the debtor’s estate. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

21. The Debtors’ sound business judgment supports paying the Prepetition Insurance Obligations and the Prepetition Bonding Obligations because the failure to pay the obligations could result in: (a) the cancellation of the Insurance Policies or the surety bonds; (b) the Debtors’ inability to obtain renewal of the Insurance Policies or surety bonds on terms that are as competitive; and (c) the violation of the Operating Guidelines, applicable laws and regulations, various contractual commitments, or the fiduciary duties of the Debtors as debtors in possession. Each of these outcomes would be detrimental to the Debtors, their creditors, and their estates and would create unnecessary risks that far outweigh the cost of paying the applicable prepetition amounts. Accordingly, the Debtors should be authorized to pay the Prepetition Insurance Obligations and Prepetition Bonding Obligations under section 363(b) of the Bankruptcy Code.

### **III. PAYING THE PREPETITION INSURANCE OBLIGATIONS AND PREPETITION BONDING OBLIGATIONS IS NECESSARY TO THE DEBTORS' REORGANIZATION.**

22. The Debtors should also be authorized to pay the Prepetition Insurance Obligations and the Prepetition Bonding Obligations because doing so is necessary to the success of their reorganization. Section 105(a) of the Bankruptcy Code provides that a bankruptcy court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). Courts have interpreted this provision to authorize payments on prepetition claims where the payments are essential to the success of the debtor’s reorganization under what is known as the “necessity of payment doctrine.” *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) (“Thus, the ‘necessity of payment’ doctrine...teaches no more than, if a payment of a claim which arose prior to reorganization is essential to the continued operation of the [debtor’s business] during reorganization, payment may be authorized...”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) “provides a statutory basis for payment of pre-petition claims” under necessity of payment doctrine); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (“The appropriate standard...is commonly referred to as ‘the necessity of payment doctrine.’”).

23. Paying the Prepetition Insurance Obligations and Prepetition Bonding Obligations is necessary to avoid cancellation, default, alteration, assignment, attachment, lapse, or any form of impairment to the coverage, benefits, or proceeds provided under the Insurance Policies and the Bonding Program, and to maintain good relationships with the Insurance Carriers, the Broker, and the Sureties. If any of those risks were to materialize, they could cause substantial disruptions and expose the Debtors to liabilities significantly greater than the amount of the obligations to be paid. These consequences could derail the Debtors’ restructuring efforts and, therefore, paying the

Prepetition Insurance Obligations and the Prepetition Bonding Obligations should be approved under section 105(a) of the Bankruptcy Code and the necessity of payment doctrine.

**IV. THE DEBTORS SHOULD BE AUTHORIZED TO MAINTAIN POSTPETITION INSURANCE COVERAGE AND THE BONDING PROGRAM AND TO ENTER INTO NEW COVERAGE.**

24. The Debtors submit that section 363(c) of the Bankruptcy Code provides statutory authority for the Debtors' request for authorization to satisfy all of the Debtors' postpetition commitments with respect to the Insurance Carriers and the Broker, renew the Insurance Policies and Surety Bonds, or enter into new insurance policies, premium financing arrangements, and surety bonds. Section 363(c) provides that a debtor in possession may "enter into transactions" in the ordinary course without notice or a hearing. *See* 11 U.S.C. § 363(c). In evaluating whether a transaction is in the ordinary course, a court must determine whether it is "of the sort commonly undertaken by companies in [the debtor's] industry" and whether it subjects a hypothetical creditor "to economic risk of a nature different from those he accepted when he decided to extend credit." *In re Roth Am., Inc.*, 975 F.2d 949, 952–53 (3d Cir. 1992).

25. Maintaining the Insurance Policies and the Bonding Program and honoring postpetition obligations arising thereunder and under the Broker Contract, including undertaking renewals of the Insurance Policies and the Surety Bonds as they expire or entering into new insurance arrangements, premium financing arrangements or surety contracts, are each the type of ordinary course transactions contemplated by section 363(c) of the Bankruptcy Code. In the event, however, that this Court believes that any actions are not properly characterized as transactions in the ordinary course of the Debtors' business, the Debtors respectfully request that this Court authorize the Debtors to take actions pursuant to section 363(b) of the Bankruptcy Code as a sound exercise of their business judgment.

26. Relief similar to the relief requested herein has been granted in this district in numerous Chapter 11 Cases. *See, e.g., In re Vitamin World, Inc.*, No. 17-11933 (KJC) (Bankr. D. Del. Oct. 6, 2017); *In re Panda Temple Power, LLC*, No. 17-10839 (LSS) (Bankr. D. Del. Apr. 20, 2017); *In re Gen. Wireless Operations Inc. dba RadioShack*, No. 17-10506 (BLS) (Bankr. D. Del. Mar. 10, 2017); *In re Chaparral Energy, Inc.*, No. 16-11144 (LSS) (Bankr. D. Del. May 11, 2016).

**PROCESSING OF CHECKS AND  
ELECTRONIC FUND TRANSFERS SHOULD BE AUTHORIZED**

27. The Debtors have sufficient funds to pay any amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing and cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Prepetition Insurance Obligations and Prepetition Bonding Obligations. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND  
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

28. Certain aspects of the relief requested herein are subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant this relief on an expedited basis if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth

herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

29. Additionally, with respect to any aspect of the relief sought herein that constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

#### **RESERVATION OF RIGHTS**

30. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

## NOTICE

31. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; (p) the Insurance Carriers, (q) the Sureties, (r) the Broker, (s) BankDirect Capital Finance, and (t) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank.]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Orders, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Joseph M. Mulvihill

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- and -

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*Proposed Counsel for Debtors and Debtors in Possession*



**EXHIBIT A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ___

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**INTERIM ORDER AUTHORIZING (A) PAYMENT  
OF PREPETITION INSURANCE OBLIGATIONS AND  
PREPETITION BONDING OBLIGATIONS, AND (B) MAINTENANCE  
OF POSTPETITION INSURANCE COVERAGE AND BONDING PROGRAM**

---

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an interim order authorizing (a) payment of Prepetition Insurance Obligations and Prepetition Bonding Obligations, and (b) maintenance of the Insurance Policies and the Bonding Program postpetition (this “*Interim Order*”); and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Interim Hearing*”); and upon the First Day Declaration and the record of the Interim Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue their Insurance Policies and Bonding Program, and to pay any obligations arising thereunder, whether arising prepetition or postpetition, including under the Premium Financing Agreement.
3. Payments on account of Prepetition Insurance Obligations and Prepetition Bonding Obligations under the Motion and this Interim Order shall not exceed \$91,250 in the aggregate without further order of this Court.
4. The Debtors are authorized, but not directed, to revise, extend, supplement, or change insurance coverage and/or their Bonding Program as needed and to enter into new insurance policies and surety bonds through renewal or purchase of new insurance policies and surety bonds.
5. The Debtors are authorized to pay the fees, costs, and commissions of the Broker in connection with the Insurance Policies and the Broker Agreement in the ordinary course of business, including any accrued and unpaid amounts owed to the Broker as of the Petition Date.

6. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the insurance and bonding obligations, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

7. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

8. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

9. Notwithstanding anything contained in the Motion or this Interim Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a “**DIP Order**”), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

10. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Interim Order shall be effective and enforceable immediately upon entry hereof.

11. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

12. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

13. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

14. A hearing to consider entry of an order granting the Motion on a final basis (the “**Final Hearing**”) shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_\_ .m. (prevailing Eastern time). Any objections or responses to the entry of such an order must be filed on or before 4:00 p.m. (prevailing Eastern time) on \_\_\_\_\_, 2020, and served on (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (email: caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com), and 885 Third

Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel (jeffrey.mispagel@lw.com); and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); (c) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (d) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (e) counsel to the administrative agent under the DIP ABL FILO Facility, Simpson Thacher & Bartlett LLP, 425 Lexington Ave. New York, New York 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (email: squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); and (f) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: trigg.erin@dorsey.com and kohn.samuel@dorsey.com). In

the event that no objections to entry of the Proposed Final Order on the Motion are timely received, this Court may enter such Proposed Final Order without need for the Final Hearing.

15. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT B**

**Proposed Final Order**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket Nos. ___ & ___

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**FINAL ORDER AUTHORIZING (A) PAYMENT  
OF PREPETITION INSURANCE OBLIGATIONS AND  
PREPETITION BONDING OBLIGATIONS, AND (B) MAINTENANCE  
OF POSTPETITION INSURANCE COVERAGE AND BONDING PROGRAM**

---

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for a final order authorizing (a) payment of Prepetition Insurance Obligations and Prepetition Bonding Obligations, and (b) maintenance of the Insurance Policies and the Bonding Program postpetition (this “*Final Order*”); and this Court having reviewed the Motion, the First Day Declaration, and the Interim Order entered on [●], 2020; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Final Hearing*”); and upon the First Day Declaration and the record of the Final Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue their Insurance Policies and Bonding Program, and to pay any Insurance Obligations and Bonding Obligations, whether arising prepetition or postpetition, including under the Premium Financing Agreement.
3. Payments on account of Prepetition Insurance Obligations and Prepetition Bonding Obligations under the Motion and this Final Order shall not exceed \$91,250 in an aggregate final amount, inclusive of amounts paid pursuant to the Interim Order, or such higher amount as may be set forth in any budget governing postpetition financing or the use of cash collateral.
4. The Debtors are authorized, but not directed, to revise, extend, supplement, or change insurance coverage and/or their Bonding Program as needed and to enter into new insurance policies and surety bonds through renewal or purchase of new insurance policies and surety bonds.

5. The Debtors are authorized to pay the fees, costs, and commissions of the Broker in connection with the Insurance Policies and the Broker Agreement in the ordinary course of business, including any accrued and unpaid amounts owed to the Broker as of the Petition Date.

6. The Debtors are authorized to pay the fees, costs, and commissions of the Broker in connection with the Insurance Policies and the Broker Agreement in the ordinary course of business, including any accrued and unpaid amounts owed to the Broker as of the Petition Date.

7. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the insurance and bonding obligations, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

8. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

9. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an

assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

10. Notwithstanding anything contained in the Motion or this Final Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a "***DIP Order***"), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

11. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Final Order shall be effective and enforceable immediately upon entry hereof.

12. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

## EXHIBIT C

### Insurance Policies

<b>Policy Description</b>	<b>Carrier</b>	<b>Term</b>	<b>Policy Number</b>	<b>Premium</b>
Directors & Officers - Primary \$10M	XL Specialty Ins. Company	07/01/19 - 07/01/20	ELU162108-19	\$204,000
Excess D&O -- 10x10	Allianz Global	07/01/19 - 07/01/20	USF00051219	\$122,181
Excess D&O 5PO10x20	RLI Insurance Company	07/01/19 - 07/01/20	EPG0027501	\$42,500
Excess D&O 5PO10x20	Endurance American Insurance Co.	07/01/19 - 07/01/20	DOX30001146500	\$42,500
Excess D&O - 10x30	Argonaut Insurance Company	07/01/19 - 07/01/20	MLX 7600438-6	\$57,000
Excess D&O - 10x40	Starr Indemnity & Liability Company	07/01/19 - 07/01/20	1000058371191	\$43,300
Excess D&O 10x50	Navigators Insurance Company	07/01/19 - 07/01/20	IS19DOL313741IV	\$35,970
Excess D&O - 10x60	QBE Insurance Corporation	07/01/19 - 07/01/20	100013117	\$33,000
A-Side D&O - 10x70	National Union Fire Ins. Co. of Pittsburgh	07/01/19 - 07/01/20	01-546-03-99	\$35,200
Excess A-Side D&O 10x80	Continental Casualty Company	07/01/19 - 07/01/20	652124841	\$30,000
Excess A-Side D&O 10x90	Endurance American Insurance Co.	07/01/19 - 07/01/20	ADX10010874702	\$30,000
Excess A-Side D&O --- 10x100	National Union Fire Ins. Co. of Pittsburgh	07/01/19 - 07/01/20	06-121-45-37	\$22,000
Special Crime - Primary \$10	US Specialty Insurance Company	04/01/20 - 04/01/23	U720-85202	\$10,358
Package/GNC Foundation	Great American Ins. Co. of NY	06/01/20 - 06/01/22	EPPE193707	\$5,060
Fiduciary - Primary \$10M	National Union Fire Ins. Co. of Pittsburgh	04/01/20 - 04/01/21	03-2990-75-68	\$19,500
Crime - Primary \$5M	Zurich American Ins. Company	04/01/20 - 04/01/21	FID 5981059 09	\$31,497
Employment Practices Liability	Continental Casualty Company	04/01/20 - 04/01/21	596883659	\$179,000
Workers Compensation AOS	Sentry Casualty Company	01/31/20 - 01/31/21	90-05341-01	\$417,344
Workers Compensation HI and WI	Sentry Casualty Company	01/31/20 - 01/31/21	90-05341-02	\$9,770
Business Auto	Sentry Insurance a Mutual Company	01/31/20 - 01/31/21	90-05341-03	\$94,418
Business Auto - MA	Sentry Insurance a Mutual Company	01/31/20 - 01/31/21	90-05341-04	\$1,599
Business Auto - Canada	Sentry Insurance a Mutual Company	01/31/20 - 01/31/21	91-05341-01	\$6,396
Products Liability	Federal Insurance Company	12/05/19 - 12/05/20	7498-01-84	\$660,000

Excess Liability	Lloyd's through RT Specialty	12/05/19 - 12/05/20	LSR-XS-00475-19	\$257,500
Excess Liability - Berkshire Hathaway	National Fire & Marine Ins. Co.	12/05/19 - 12/05/20	42-XSF-100394-06	\$199,500
Excess Liability - Products Liability	Great American Ins. Co. of NY	12/05/19 - 12/05/20	EXC 2969789	\$130,610
Excess Liability Products Liability - \$10M X \$65M	Columbia Casualty	12/05/19 - 12/05/20	ADE 2067457946	\$85,000
Excess Liability	Lloyd's	12/05/19 - 12/05/20	17976U19	\$147,428
Excess Liability	Lloyd's	12/05/19 - 12/05/20	17974U19	\$172,000
Excess Liability	Lloyd's	12/05/19 - 12/05/20	17975U19*(Directly Procured)	\$110,571
Excess Liability - Chubb Bermuda	Chubb Bermuda	12/05/19 - 12/05/20	GNC-2109/CMOCC01	\$175,000
Commercial General Liability	Federal Insurance Company	12/05/19 - 12/05/20	7498-01-83	\$150,000
Commercial Umbrella	ACE Property & Casualty	12/05/19 - 12/05/20	XOO G28191844 004	\$87,900
Excess Liability (Non-Products)	The American Ins. Co.	12/05/19 - 12/05/20	USL003207193	\$34,600
International Package	Great Northern	12/05/19 - 12/05/20	3570-34-68	\$7,123
Commercial Property	Zurich American Ins. Company	01/10/20 - 01/10/21	PPR4452262-00	\$568,000
Stock Through Put	Lloyd's	01/10/20 - 01/10/21	20MRSNU51401	\$173,515
Excess Stock Through Put	Lloyd's	01/10/20 - 01/10/21	B080122091M20	\$344,625
Cyber Excess Liability	Greenwich Insurance Company	08/31/19 - 08/31/20	MTE 9033894 03	\$63,024
Cyber Media Liability	Beazley Insurance Company, Inc.	08/31/19 - 08/31/20	V16770190601	\$185,866
Non-Owned Aircraft Liability	Starr Indemnity & Liability Company	06/13/20 - 06/13/21	1000232992-04	\$6,140

**EXHIBIT D**

**Letters of Credit for the Benefit of Insurance Carriers**

<b>Debtor</b>	<b>Beneficiary Name</b>	<b>Letter of Credit Number</b>	<b>Amount of Letter of Credit</b>	<b>Description</b>
GENERAL NUTRITION CENTERS, INC	Self-Insurance Division, Bureau	NUSCGS002902	\$100,000	LOC for when GNC was self-insured for WC in PA
GENERAL NUTRITION CENTERS, INC	Sentry Insurance a Mutual Company	NUSCGS020048	\$ 2,650,000	Sentry WC/AL (01/31/16 to 01/31/21)
GENERAL NUTRITION CENTERS, INC	The Port Authority of New York	NUSCGS021832	\$70,000	Relating to a real estate lease with the beneficiary
GENERAL NUTRITION CENTERS, INC	Liberty Mutual Insurance Company	NUSCGS022728	\$800,000	Liberty Mutual WC/AL
GENERAL NUTRITION CENTERS, INC	State of New York	NUSCGS022969	\$796,536	LOC for when GNC was self-insured for WC in NY
GENERAL NUTRITION CENTERS, INC	Federal Insurance Company	NUSCGS024014	\$89,104	Chubb WC/AL Carrier
GENERAL NUTRITION CENTERS, INC	RLI Insurance Company	NUSCGS033123	\$473,477	LOC recently required by Surety Bond carrier
GENERAL NUTRITION CENTERS, INC	Fidelity and Deposit Company of MA	NUSCGS033210	\$142,950	LOC recently required by Surety Bond carrier

## EXHIBIT E

### Bonding Obligations

<b>Debtor</b>	<b>Obligee</b>	<b>Bond Number</b>	<b>Expiration Date</b>	<b>Description</b>
General Nutrition Corporation	United States Customs Service	081222007	01/05/21	Import or Broker Bond; Customs Bond No. 990904375
General Nutrition Corporation	Pennsylvania Turnpike Commission	30479565	06/11/21	Turnpike Toll Bond
General Nutrition Corporation	Indiana Department of Transportation, Toll Road Division	30479566	06/11/21	Toll Bond
General Nutrition Corporation	Ohio Turnpike Commission	30479567	06/11/21	Toll Bond
General Nutrition Corporation	Florida Power and Light Company	5875109	10/04/20	Utility Bond
General Nutrition Corporation	State of Texas	8207556	10/14/20	Franchise Tax Bond
General Nutrition Corporation	State of South Dakota	8852652	10/06/20	Retail Store Merchant's Bond
General Nutrition Corporation	Tampa Electric Company ("TECO")	9137109	11/21/20	Utility Bond
General Nutrition Center, Inc.	State of Nevada	9218566	07/07/20	Bond of Nevada Retailer and/or User
General Nutrition Corporation	City of Greenville	9561950	02/04/21	Utility Bond; 6834 Wesley Sp. 10, Greenville, TX 75401
General Nutrition Corporation	Jacksonville Electric Authority	9659577	09/27/20	Utility Bond
General Nutrition Corporation	Fort Pierce Utilities Authority	9660412	01/27/21	Utility Bond; Space #60, Orange Blossom Mall, 4300 Okeechobee Road, Fort Pierce, FL 33450
General Nutrition, Inc.	City of Tallahassee, Florida	9799966	10/10/20	Utility Bond
GNC Puerto Rico, LLC	Commonwealth of Puerto Rico Department of the Treasury	CMS0269971	07/23/20	Import Tax Bond
GNC Puerto Rico, LLC	Autoridad De Energia Electrica De Puerto Rico	CMS0269987	11/12/20	Utility Bond - KK6798

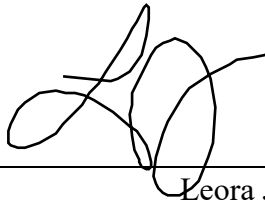


<b>Debtor</b>	<b>Obligee</b>	<b>Bond Number</b>	<b>Expiration Date</b>	<b>Description</b>
General Nutrition Corporation	Salt River Project Agricultural Improvement & Power District	CMS228546	10/25/20	Utility Bond
General Nutrition Corporation	Florida Power, a Progress Energy Company	CMS242209	10/16/20	Utility Bond
General Nutrition Corporation	MidAmerican Energy Company	CMS242402	10/28/20	Utility Bond
General Nutrition Corporation	Tucson Electric Power Company	CMS242404	09/19/20	Utility Bond
General Nutrition Corporation	Georgia Power Company	CMS252500	12/14/20	Utility Bond
General Nutrition Corp	Dominion Virginia Power	CMS324882	03/29/21	Utility Bond



**TAB JJ**

THIS IS **EXHIBIT “JJ”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', written over a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
GNC HOLDINGS, INC.	)	Case No. 20-11662 (___)
Debtor.	)	Tax I.D. No. 20-8536244
In re:	)	Chapter 11
GNC PARENT LLC	)	Case No. 20-11663 (___)
Debtor.	)	Tax I.D. No. 20-5877572
In re:	)	Chapter 11
GNC CORPORATION	)	Case No. 20-11664 (___)
Debtor.	)	Tax I.D. No. 72-1575170
In re:	)	Chapter 11
GENERAL NUTRITION CENTERS, INC.	)	Case No. 20-11665 (___)
Debtor.	)	Tax I.D. No. 72-1575168
In re:	)	Chapter 11
GENERAL NUTRITION CORPORATION	)	Case No. 20-11666 (___)
Debtor.	)	Tax I.D. No. 25-1124574
In re:	)	Chapter 11
GENERAL NUTRITION INVESTMENT COMPANY	)	Case No. 20-11667 (___)
Debtor.	)	Tax I.D. No. 51-0313878

In re:	) Chapter 11
LUCKY OLDSCO CORPORATION	) Case No. 20-11668 (___)
Debtor.	) Tax I.D. No. 45-3007141
In re:	) Chapter 11
GNC FUNDING INC.	) Case No. 20-11669 (___)
Debtor.	) Tax I.D. No. 20-8577837
In re:	) Chapter 11
GNC INTERNATIONAL HOLDINGS INC.	) Case No. 20-11670 (___)
Debtor.	) Tax I.D. No. 61-1869873
In re:	) Chapter 11
GNC CHINA HOLDCO, LLC	) Case No. 20-11671 (___)
Debtor.	) Tax I.D. No. 27-2120004
In re:	) Chapter 11
GNC HEADQUARTERS LLC	) Case No. 20-11672 (___)
Debtor.	) Tax I.D. No. 45-4317550
In re:	) Chapter 11
GUSTINE SIXTH AVENUE ASSOCIATES, LTD.	) Case No. 20-11673 (___)
Debtor.	) Tax I.D. No. 25-1780731

In re:	)	Chapter 11
GNC CANADA HOLDINGS, INC.	)	Case No. 20-11674 (___)
Debtor.	)	Tax I.D. No. 46-1613879
In re:	)	Chapter 11
GENERAL NUTRITION CENTRES COMPANY	)	Case No. 20-11675 (___)
Debtor.	)	Tax I.D. No. 898190939
In re:	)	Chapter 11
GNC GOVERNMENT SERVICES, LLC	)	Case No. 20-11676 (___)
Debtor.	)	Tax I.D. No. 27-1532226
In re:	)	Chapter 11
GNC PUERTO RICO HOLDINGS, INC.	)	Case No. 20-11677 (___)
Debtor.	)	Tax I.D. No. 81-5034559
In re:	)	Chapter 11
GNC PUERTO RICO, LLC	)	Case No. 20-11678 (___)
Debtor.	)	Tax I.D. No. 66-0507234

**MOTION OF DEBTORS FOR ORDER  
AUTHORIZING JOINT ADMINISTRATION OF CHAPTER 11 CASES**

---

The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

## **RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Order*”), directing the joint administration of the Debtors’ Chapter 11 Cases for procedural purposes only.

## **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Local Rule 1015-1.

## **BACKGROUND**

3. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “*Chapter 11 Cases*”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “*Bankruptcy Code*”). The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies' Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day Declaration**")<sup>1</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>2</sup>

#### **BASIS FOR RELIEF**

6. Bankruptcy Rule 1015(b) provides that "if . . . two or more petitions are pending in the same court by or against . . . a debtor and an affiliate, the court may order joint administration of the estates" of the debtor and such affiliates. *See* Fed. R. Bankr. P. 1015(b)(4). Section 101(2) of the Bankruptcy Code, in turn, defines the term "affiliate" in pertinent part, as follows:

(A) [an] entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor . . . ;

(B) [a] corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor . . . ;

---

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the First Day Declaration.

<sup>2</sup> The First Day Declaration and other relevant case information is available from (a) the Court's website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors' proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/GNC>.



(C) [a] person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

(D) [an] entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement.

11 U.S.C. § 101(2).

7. Further, Local Rule 1015-1 provides the following:

[a]n order of joint administration may be entered, without notice and an opportunity for hearing, upon the filing of a motion for joint administration pursuant to Fed. R. Bankr. P. 1015, supported by an affidavit, declaration or verification, which establishes that the joint administration of two or more cases pending in this Court under title 11 is warranted and will ease the administrative burden for the Court and the parties.

Del. Bankr. L.R. 1015-1.

8. The Debtors are “affiliates” as that term is defined in section 101(2) of the Bankruptcy Code and as used in Bankruptcy Rule 1015(b). Accordingly, joint administration of the Chapter 11 Cases is appropriate under Bankruptcy Rule 1015(b) and Local Rule 1015-1.

9. The Debtors anticipate that numerous notices, applications, motions, other pleadings, hearings, and orders in the Chapter 11 Cases will affect all of the Debtors. With seventeen Debtors, each with its own case docket, not administering the Chapter 11 Cases jointly would result in numerous, duplicative filings for each issue, which would then be served upon separate service lists. This duplication would be extremely wasteful and would unnecessarily overburden the Clerk of the Court and the Debtors.

10. Joint administration of the Chapter 11 Cases will save time and money and avoid duplicative and potentially confusing filings by permitting counsel for all parties in interest to (a) use a single caption on the numerous documents that will be served and filed in the Chapter 11 Cases and (b) file the papers in one case rather than in multiple cases. Moreover, the Court will

be relieved of the burden of entering duplicative orders and maintaining duplicative files. Also, joint administration will ease the burden on the office of the United States Trustee for the District of Delaware in supervising the Chapter 11 Cases.

11. Further, joint administration of the Chapter 11 Cases will permit the Clerk of the Court to use a single general docket for each of the Debtor’s cases and to combine notices to creditors and other parties in interest. Joint administration also will protect parties in interest by ensuring that parties in each of the Debtor’s respective cases will be apprised of the various matters before the Court in the Chapter 11 Cases.

12. The rights of the respective creditors of each of the Debtors will not be adversely affected by joint administration of the Chapter 11 Cases inasmuch as the relief sought is purely procedural and is in no way intended to affect substantive rights. Each creditor and other party in interest will maintain whatever rights it has against the particular estate against which it asserts a claim or right. In addition, all creditors will benefit from the reduced costs that will result from joint administration.

13. Accordingly, the Debtors request that the official caption to be used by all parties on all pleadings and other filings in the jointly administered cases be as follows:

In re:	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Chapter 11
Debtors. <sup>1</sup>	)	Case No. 20-11662 (___)
	)	Jointly Administered

<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

The footnote reference in the caption above will set forth a complete listing of the Debtors' names, as well as the last four digits of each Debtor's tax identification number and the Debtors' mailing address, as shown.

14. The Debtors submit that use of this simplified caption, without reference to their complete tax identification numbers and other detail specified by section 342(c)(1) of the Bankruptcy Code and Bankruptcy Rule 2002(n), will eliminate cumbersome and confusing procedures and ensure a uniformity of pleading identification. Further, this case-specific information will be listed in the Debtors' petitions, which are publicly available to parties in interest or will be provided by the Debtors upon request. In addition, this information will be included in key notices to parties in interest, such as the notices required under Bankruptcy Rules 2002(a)(1), 2002(a)(7), and 2002(b), as made applicable to the Chapter 11 Cases. Therefore, the Debtors submit that the policies behind the requirements of section 342(c)(1) of the Bankruptcy Code and Bankruptcy Rule 2002(n) have been satisfied.

15. In addition, the Debtors request that the Court make separate docket entries on the case docket of each Debtor (except that of GNC Holdings, Inc.), substantially as follows:

An order has been entered in this case consolidating this case with the case of GNC Holdings, Inc., Case No. 20-11662 (\_\_\_), for procedural purposes only and providing for its joint administration in accordance with the terms thereof. The docket in Case No. 20-11662 (\_\_\_) should be consulted for all matters affecting this case.

16. As the proposed joint administration is procedural only, the Debtors respectfully request that the Court direct that any creditor filing a proof of claim against any of the Debtors or their respective estates clearly assert its claim against the particular Debtor obligated on such claim, and not against the jointly administered Debtors.

17. An order of joint administration relates to the routine administration of a case and may be entered by the Court in its sole discretion on an *ex parte* basis. See Del. Bankr. L.R. 1015-1.

No party will be prejudiced by virtue of the relief requested in this Motion. Specifically, the relief sought herein is solely procedural and is not intended to affect substantive rights.

18. Accordingly, the Debtors submit that the relief requested herein is in the best interest of the Debtors, their estates, creditors, and other parties in interest and, therefore, should be granted.

### **NOTICE**

19. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; and (p) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank.]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Order, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Joseph M. Mulvihill

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Kara Hammond Coyle (No. 4410)  
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- and -

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*Proposed Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
GNC HOLDINGS, INC.	)	Case No. 20-11662 (___)
Debtor.	)	Tax I.D. No. 20-8536244
In re:	)	Chapter 11
GNC PARENT LLC	)	Case No. 20-11663 (___)
Debtor.	)	Tax I.D. No. 20-5877572
In re:	)	Chapter 11
GNC CORPORATION	)	Case No. 20-11664 (___)
Debtor.	)	Tax I.D. No. 72-1575170
In re:	)	Chapter 11
GENERAL NUTRITION CENTERS, INC.	)	Case No. 20-11665 (___)
Debtor.	)	Tax I.D. No. 72-1575168
In re:	)	Chapter 11
GENERAL NUTRITION CORPORATION	)	Case No. 20-11666 (___)
Debtor.	)	Tax I.D. No. 25-1124574
In re:	)	Chapter 11
GENERAL NUTRITION INVESTMENT COMPANY	)	Case No. 20-11667 (___)
Debtor.	)	Tax I.D. No. 51-0313878

In re:	) Chapter 11
LUCKY OLDSCO CORPORATION	) Case No. 20-11668 (___)
Debtor.	) Tax I.D. No. 45-3007141
In re:	) Chapter 11
GNC FUNDING INC.	) Case No. 20-11669 (___)
Debtor.	) Tax I.D. No. 20-8577837
In re:	) Chapter 11
GNC INTERNATIONAL HOLDINGS INC.	) Case No. 20-11670 (___)
Debtor.	) Tax I.D. No. 61-1869873
In re:	) Chapter 11
GNC CHINA HOLDCO, LLC	) Case No. 20-11671 (___)
Debtor.	) Tax I.D. No. 27-2120004
In re:	) Chapter 11
GNC HEADQUARTERS LLC	) Case No. 20-11672 (___)
Debtor.	) Tax I.D. No. 45-4317550
In re:	) Chapter 11
GUSTINE SIXTH AVENUE ASSOCIATES, LTD.	) Case No. 20-11673 (___)
Debtor.	) Tax I.D. No. 25-1780731



In re:	)	Chapter 11
GNC CANADA HOLDINGS, INC.	)	Case No. 20-11674 (___)
Debtor.	)	Tax I.D. No. 46-1613879
In re:	)	Chapter 11
GENERAL NUTRITION CENTRES COMPANY	)	Case No. 20-11675 (___)
Debtor.	)	Tax I.D. No. 898190939
In re:	)	Chapter 11
GNC GOVERNMENT SERVICES, LLC	)	Case No. 20-11676 (___)
Debtor.	)	Tax I.D. No. 27-1532226
In re:	)	Chapter 11
GNC PUERTO RICO HOLDINGS, INC.	)	Case No. 20-11677 (___)
Debtor.	)	Tax I.D. No. 81-5034559
In re:	)	Chapter 11
GNC PUERTO RICO, LLC	)	Case No. 20-11678 (___)
Debtor.	)	Tax I.D. No. 66-0507234
	)	Re: Docket No. ___

**ORDER AUTHORIZING JOINT ADMINISTRATION OF CHAPTER 11 CASES**

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Upon the motion (the “*Motion*”)<sup>1</sup> of the Debtors for an order, under Bankruptcy Rule 1015(b) and Local Rule 1015-1, authorizing the joint administration of their Chapter 11 Cases; and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The above-captioned cases are consolidated for procedural purposes only and shall be administered jointly under Case No. 20-11662 (\_\_\_) in accordance with the provisions of Bankruptcy Rule 1015(b) and Local Rule 1015-1.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

3. The official caption to be used by all parties on all pleadings and other documents filed in the jointly administered cases shall be as follows:

In re:	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
Debtors. <sup>1</sup>	)	Jointly Administered

<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

As reflected in the caption set forth above, footnote 1 sets forth a complete listing of the Debtors’ names, as well as the last four digits of each Debtor’s tax identification number and the Debtors’ address.

4. The caption set forth above shall be deemed to satisfy any applicable requirements of section 342(c)(1) of the Bankruptcy Code and Bankruptcy Rule 2002(n).

5. All pleadings and other documents to be filed in the jointly administered cases shall be filed and docketed in the case of GNC Holdings, Inc., Case No. 20-11662 (\_\_\_).

6. A docket entry shall be made in each of the Debtors’ Chapter 11 Cases (except that of GNC Holdings, Inc.), substantially as follows:

An order has been entered in this case consolidating this case with the case of GNC Holdings, Inc., Case No. 20-11662 (\_\_\_), for procedural purposes only and providing for its joint administration in accordance with the terms thereof. The docket in Case No. 20-11662 (\_\_\_) should be consulted for all matters affecting this case.

7. Nothing contained in the Motion or this Order shall be deemed or construed as directing or otherwise effecting the substantive consolidation of the Chapter 11 Cases.

8. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

9. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

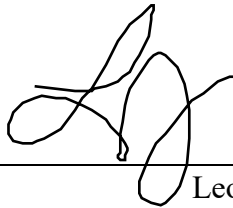
Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge



TAB KK

THIS IS **EXHIBIT “KK”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', positioned above a horizontal line.

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Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

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**MOTION OF DEBTORS FOR ORDERS (A) AUTHORIZING PAYMENT OF  
PREPETITION LIEN CLAIMS AND IMPORT CLAIMS AND (B) CONFIRMING  
ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS**

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The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Interim Order*”) and **Exhibit B** (the “*Proposed Final Order*,” and together with the Proposed Interim Order, the “*Proposed Orders*”), respectively: (a) authorizing payment of prepetition and postpetition amounts owing on account of (i) claims held by shippers, warehousemen, and other non-merchant lienholders, and (ii) claims held by import claimants; (b) confirming the administrative expense priority status of Outstanding Orders (as defined herein) and authorizing the Debtors to satisfy such

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

obligations in the ordinary course of business; and (c) authorizing financial institutions to honor and process related checks and transfers.

### **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), 506(b), 1107(a) and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “*Bankruptcy Code*”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

### **BACKGROUND**

3. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.



4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies' Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the "*First Day Declaration*")<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

#### **PREPETITION OBLIGATIONS TO BE SATISFIED**

6. While the Debtors' businesses are vertically-integrated to a significant extent, they rely heavily on third party providers of goods and services to deliver the broad range of high quality health and wellness products their customers have come to expect. All of the Debtors' vendors play key parts in the Debtors' operations, and preserving these business relationships and the operational success and stability that goes along with them is critical to the Debtors' transition into the Chapter 11 Cases. Importantly, certain of the Debtors' vendors provide specific types of goods or services that may entitle them to security interests, priorities, or other rights in or over the Debtors' assets. If these vendors were to assert those rights on account of outstanding unpaid amounts, the Debtors and their estates could suffer numerous ill effects that would likely lead to direct value losses or missed opportunities for sales, all to the detriment of the Debtors' creditors and other stakeholders.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court's website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors' proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

7. These potential claims and rights, and the Debtors' justifications for paying the related outstanding amounts, are discussed further below. In the aggregate, the Debtors seek authority to pay (a) \$6,212,000, on an interim basis, and \$6,251,000, in an aggregate final amount, inclusive of amounts paid pursuant to the Interim Order, on account of outstanding Lien Claims and Import Claims (each as defined below) (collectively, the "**Obligations**"), and (b) all undisputed, postpetition amounts, incurred in the ordinary course of business, owing on account of the Obligations.

#### **I. THE LIEN CLAIMS**

8. The Debtors owe, either directly or indirectly, certain prepetition shipping, delivery, warehousing, and related charges (all such charges, the "**Shipping and Warehousing Claims**") to certain third-party haulers, common carriers, truckers, and/or other transporters and logistics providers (collectively, the "**Shippers**") and to certain third-party warehousemen (the "**Warehousemen**") for prepetition shipping-related and warehousing services provided to the Debtors ( the "**Shipping and Warehousing Services**"). In the ordinary course of business, the Debtors rely on line Shippers to ship, transport, store, and otherwise facilitate the movement of their health and wellness products manufactured and distributed by the Debtors and the Debtors' vendors through established distribution networks to the Warehousemen's and Debtors' warehouses and rely on pool Shippers to perform these tasks between the warehouses and retail stores.

9. The Debtors also employ various third party service providers or contractors who may be permitted to assert statutory or possessory liens against the Debtors' property if the Debtors fail to pay for those parties' services (the "**Non-Merchant Lienholders**", and together with the Shippers and Warehousemen, the "**Lien Claimants**"). As examples, the Debtors owe prepetition amounts to Non-Merchant Lienholders (the "**Non-Merchant Charges**") on account of

services such as on-site construction and repair at the Debtors' corporate headquarters, distribution centers and retail stores, on account of renovations of closed retail stores to return such stores to their original condition, and on account of maintenance and repairs to the Debtors' signage. Some of the Non-Merchant Lienholders are not required to perform future services, but rather perform work and related services on an order-by-order basis. It is imperative that the Non-Merchant Lienholders continue providing these services. Otherwise, the Debtors' uncompleted remodeling and construction projects may grind to a halt, and the Non-Merchant Lienholders may not make necessary repairs essential to the continued operation of the Debtors' corporate headquarters, warehouses, and retail stores.

10. Collectively, the Debtors estimate approximately \$6,122,000 of Shipping and Warehousing Claims and Non-Merchant Charges (collectively, the "*Lien Claims*") are due and owing as of the Petition Date, of which approximately \$6,122,000 may become due or owing during the interim period.

11. Under certain nonbankruptcy laws, the Lien Claimants may be able to assert liens on the goods in their possession or other statutory mechanics' liens to secure payment of the charges or expenses incurred in connection with the Lien Claims.

12. Accordingly, in the event the Lien Claims remain unpaid, the Lien Claimants are likely to attempt to assert such possessory liens or other statutory liens, and may refuse to deliver or release goods in their possession until their claims are satisfied and their liens redeemed. The Lien Claimants' retention of the Debtors' goods and supplies would disrupt the Debtors' operations, and affect the Debtors' ability to efficiently administer the Chapter 11 Cases.

13. By this Motion, the Debtors seek authority, but not direction, to (a) pay up to \$6,122,000 during the interim period, and up to \$6,122,000 on a final basis on account of

prepetition Lien Claims, and (b) pay all undisputed, postpetition amounts incurred in the ordinary course of business, as determined by the Debtors, owing on account of the Lien Claims.

## **II. THE IMPORT CLAIMS**

14. In the ordinary course of their business, the Debtors import inventory and related materials (collectively, the “*Imported Goods*”) from certain of the Debtors’ vendors through the Debtors’ customs broker Bollore Logistics Canada. Timely receipt or transmittal, as applicable, of the Imported Goods is critical to the Debtors’ Canada business operations. Any disruption or delay would adversely affect the Debtors’ business operations and affect the Debtors’ ability to efficiently administer the Chapter 11 Cases.

15. In connection with the import and export of goods, the Debtors may be required to pay various charges (the “*Import Claims*”), including customs duties, tariffs and excise taxes, and various fees and import-related charges.

16. The Debtors seek authority to pay any and all necessary and appropriate Import Claims incurred on account of prepetition transactions. Absent such payment, parties to whom the Debtors owe Import Claims (the “*Import Claimants*”) may interfere with the transportation of the Imported Goods. If the flow of Imported Goods were to be interrupted, the Debtors may be deprived of the inventory necessary to stock the shelves in their stores, which means the Debtors would not have inventory to sell to their customers. The ultimate value of such sales is worth far more to the Debtors (both in terms of future receipts and the maintenance of valuable customer goodwill) than the aggregate amount of incurred, but unpaid, Import Claims.

17. In 2019, the Debtors’ incurred approximately \$43,000 per month of import-related charges, though that has increased to approximately \$76,000 per month in 2020. Collectively, the Debtors estimate approximately \$129,000 of Import Claims are due and owing

as of the Petition Date, of which approximately \$90,000 may become due or owing during the interim period.

18. By this Motion, the Debtors seek authority, but not direction, to (a) pay up to \$90,000 during the interim period, and up to \$129,000 on a final basis on account of prepetition Import Claims, and (b) pay all undisputed, postpetition amounts incurred in the ordinary course of business, as determined by the Debtors, owing on account of the Import Claims.

### **THE OUTSTANDING ORDERS**

19. Prior to the Petition Date and in the ordinary course of business, the Debtors may have ordered goods that will not be delivered until after the Petition Date (the “*Outstanding Orders*”). To avoid becoming general unsecured creditors of the Debtors’ estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition. To prevent any disruption to the Debtors’ business operations, and given that goods delivered after the Petition Date are afforded administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtors seek an order (a) granting administrative expense priority under section 503(b) of the Bankruptcy Code to all undisputed obligations of the Debtors arising from the acceptance of goods subject to Outstanding Orders, and (b) authorizing the Debtors to so satisfy such obligations in the ordinary course of business.

### **BASIS FOR RELIEF**

#### **I. PAYING THE OBLIGATIONS IS A SOUND EXERCISE OF BUSINESS JUDGMENT AND THEREFORE SHOULD BE APPROVED.**

20. To the extent that payment of the Obligations would be deemed to constitute a use of property outside the ordinary course of business, a basis for authorizing such payment is found under section 363 of the Bankruptcy Code. Section 363(b) of the Bankruptcy Code provides, in

relevant part, that a debtor “may use, sell, or lease, other than in the ordinary course of business, property of the estate” after notice and a hearing. 11 U.S.C. § 363(b)(1). Generally, the debtor is only required to “show that a sound business purpose” justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring “good business reason” for use under section 363(b) of the Bankruptcy Code). This standard prohibits other parties from second-guessing the debtor’s business judgment if the debtor has shown that the proposed use will benefit the debtor’s estate. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

21. Paying the Obligations reflects a sound exercise of the Debtors’ business judgment and should be approved. First, if the Shippers are not paid on a timely basis, they may refuse to perform additional services for the Debtors. This would cause the Debtors to incur additional expenses (such as premium shipping costs) to replace the current Shippers, which amounts would likely exceed the amounts of any unpaid prepetition amounts owed to the Shippers. In addition, to the extent the Debtors’ products are in the possession of the Shippers on the Petition Date, the Shippers would likely assert, under applicable law, possessory liens against the products in their possession and would significantly disrupt the Debtors’ operations.<sup>4</sup>

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<sup>4</sup> For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a “carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier’s receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably

22. Likewise, if the Warehousemen are not paid on a timely basis, they may assert possessory liens on the products currently in their possession and refuse to deliver or release them until their invoices are paid.<sup>5</sup> The consequence would be an immediate destruction of value for the Debtors' estates and could potentially cost the Debtors substantial revenue and future business.

23. The Debtors must rely on the Shippers and Warehousemen, who have specialized skills and offer superior care in the transportation of the products. By every measure, the services provided by the Shippers and Warehousemen are critical to the day-to-day operations of the Debtors' core businesses, and finding replacement vendors for the transportation and storage of the products would be cumbersome, time-consuming, and very costly.

24. In addition, the assertion of liens and interests by the Non-Merchant Lienholders would unnecessarily burden the Debtors and their estates. The Debtors believe that the Non-Merchant Lienholders may refuse to continue to provide their services if their Non-Merchant Charges will not be paid due to the pendency of the Chapter 11 Cases. The failure to properly and timely complete these services would likely adversely affect the Debtors' financial condition and operations. These adverse effects likely will exceed the amount of unpaid prepetition Non-Merchant Charges that the Debtors request permission to pay hereunder.

25. Without payment to the Import Claimants, the flow of the Debtors' goods into

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incurred in their sale pursuant to law." U.C.C. § 7-307(a). By this Motion, the Debtors do not concede that any liens (contractual, common law, statutory, or otherwise) are valid, and the Debtors expressly reserve the right to contest the extent, validity, and perfection of any and all such liens.

<sup>5</sup> The Warehousemen may be able to assert possessory or other liens on items currently in their possession if their prepetition claims are not paid. *See* U.C.C. § 7-209(a) (lien of warehouseman). The perfection and maintenance of liens is, in most cases, dependent upon possession, so the Warehousemen likely would refuse to deliver or release such items until their claims have been satisfied and the liens released. The value of these items generally exceeds the amount of the outstanding amounts owed to the Warehousemen and, thus, the Warehousemen would hold secured claims on account of the amounts owed to them. Irrespective of the amount and validity of their liens, the mere assertion of possessory or other liens will delay delivery of the products to the ultimate purchasers of the products, thereby severely, if not irreparably, damaging the Debtors' businesses and ability to maximize estate value.

Canada would be disrupted, depriving the Debtors' Canada business of the inventory it needs to sell to customers.

26. Under these circumstances, it is the Debtors' business judgment that the failure to pay the Obligations could have a material adverse impact on the day-to-day operations of their businesses and to their prospects for reorganizing successfully. Paying them, on the other hand, does not result in material prejudice to any parties in interest due to the rights and interests that the holders of the Obligations have or could assert to collect on the Obligations. Therefore, the Debtors should be authorized to pay the Obligations under section 363(b) of the Bankruptcy Code.

## **II. PAYING THE OBLIGATIONS IS NECESSARY TO THE SUCCESS OF THE DEBTORS' REORGANIZATION AND THEREFORE SHOULD BE APPROVED.**

27. In addition, the Debtors should be authorized to pay the Obligations as set forth in the Proposed Orders because doing so is necessary to the success of their reorganization. Section 105(a) of the Bankruptcy Code provides that a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). Courts have interpreted this provision to authorize payments on prepetition claims where the payments are essential to the success of the debtor's reorganization under what is known as the "necessity of payment doctrine." *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) ("Thus, the 'necessity of payment' doctrine...teaches no more than, if a payment of a claim which arose prior to reorganization is essential to the continued operation of the [debtor's business] during reorganization, payment may be authorized..."); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code "provides a statutory basis for payment of pre-petition claims" under necessity of payment doctrine); *In re Columbia Gas Sys., Inc.*, 171



B.R. 189, 191-92 (Bankr. D. Del. 1994) (“The appropriate standard...is commonly referred to as ‘the necessity of payment doctrine.’”).

28. As set forth above, paying the Obligations is necessary to help the Debtors preserve the stability, continuity, and success of their core businesses and, therefore, necessary to the success of their reorganization. Failing to pay the Obligations could lead to severe operational disruptions, administrative and logistical costs to manage those disruptions, increased costs imposed by new vendors, and opportunity costs as the Debtors’ personnel devote their time to managing through these crises instead of maximizing sales and profitability. These harmful effects could reverberate through the Chapter 11 Cases and jeopardize the Debtors’ path to emergence as a revitalized enterprise. Thus, the Debtors should be authorized to pay the Obligations under the necessity of payment doctrine and section 105(a) of the Bankruptcy Code.

### **III. PAYING THE OBLIGATIONS WILL PREVENT THE ASSERTION OF POSSESSORY LIENS BY THE LIEN CLAIMANTS.**

29. In addition, the Debtors believe that their failure to pay the Lien Claims may result in the assertion of possessory liens by many of the Lien Claimants under applicable state law with respect to certain of the Debtors’ property (the “*Liens*”). Pursuant to section 362(b)(3) of the Bankruptcy Code, acts to perfect such Liens or interests, to the extent consistent with section 546(b) of the Bankruptcy Code, are expressly excluded from the automatic stay otherwise established by section 362(a) of the Bankruptcy Code. 11 U.S.C. § 362(b)(3). Moreover, under section 546(b) of the Bankruptcy Code, a debtor’s lien avoidance powers “are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection.” 11 U.S.C. § 546(b). Therefore, notwithstanding the automatic stay established by section 362 of the Bankruptcy Code, many of the Lien Claimants may assert and attempt to perfect Liens or interests

against the Debtors' property. Thus, there is a risk that they would be deemed to hold secured claims under section 506(b) of the Bankruptcy Code that would, in any event, be required to be paid in full under section 1129(b)(2)(A) of the Bankruptcy Code. 11 U.S.C. § 1129(b)(2)(A).

30. Moreover, to protect any asserted Lien rights, such counterparties may refuse to release goods or property in their possession unless and until their Lien Claims have been satisfied. Therefore, notwithstanding the automatic stay imposed by section 362 of the Bankruptcy Code, many of these parties: (i) may be entitled to assert and perfect Liens against the Debtors' property, which would entitle them to payment ahead of other general unsecured creditors in any event; and (ii) may hold the property subject to the asserted Liens pending payment, to the direct detriment of the Debtors and their estates. The time and resources that would be required for the Debtors to contest Liens would detract from the value of the estates and could impair the Debtors' ability to stabilize their operations.

31. Furthermore, since the amount of the Lien Claims is likely materially less than the value of any property securing those claims, any such party holding a Lien arguably is a fully secured creditor. For any Lien Claims that are deemed secured claims, section 1129(b)(2)(A) of the Bankruptcy Code requires that they be satisfied through deferred cash payments totaling at least the allowed amount of each such claim, of a value as of the effective date of the plan equal to the value of the collateral securing the claim, with a continuation of the Liens against the collateral; or if the collateral is to be sold, that the Lien securing the claim attach to the proceeds of sale; or that the holder realize the indubitable equivalent of the claim. 11 U.S.C. § 1129 (b)(2)(A).

32. Additionally, under section 506(b) of the Bankruptcy Code, fully secured creditors are entitled to receive postpetition interest accruing on their claims to the extent that

such claims are oversecured. 11 U.S.C. § 506(b). Consequently, payment of those of Lien Claims that are subject to valid Liens should give such counterparties no more than that to which they otherwise would be entitled under a plan and save the Debtors the interest costs that otherwise may accrue on the Lien Claims during the Chapter 11 Cases.

#### **IV. THE DEBTORS SHOULD BE AUTHORIZED TO PAY CRITICAL VENDOR CLAIMS UNDER SECTIONS 1107(A) AND 1108 OF THE BANKRUPTCY CODE**

33. The Debtors are operating their business as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code, and they are therefore fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) [their] equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). A chapter 11 debtor in possession has the implicit duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.*

34. Courts have noted that a debtor in possession can, in certain instances, fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* The court provided a three-prong test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*Id.* at 498.

35. Payment of the Obligations meet each *CoServ* element. First, it is critical that the Debtors deal with the Lien Claimants and Import Claimants because each of these claimants provide goods and services necessary to the Debtors' ongoing operations. Second, the Debtors believe that the Lien Claimants and Import Claimants may otherwise be unwilling or unable to provide goods and services to the Debtors on a postpetition basis if their prepetition balances are not paid. Accordingly, not paying the Obligations harms the Debtors financially because losing access postpetition to the necessary goods and services provided by the Lien Claimants and Import Claimants could force the Debtors to halt ongoing business and potentially forgo existing favorable trade terms. Third, the Debtors have examined other options short of paying the Obligations and have determined that, to avoid any unexpected or inopportune interruptions to their business operations, there is no practical alternative to paying the Obligations. Therefore, the Debtors submit that paying the Obligations is a sound exercise of their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

**V. THE COURT SHOULD CONFIRM THAT OUTSTANDING ORDERS ARE ADMINISTRATIVE EXPENSE PRIORITY CLAIMS AND THAT PAYMENT OF SUCH CLAIMS IS AUTHORIZED.**

36. Pursuant to section 503(b)(1) of the Bankruptcy Code, obligations that arise in connection with the postpetition delivery of goods and services, including goods ordered prepetition, are administrative expense priority claims because they benefit the estate postpetition. *See* 11 U.S.C. § 503(b)(1)(A) (providing that the “actual [and] necessary costs and expenses of preserving the estate” are administrative expenses); *see also In re John Clay & Co.*, 43 B.R. 797, 809–10 (Bankr. D. Utah 1984) (holding that goods ordered prepetition but delivered postpetition are entitled to administrative priority). Thus, the relief requested herein with respect to the Outstanding Orders will not afford the applicable vendors any greater priority

than they otherwise would have if the relief requested herein were not granted, and will not prejudice any other party in interest.

37. Absent this relief, however, the Debtors would have to reissue the requests underlying the Outstanding Orders and likely spend time resolving related complications with their vendors. The attendant disruption to the continuous and timely flow of materials, finished products, and other goods to the Debtors would force the Debtors to potentially halt operations, damage the Debtors' business reputation, erode the Debtors' customer base, and ultimately lead to a loss of revenue, all to the detriment of the Debtors and their creditors. Accordingly, the Debtors submit that the Court should confirm the administrative expense priority status of the Outstanding Orders and should authorize the Debtors to pay the Outstanding Orders in the ordinary course of business.

**PROCESSING OF CHECKS AND  
ELECTRONIC FUND TRANSFERS SHOULD BE AUTHORIZED**

38. The Debtors have sufficient funds to pay any amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing and cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Obligations. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND  
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

39. Certain aspects of the relief requested herein are subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant this relief on an expedited basis if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

40. Additionally, with respect to any aspect of the relief sought herein that constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

**RESERVATION OF RIGHTS**

41. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to

section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

### **NOTICE**

42. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; and (p) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Orders, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Joseph M. Mulvihill  
Michael R. Nestor (No. 3526)  
Kara Hammond Coyle (No. 4410)  
Andrew L. Magaziner (No. 5426)  
Joseph M. Mulvihill (No. 6061)  
Rodney Square  
1000 North King Street  
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**LATHAM & WATKINS LLP**

Richard A. Levy (*pro hac vice* pending)  
Caroline A. Reckler (*pro hac vice* pending)  
Asif Attarwala (*pro hac vice* pending)  
Brett V. Newman (*pro hac vice* pending)  
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Email: richard.levy@lw.com  
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brett.newman@lw.com

- and -

George A. Davis (*pro hac vice* pending)  
Jeffrey T. Mispagel (*pro hac vice* pending)  
885 Third Avenue  
New York, New York 10022  
Telephone: (212) 906-1200  
Facsimile: (212) 751-4864  
Email: george.davis@lw.com  
jeffrey.mispagel@lw.com

*Proposed Counsel for Debtors and Debtors in Possession*



**EXHIBIT A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. _____

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**INTERIM ORDER (A) AUTHORIZING PAYMENT OF PREPETITION LIEN  
CLAIMS AND IMPORT CLAIMS AND (B) CONFIRMING ADMINISTRATIVE  
EXPENSE PRIORITY OF OUTSTANDING ORDERS**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an order, (a) authorizing, but not directing, them to remit and pay in the ordinary course of business any prepetition and postpetition amounts owing on account of (i) Lien Claims and (ii) Import Claims and (b) confirming the administrative expense priority status of Outstanding Orders (this “*Interim Order*”); and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, to remit and pay in the ordinary course of business any prepetition amounts owing on account of Lien Claims and Import Claims in an amount not to exceed \$6,212,000 on an interim basis.
3. The Debtors are authorized, but not directed to remit and pay in the ordinary course of business all undisputed, postpetition amounts owing on account of Lien Claims and Import Claims consistent with the parties’ customary practices in effect prior to the Petition Date.
4. The Debtors shall determine which of the Obligations, if any, shall be paid under this Interim Order.
5. All undisputed obligations of the Debtors arising from the acceptance of goods subject to Outstanding Orders is granted administrative expense priority status. Further, the

Debtors are authorized, but not directed, to satisfy such obligations in the ordinary course of business.

6. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the Obligations, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

7. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

8. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease,

reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

9. Notwithstanding anything contained in the Motion or this Interim Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a “*DIP Order*”), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

10. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

11. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Interim Order shall be effective and enforceable immediately upon entry hereof.

12. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

14. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

15. A hearing to consider entry of an order granting the Motion on a final basis (the “*Final Hearing*”) shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_\_\_ .m. (prevailing Eastern time). Any objections or responses to the entry of such an order must be filed on or before 4:00 p.m. (prevailing Eastern time) on \_\_\_\_\_, 2020, and served on (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (email: caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com), and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel (jeffrey.mispagel@lw.com); and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); (c) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (d) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb

(cobb@lrclaw.com); (e) counsel to the administrative agent under the DIP ABL FILO Facility, Simpson Thacher & Bartlett LLP, 425 Lexington Ave. New York, New York 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (email: squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); and (f) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: trigg.erin@dorsey.com and kohn.samuel@dorsey.com). In the event that no objections to entry of the Proposed Final Order on the Motion are timely received, this Court may enter such Proposed Final Order without need for the Final Hearing.

16. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

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United States Bankruptcy Judge

**EXHIBIT B**

**Proposed Final Order**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket Nos. ___ & ___

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**FINAL ORDER (A) AUTHORIZING PAYMENT OF PREPETITION LIEN  
CLAIMS AND IMPORT CLAIMS AND (B) CONFIRMING ADMINISTRATIVE  
EXPENSE PRIORITY OF OUTSTANDING ORDERS**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an order, (a) authorizing, but not directing, them to remit and pay in the ordinary course of business any prepetition and postpetition amounts owing on account of (i) Lien Claims and (ii) Import Claims and (b) confirming the administrative expense priority status of Outstanding Orders (this “*Final Order*”); and the Court having reviewed the Motion, the First Day Declaration, and the Interim Order entered on [●], 2020; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference*

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and the Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before the Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to remit and pay in the ordinary course of business any prepetition amounts owing on account of Lien Claims and Import Claims in an amount not to exceed \$6,251,000, in an aggregate final amount, inclusive of amounts paid pursuant to the Interim Order, or such higher amount as may be set forth in any budget governing postpetition financing or the use of cash collateral.
3. The Debtors are authorized, but not directed to remit and pay in the ordinary course of business all undisputed, postpetition amounts owing on account of Lien Claims and Import Claims consistent with the parties’ customary practices in effect prior to the Petition Date.
4. The Debtors shall determine which of the Obligations, if any, shall be paid under this Final Order.

5. All undisputed obligations of the Debtors arising from the acceptance of goods subject to Outstanding Orders is granted administrative expense priority status. Further, the Debtors are authorized, but not directed, to satisfy such obligations in the ordinary course of business.

6. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the Obligations, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

7. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

8. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365

of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

9. Notwithstanding anything contained in the Motion or this Final Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a “*DIP Order*”), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

10. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Final Order shall be effective and enforceable immediately upon entry hereof.

11. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

12. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

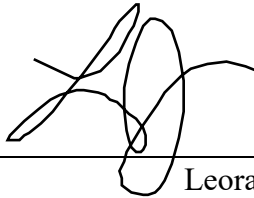
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United States Bankruptcy Judge



# TAB LL

THIS IS **EXHIBIT “LL”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

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Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
	)	Case No. 20-11662 (___)
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

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**DEBTORS' APPLICATION FOR APPOINTMENT OF  
PRIME CLERK LLC AS CLAIMS AND NOTICING AGENT**

The above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) file this application (the “*Section 156(c) Application*”) for entry of an order, substantially in the form of Exhibit A hereto (the “*Retention Order*”), pursuant to section 156(c) of title 28 of the United States Code, section 105(a) of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), appointing Prime Clerk LLC (“*Prime Clerk*”) as claims and noticing agent (“*Claims and Noticing Agent*”) in the Debtors’ Chapter 11 Cases effective as of the Petition Date (as defined below). In support of the Section 156(c) Application, the Debtors submit the Declaration of Benjamin J. Steele (the “*Steele Declaration*”), attached hereto as Exhibit B, and respectfully represent as follows:

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

## **JURISDICTION**

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b), and the Debtors confirm their consent pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with this Application to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), 506(a), 507(a)(8) and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “*Bankruptcy Code*”) and rule 6003 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

## **BACKGROUND**

2. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions in this Court, commencing cases (the “*Chapter 11 Cases*”) under the Bankruptcy Court. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.

3. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies’ Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

4. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of*



*GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”)<sup>2</sup> filed contemporaneously herewith. In support of the Section 156(c) Application, the Debtors rely on and fully incorporate by reference the First Day Declaration.<sup>3</sup>

### **RELIEF REQUESTED**

5. The Debtors request entry of an order appointing Prime Clerk as the Claims and Noticing Agent for the Debtors and their Chapter 11 Cases, including assuming full responsibility for the distribution of notices and the maintenance, processing and docketing of proofs of claim filed in the Debtors’ Chapter 11 Cases. The Debtors’ selection of Prime Clerk to act as the Claims and Noticing Agent has satisfied the Court’s *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)* (the “*Claims Agent Protocol*”), in that the Debtors have obtained and reviewed engagement proposals from at least two other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that Prime Clerk’s rates are competitive and reasonable given Prime Clerk’s quality of services and expertise. The terms of Prime Clerk’s retention are set forth in the Engagement Agreement attached hereto as **Exhibit C** (the “*Engagement Agreement*”); provided, however, that the Debtors are seeking approval solely of the terms and provisions as set forth in this Section 156(c) Application and the proposed Retention Order attached hereto.

6. Although the Debtors have not yet filed their schedules of assets and liabilities, they anticipate that there will be hundreds of thousands of entities to be noticed. Local Rule 2002-1(f) provides that “[i]n all cases with more than 200 creditors or parties in interest listed on

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court’s website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by Prime Clerk, at <https://cases.primeclerk.com/gnc>.

the creditor matrix, unless the Court orders otherwise, the debtor shall file [a] motion [to retain a claims and noticing agent] on the first day of the case or within seven (7) days thereafter.” In view of the number of anticipated claimants and the complexity of the Debtors' businesses, the Debtors submit that the appointment of a claims and noticing agent is required by Local Rule 2002-1(f) and is otherwise in the best interests of both the Debtors' estates and their creditors.

7. By separate application, the Debtors will seek authorization to retain and employ Prime Clerk as administrative advisor in these Chapter 11 Cases pursuant to section 327(a) of the Bankruptcy Code because the administration of these Chapter 11 Cases will require Prime Clerk to perform duties outside the scope of 28 U.S.C. § 156(c).

#### **PRIME CLERK'S QUALIFICATIONS**

8. Prime Clerk is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. Prime Clerk's professionals have experience in noticing, claims administration, solicitation, balloting and facilitating other administrative aspects of Chapter 11 Cases and experience in matters of this size and complexity. Prime Clerk's professionals have acted as debtor's counsel or official claims and noticing agent in many large bankruptcy cases in this District and in other districts nationwide. Prime Clerk's active and former cases include: *Paddock Enterprises, LLC*, No. 20-10028 (LSS) (Bankr. D. Del); *High Ridge Brands Co.*, No. 19-12689 (BLS) (Bankr. D. Del); *Anna Holdings, Inc.*, No. 19-12551 (CSS) (Bankr. D. Del); *Bumble Bee Parent, Inc.*, No. 19-12502 (LSS) (Bankr. D. Del); *Arsenal Resources Development LLC*, No. 19-12347 (BLS) (Bankr. D. Del); *Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del.); *Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del.); *Deluxe Entertainment Services Group Inc.*, No. 19-23774 (RDD) (Bankr. S.D.N.Y.); *Purdue Pharma L.P.*, No. 19-23649 (RDD) (Bankr.

S.D.N.Y.); *Maxcom USA Telecom, Inc.*, No. 19-23489 (RDD) (Bankr. S.D.N.Y.); *Stearns Holdings LLC*, No. 19-12226 (SCC) (Bankr. S.D.N.Y.); *Fusion Connect, Inc.*, No. 19-11811 (SMB) (Bankr. S.D.N.Y.); *Aegerion Pharmaceuticals, Inc.*, No. 19-11632 (MG) (Bankr. S.D.N.Y.); *Sungard Availability Services Capital, Inc.*, No. 19-22915 (RDD) (Bankr. S.D.N.Y.); *New Cotai Holdings, LLC*, No. 19-22911 (RDD) (Bankr. S.D.N.Y.); *Payless Holdings LLC*, No. 19-40883 (Bankr. E.D. Mo.); *PG&E Corporation*, No. 19-30088 (DM) (Bankr. N.D. Cal.); *PHI, Inc.*, No. 19-30923 (HDH) (Bankr. N.D. Tex.); *McDermott International, Inc.*, No. 20-30336 (DRJ) (Bankr. S.D. Tex.); and *Alta Mesa Resources, Inc.*, No. 19-35133 (MI) (Bankr. S.D. Tex.).

9. By appointing Prime Clerk as the Claims and Noticing Agent in these Chapter 11 Cases, the distribution of notices and the processing of claims will be expedited, and the Office of the Clerk of the Bankruptcy Court (the “*Clerk*”) will be relieved of the administrative burden of processing what may be an overwhelming number of claims.

### **SERVICES TO BE PROVIDED**

10. This Section 156(c) Application pertains only to the work to be performed by Prime Clerk under the Clerk’s delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 2002-1(f). Any work to be performed by Prime Clerk outside of this scope is not covered by this Section 156(c) Application or by any order granting approval hereof. Specifically, Prime Clerk will perform the following tasks in its role as Claims and Noticing Agent, as well as all quality control relating thereto:

- (a) Prepare and serve required notices and documents in these Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of these Chapter 11 Cases and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors’

plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan and (vii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of these Chapter 11 Cases;

- (b) Maintain an official copy of the Debtors' schedules of assets and liabilities and statements of financial affairs (collectively, the "***Schedules***"), listing the Debtors' known creditors and the amounts owed thereto;
- (c) Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest and (ii) a "core" mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update and make said lists available upon request by a party-in-interest or the Clerk;
- (d) Furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- (e) Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- (f) For *all* notices, motions, orders or other pleadings or documents served, prepare and file or cause to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service and (iv) the date served;
- (g) Process all proofs of claim received, including those received by the Clerk, check said processing for accuracy and maintain the original proofs of claim in a secure area;
- (h) Maintain the official claims register for each Debtor (collectively, the "***Claims Registers***") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the

claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), (vi) the applicable Debtor and (vii) any disposition of the claim;

- (i) Provide public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge;
- (j) Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- (k) Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (l) Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of Prime Clerk, not less than weekly;
- (m) Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the Claims Registers for the Clerk's review (upon the Clerk's request);
- (n) Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- (o) Identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- (p) Assist in the dissemination of information to the public and respond to requests for administrative information regarding these Chapter 11 Cases as directed by the Debtors or the Court, including through the use of a case website and/or call center;
- (q) Monitor the Court's docket in these Chapter 11 Cases and, when filings are made in error or containing errors, alert the filing party of such error and work with them to correct any such error;
- (r) If these Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk's office within three (3) days of notice to Prime Clerk of entry of the order converting the cases;
- (s) Thirty (30) days prior to the close of these Chapter 11 Cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing Prime Clerk as Claims and Noticing Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of these Chapter 11 Cases;

- (t) Within seven (7) days of notice to Prime Clerk of entry of an order closing these Chapter 11 Cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of the Chapter 11 Cases; and
- (u) At the close of these Chapter 11 Cases, (i) box and transport all original documents, in proper format, as provided by the Clerk's office, to (A) the Philadelphia Federal Records Center, 14700 Townsend Road, Philadelphia, PA 19154-1096 or (B) any other location requested by the Clerk's office; and (ii) docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

11. The Claims Registers shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by Prime Clerk.

### **PROFESSIONAL COMPENSATION**

12. The Debtors respectfully request that the undisputed fees and expenses incurred by Prime Clerk in the performance of the above services be treated as administrative expenses of the Debtors' chapter 11 estates pursuant to 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code and be paid in the ordinary course of business without further application to or order of the Court. Prime Clerk agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Engagement Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

13. Prior to the Petition Date, the Debtors provided Prime Clerk an advance in the amount of \$75,000. Prime Clerk seeks to first apply the advance to all prepetition invoices, and thereafter, to have the advance replenished to the original advance amount, and thereafter, to

hold the advance under the Engagement Agreement during these Chapter 11 Cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

14. Additionally, under the terms of the Engagement Agreement, the Debtors have agreed to indemnify, defend and hold harmless Prime Clerk and its members, officers, employees, representatives and agents under certain circumstances specified in the Engagement Agreement, except in circumstances resulting solely from Prime Clerk's gross negligence or willful misconduct or as otherwise provided in the Engagement Agreement or Retention Order. The Debtors believe that such an indemnification obligation is customary, reasonable and necessary to retain the services of a Claims and Noticing Agent in these Chapter 11 Cases.

#### **DISINTERESTEDNESS**

15. Although the Debtors do not propose to employ Prime Clerk under section 327 of the Bankruptcy Code pursuant to this Section 156(c) Application (such retention will be sought by separate application), Prime Clerk has nonetheless reviewed its electronic database to determine whether it has any relationships with the creditors and parties in interest provided by the Debtors, and, to the best of the Debtors' knowledge, information, and belief, and except as disclosed in the Steele Declaration, Prime Clerk has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

16. Moreover, in connection with its retention as Claims and Noticing Agent, Prime Clerk represents in the Steele Declaration, among other things, that:

- (a) Prime Clerk is not a creditor of the Debtors;
- (b) Prime Clerk will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these Chapter 11 Cases;

- (c) By accepting employment in these Chapter 11 Cases, Prime Clerk waives any rights to receive compensation from the United States government in connection with these Chapter 11 Cases;
- (d) In its capacity as the Claims and Noticing Agent in these Chapter 11 Cases, Prime Clerk will not be an agent of the United States and will not act on behalf of the United States;
- (e) Prime Clerk will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these Chapter 11 Cases;
- (f) Prime Clerk is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged;
- (g) In its capacity as Claims and Noticing Agent in these Chapter 11 Cases, Prime Clerk will not intentionally misrepresent any fact to any person;
- (h) Prime Clerk shall be under the supervision and control of the Clerk’s office with respect to the receipt and recordation of claims and claim transfers;
- (i) Prime Clerk will comply with all requests of the Clerk’s office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- (j) None of the services provided by Prime Clerk as Claims and Noticing Agent in these Chapter 11 Cases shall be at the expense of the Clerk’s office.

Prime Clerk will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

**COMPLIANCE WITH CLAIMS AND NOTICING AGENT PROTOCOL**

17. This Section 156(c) Application complies with the Claims Agent Protocol and substantially conforms to the standard Section 156(c) Application in use in this Court. To the extent that there is any inconsistency between this Application, the Retention Order and the Engagement Agreement, the Retention Order shall govern.



**NOTICE**

18. Notice of this Application will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) the indenture trustee for the Debtors' prepetition convertible notes; (g) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (h) the United States Attorney's Office for the District of Delaware; (i) the attorneys general for all 50 states and the District of Columbia; (j) the United States Department of Justice; (k) the Internal Revenue Service; (l) the Securities and Exchange Commission; (m) the United States Drug Enforcement Agency; (n) the United States Food and Drug Administration; (o) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Application and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of Page Left Intentionally Blank]*

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing Prime Clerk to act as Claims and Noticing Agent for the Debtors and granting such other relief as may be appropriate.

Dated: June 24, 2020  
Pittsburgh, Pennsylvania

*/s/ Tricia Tolivar*  
\_\_\_\_\_  
Tricia Tolivar  
Executive Vice President, Chief Financial Officer  
GNC HOLDINGS, INC.

**Exhibit A**

**Proposed Retention Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ____

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**ORDER AUTHORIZING RETENTION AND APPOINTMENT  
OF PRIME CLERK LLC AS CLAIMS AND NOTICING AGENT**

Upon the application (the “*Application*”) of the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) for retention and appointment of Prime Clerk LLC (“*Prime Clerk*”) as claims and noticing agent (“*Claims and Noticing Agent*”) pursuant to 28 U.S.C. § 156(c), section 105(a) of the Bankruptcy Code<sup>2</sup> and Local Rule 2002-1(f) to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket and otherwise administer the proofs of claim filed in the Debtors’ Chapter 11 Cases and (iii) provide such other administrative services – as required by the Debtors – that would fall within the purview of services to be provided by the Clerk’s office; and upon the Steele Declaration submitted in support of the Application; and the Debtors having estimated that there are hundreds of thousands of creditors in these Chapter 11 Cases, many of which are expected to file proofs of claim; and it appearing that the receiving, docketing and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and the Court being authorized under 28

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.  
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U.S.C. § 156(c) to utilize, at the Debtors' expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and the Court being satisfied that Prime Clerk has the capability and experience to provide such services and that Prime Clerk does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and good and sufficient notice of the Application having been given and no other or further notice being required; and it appearing that the employment of Prime Clerk is in the best interests of the Debtors, their estates and creditors; and sufficient cause appearing therefor; it is hereby ORDERED THAT:

1. Notwithstanding the terms of the Engagement Agreement attached to the Application, the Application is approved solely as set forth in this Order.

2. The Debtors are authorized to retain Prime Clerk as Claims and Noticing Agent effective as of the Petition Date under the terms of the Engagement Agreement, and Prime Clerk is authorized and directed to perform noticing services and to receive, maintain, record and otherwise administer the proofs of claim filed in these Chapter 11 Cases, and all related tasks, all as described in the Application.

3. Prime Clerk shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these Chapter 11 Cases and is authorized and directed to maintain official claims registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Court and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

4. Prime Clerk is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

5. Prime Clerk is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtors are authorized to compensate Prime Clerk in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Prime Clerk and the rates charged for each, and to reimburse Prime Clerk for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Prime Clerk to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. Prime Clerk shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors and any party-in-interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices; provided that the parties may seek resolution of the matter from the Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Prime Clerk under this Order shall be an administrative expense of the Debtors' estates.

10. Prime Clerk may apply its advance to all prepetition invoices, which advance shall be replenished to the original advance amount, and thereafter, Prime Clerk may hold its advance under the Engagement Agreement during the Chapter 11 Cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

11. The Debtors shall indemnify Prime Clerk under the terms of the Engagement Agreement, as modified pursuant to this Order.

12. Prime Clerk shall not be entitled to indemnification, contribution or reimbursement

pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefor are approved by the Court.

13. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify Prime Clerk, or provide contribution or reimbursement to Prime Clerk, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from Prime Clerk's gross negligence, willful misconduct or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of Prime Clerk's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which Prime Clerk should not receive indemnity, contribution or reimbursement under the terms of the Engagement Agreement as modified by this Order.

14. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing these Chapter 11 Cases, Prime Clerk believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Agreement (as modified by this Order), including the advancement of defense costs, Prime Clerk must file an application therefor in this Court, and the Debtors may not pay any such amounts to Prime Clerk before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and

expenses by Prime Clerk for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Prime Clerk. All parties in interest shall retain the right to object to any demand by Prime Clerk for indemnification, contribution or reimbursement.

15. The limitation of liability section in paragraph 10 of the Engagement Agreement is deemed to be of no force or effect with respect to the services to be provided pursuant to this Order.

16. In the event Prime Clerk is unable to provide the services set out in this order, Prime Clerk will immediately notify the Clerk and the Debtors' attorney and, upon approval of the Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' attorney.

17. The Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 and/or any applicable law, for work that is to be performed by Prime Clerk but is not specifically authorized by this Order.

18. The Debtors and Prime Clerk are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

19. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

20. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

21. Prime Clerk shall not cease providing claims processing services during the chapter 11 case(s) for any reason, including nonpayment, without an order of the Court.



22. In the event of any inconsistency between the Engagement Agreement, the Application and the Order, the Order shall govern.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**Exhibit B**

**Steele Declaration**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**DECLARATION OF BENJAMIN J. STEELE IN SUPPORT  
OF DEBTORS’ APPLICATION FOR APPOINTMENT OF  
PRIME CLERK LLC AS CLAIMS AND NOTICING AGENT**

I, Benjamin J. Steele, under penalty of perjury, declare as follows:

1. I am a Vice President of Prime Clerk LLC (“**Prime Clerk**”), a chapter 11 administrative services firm whose headquarters are located at One Grand Central Place, 60 East 42<sup>nd</sup> Street, Suite 1440, New York, New York 10165. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. This Declaration is made in support of the above-captioned debtors’ (collectively, the “**Debtors**”) *Application for Appointment of Prime Clerk LLC as Claims and Noticing Agent*, which was filed contemporaneously herewith (the “**Application**”).<sup>2</sup>

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<sup>1</sup> The debtors in these Chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.  
26664176.2

3. Prime Clerk is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. Prime Clerk's professionals have experience in noticing, claims administration, solicitation, balloting and facilitating other administrative aspects of Chapter 11 Cases and experience in matters of this size and complexity. Prime Clerk's professionals have acted as debtor's counsel or official claims and noticing agent in many large bankruptcy cases in this District and in other districts nationwide. Prime Clerk's active and former cases include: *Paddock Enterprises, LLC*, No. 20-10028 (LSS) (Bankr. D. Del); *High Ridge Brands Co.*, No. 19-12689 (BLS) (Bankr. De. Del); *Anna Holdings, Inc.*, No. 19-12551 (CSS) (Bankr. D. Del); *Bumble Bee Parent, Inc.*, No. 19-12502 (LSS) (Bankr. D. Del); *Arsenal Resources Development LLC*, No. 19-12347 (BLS) (Bankr. D. Del); *Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del.); *Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del.); *Deluxe Entertainment Services Group Inc.*, No. 19-23774 (RDD) (Bankr. S.D.N.Y.); *Purdue Pharma L.P.*, No. 19-23649 (RDD) (Bankr. S.D.N.Y.); *Maxcom USA Telecom, Inc.*, No. 19-23489 (RDD) (Bankr. S.D.N.Y.); *Stearns Holdings LLC*, No. 19-12226 (SCC) (Bankr. S.D.N.Y.); *Fusion Connect, Inc.*, No. 19-11811 (SMB) (Bankr. S.D.N.Y.); *Aegerion Pharmaceuticals, Inc.*, No. 19-11632 (MG) (Bankr. S.D.N.Y.); *Sungard Availability Services Capital, Inc.*, No. 19-22915 (RDD) (Bankr. S.D.N.Y.); *New Cotai Holdings, LLC*, No. 19-22911 (RDD) (Bankr. S.D.N.Y.); *Payless Holdings LLC*, No. 19-40883 (Bankr. E.D. Mo.); *PG&E Corporation*, No. 19-30088 (DM) (Bankr. N.D. Cal.); *PHI, Inc.*, No. 19-30923 (HDH) (Bankr. N.D. Tex.); *McDermott International, Inc.*, No. 20-30336 (DRJ) (Bankr. S.D. Tex.); *Alta Mesa Resources, Inc.*, No. 19-35133 (MI) (Bankr. S.D. Tex.).

4. As agent and custodian of Court records pursuant to 28 U.S.C. § 156(c), Prime Clerk will perform, at the request of the Office of the Clerk of the Bankruptcy Court (the "**Clerk**"),

the services specified in the Application and the Engagement Agreement, and, at the Debtors' request, any related administrative, technical and support services as specified in the Application and the Engagement Agreement. In performing such services, Prime Clerk will charge the Debtors the rates set forth in the Engagement Agreement, which is attached as **Exhibit C** to the Application.

5. Prime Clerk represents, among other things, the following:
  - (a) Prime Clerk is not a creditor of the Debtors;
  - (b) Prime Clerk will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these Chapter 11 Cases;
  - (c) By accepting employment in these Chapter 11 Cases, Prime Clerk waives any rights to receive compensation from the United States government in connection with these Chapter 11 Cases;
  - (d) In its capacity as the Claims and Noticing Agent in these Chapter 11 Cases, Prime Clerk will not be an agent of the United States and will not act on behalf of the United States;
  - (e) Prime Clerk will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these Chapter 11 Cases;
  - (f) Prime Clerk is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged;
  - (g) In its capacity as Claims and Noticing Agent in these Chapter 11 Cases, Prime Clerk will not intentionally misrepresent any fact to any person;
  - (h) Prime Clerk shall be under the supervision and control of the Clerk's office with respect to the receipt and recordation of claims and claim transfers;
  - (i) Prime Clerk will comply with all requests of the Clerk's office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
  - (j) None of the services provided by Prime Clerk as Claims and Noticing Agent in these Chapter 11 Cases shall be at the expense of the Clerk's

office.

6. To the best of my knowledge, and based solely upon information provided to me by the Debtors, and except as provided herein, neither Prime Clerk, nor any of its professionals, has any materially adverse connection to the Debtors, their creditors or other relevant parties. Prime Clerk may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which Prime Clerk serves or has served in a neutral capacity as claims and noticing agent and/or administrative advisor for another chapter 11 debtor.

7. Prime Clerk has reviewed its electronic database to determine whether it has any relationships with the list of entities provided by the Debtors. Based on the results of such search, at this time, Prime Clerk is not aware of any relationship that would present a disqualifying conflict of interest. Should Prime Clerk discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, Prime Clerk will use reasonable efforts to promptly file a supplemental declaration.

8. Certain of Prime Clerk's professionals were partners of or formerly employed by firms that are providing or may provide professional services to parties in interest in these cases. Such firms include Kirkland & Ellis LLP; Weil, Gotshal & Manges LLP; O'Melveny & Myers LLP; Mayer Brown LLP; Fried, Frank, Harris, Shriver & Jacobson LLP; Bracewell LLP; Proskauer Rose LLP; Curtis, Mallet-Prevost, Colt & Mosle LLP; Baker & Hostetler LLP; Togut, Segal & Segal LLP; Gibson, Dunn & Crutcher LLP; Willkie Farr & Gallagher LLP; Centerview Partners LLC; KPMG LLP; PricewaterhouseCoopers LLP; Epiq Bankruptcy Solutions, LLC; Donlin, Recano & Company, Inc. and Kurtzman Carson Consultants LLC. Except as may be disclosed herein, these professionals did not work on any matters involving the Debtors while employed by their previous firms. Moreover, these professionals were not employed by their

previous firms when these Chapter 11 Cases were filed.

9. Prime Clerk is an indirect subsidiary of Duff & Phelps LLP (“**D&P**”). D&P is the global advisor that protects, restores and maximizes value for clients. Within the D&P corporate structure, Prime Clerk operates independently from D&P. As such, any relationships that D&P and its affiliates maintain do not create an interest of Prime Clerk that is materially adverse to the Debtors’ estates or any class of creditors or security holders.

10. Prime Clerk, as well as its personnel, has and will continue to have relationships personally or in the ordinary course of business with certain vendors, professionals, financial institutions, and other parties in interest that may be involved in the Debtors’ Chapter 11 Cases. Prime Clerk may also provide professional services to entities or persons that may be creditors or parties in interest in these Chapter 11 Cases, which services do not directly relate to, or have any direct connection with, these Chapter 11 Cases or the Debtors.

11. Prime Clerk, and its personnel in their individual capacities, regularly utilize the services of law firms, investment banking and advisory firms, accounting firms and financial advisors. Such firms engaged by Prime Clerk or its personnel may appear in Chapter 11 Cases representing the Debtors or parties in interest. All engagements where such firms represent Prime Clerk or its personnel in their individual capacities are unrelated to these Chapter 11 Cases.

12. Based on the foregoing, I believe that Prime Clerk is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged. Moreover, to the best of my knowledge and belief, neither Prime Clerk nor any of its partners or employees hold or represent any interest materially adverse to the Debtors’ estates with respect to any matter upon which Prime Clerk is to be engaged.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

Executed on June 24, 2020

*/s/ Benjamin J. Steele*

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Benjamin J. Steele  
Vice President  
Prime Clerk LLC  
One Grand Central Place  
60 East 42<sup>nd</sup> Street, Suite 1440  
New York, New York 10165



**Exhibit C**

**Engagement Agreement**

## Prime Clerk LLC Engagement Agreement

This Agreement is entered into as of February 2, 2018 between Prime Clerk LLC ("**Prime Clerk**") and GNC Holdings, Inc. (together with its affiliates and subsidiaries, the "**Company**").<sup>1</sup>

In consideration of the promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### 1. Services

- (a) Prime Clerk agrees to provide the Company with consulting services regarding legal noticing, claims management and reconciliation, plan solicitation, balloting, disbursements, preparation of schedules of assets and liabilities and statements of financial affairs, communications, confidential online workspaces or data rooms (publication to which shall not violate the confidentiality provisions of this Agreement) and any other services agreed upon by the parties or otherwise required by applicable law, governmental regulations or court rules or orders (all such services collectively, the "**Services**").
- (b) The Company acknowledges and agrees that Prime Clerk will often take direction from the Company's representatives, employees, agents and/or professionals (collectively, the "**Company Parties**") with respect to providing Services hereunder. The parties agree that Prime Clerk may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company.
- (c) The Company agrees and understands that Prime Clerk shall not provide the Company or any other party with legal advice.

### 2. Rates, Expenses and Payment

- (a) Prime Clerk will provide the Services on an as-needed basis and upon request or agreement of the Company (which request or agreement shall be in writing to the extent the services to be provided are beyond the scope of this Agreement or any Bankruptcy Court order), in each case in accordance with the rate structure attached hereto and incorporated by reference herein (the "**Rate Structure**"); provided, however that Prime Clerk will provide a discount of 10% off the attached hourly rates for the remaining life of the engagement. The Company agrees to pay for reasonable out of pocket expenses incurred by Prime Clerk in connection with providing Services hereunder.
- (b) The Rate Structure sets forth individual unit pricing for each of the Services. The Company may request separate Services or all of the Services.
- (c) Prime Clerk will bill the Company no less frequently than monthly. All invoices shall be due and payable upon receipt. Where an expense or group of expenses to be incurred is expected to exceed \$10,000 (e.g., publication notice), Prime Clerk may require advance or direct payment from the Company before the performance of Services hereunder. If any amount is

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<sup>1</sup> The Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in any chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company's chapter 11 case.

unpaid as of 30 days after delivery of an invoice, the Company agrees to pay a late charge equal to 1.5% of the total amount unpaid every 30 days.

- (d) In case of a good faith dispute with respect to an invoice amount, the Company shall provide a detailed written notice of such dispute to Prime Clerk within 10 days of receipt of the invoice. The undisputed portion of the invoice will remain due and payable immediately upon receipt thereof. Late charges shall not accrue on any amounts disputed in good faith.
- (e) The Company shall pay any fees and expenses for Services relating to, arising out of or resulting from any error or omission made by the Company or the Company Parties.
- (f) The Company shall pay or reimburse any taxes, other than income taxes, that are applicable to Services performed hereunder or that are measured by payments made hereunder and are required to be collected by Prime Clerk or paid by Prime Clerk to a taxing authority.
- (g) Upon execution of this Agreement, the Company shall pay Prime Clerk an advance of \$75,000. Prime Clerk may use such advance against unpaid fees and expenses hereunder. Prime Clerk may use the advance against all prepetition fees and expenses, which advance then shall be replenished immediately by the Company to the original advance amount; thereafter, Prime Clerk may hold such advance to apply against unpaid fees and expenses hereunder.
- (h) Prime Clerk reserves the right to make reasonable increases to the Rate Structure on an annual basis effective on the first business day of each year. If such annual increases represent an increase greater than 10% from the previous year's levels, Prime Clerk shall provide 30 days' notice to the Company of such increases.

### **3. Retention in Bankruptcy Case**

- (a) If the Company commences a case pursuant to title 11 of the United States Code (the "**Bankruptcy Code**"), the Company promptly shall file applications with the Bankruptcy Court to retain Prime Clerk (i) as claims and noticing agent pursuant to 28 U.S.C. § 156(c) and (ii) as administrative advisor pursuant to section 327(a) of the Bankruptcy Code for all Services that fall outside the scope of 28 U.S.C. § 156(c). The form and substance of such applications and any order approving them shall be reasonably acceptable to Prime Clerk.
- (b) If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, Prime Clerk will continue to be paid for Services pursuant to 28 U.S.C. § 156(c) and the terms hereunder.
- (c) Notwithstanding anything to the contrary, if the Company commences a case under the Bankruptcy Code, the Company's payment of Prime Clerk's fees and expenses will be subject to the limitations, if any, imposed by the Bankruptcy Code and any applicable order of the Bankruptcy Court.

### **4. Confidentiality**

- (a) The Company and Prime Clerk agree to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the Services provided hereunder; provided, however, that if any such information was publicly available, already in the party's possession or known to it, independently developed, lawfully obtained from a third party or required to be disclosed by law, then a party shall bear no responsibility for publicly disclosing such information.

- (b) If either party reasonably believes that it is required to disclose any confidential information pursuant to an order from a governmental authority, such party shall provide written notice to the other party promptly after receiving such order, to allow the other party sufficient time to seek any remedy available under applicable law to prevent disclosure of the information.

## 5. Property Rights

Prime Clerk reserves all property rights in and to all materials, concepts, creations, inventions, works of authorship, improvements, designs, innovations, ideas, discoveries, know-how, techniques, programs, systems, specifications, applications, processes, routines, manuals, documentation and any other information or property (collectively, "**Property**") furnished by Prime Clerk for itself or for use by the Company hereunder. Fees and expenses paid by the Company do not vest in the Company any rights in such Property. Such Property is only being made available for the Company's use during and in connection with the Services provided by Prime Clerk hereunder.

## 6. Bank Accounts

At the request of the Company or the Company Parties, Prime Clerk shall be authorized to establish accounts with financial institutions in the name of and as agent for the Company to facilitate distributions pursuant to a chapter 11 plan or other transaction. To the extent that certain financial products are provided to the Company pursuant to Prime Clerk's agreement with financial institutions, Prime Clerk may receive compensation from such institutions for the services Prime Clerk provides pursuant to such agreement.

## 7. Term and Termination

- (a) This Agreement shall remain in effect until terminated by either party: (i) on 30 days' prior written notice to other party; or (ii) immediately upon written notice for Cause (as defined herein). "**Cause**" means (i) gross negligence or willful misconduct of Prime Clerk that causes material harm to the Company's restructuring under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay Prime Clerk invoices for more than 60 days from the date of invoice, unless such delay results from limitations imposed under the Bankruptcy Code or by order of the Bankruptcy Court or (iii) the accrual of invoices or unpaid Services in excess of the retainer held by Prime Clerk where Prime Clerk reasonably believes it will not be paid. Upon receipt of such written notice, Prime Clerk shall cease providing Services, unless directed otherwise by the Company in writing or as required pursuant to Bankruptcy Court order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or the Local Bankruptcy Rules for the district in which any bankruptcy case is commenced.
- (b) If this Agreement is terminated after Prime Clerk is retained pursuant to Bankruptcy Court order, the Company promptly shall seek entry of a Bankruptcy Court order discharging Prime Clerk of its duties under such retention, which order shall be in form and substance reasonably acceptable to Prime Clerk.
- (c) If this Agreement is terminated, the Company shall remain liable for all amounts then accrued and/or due and owing to Prime Clerk hereunder.
- (d) If this Agreement is terminated, Prime Clerk shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions, and Prime Clerk shall provide the necessary staff, services and assistance

required for such an orderly transfer. The Company agrees to pay for such Services pursuant to the Rate Structure.

**8. No Representations or Warranties**

Prime Clerk makes no representations or warranties, express or implied, including, without limitation, any express or implied warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

**9. Indemnification**

- (a) To the fullest extent permitted by applicable law, the Company shall indemnify and hold harmless Prime Clerk and its members, directors, officers, employees, representatives, affiliates, consultants, subcontractors and agents (collectively, the “**Indemnified Parties**”) from and against any and all losses, claims, damages, judgments, liabilities and expenses, whether direct or indirect (including, without limitation, counsel fees and expenses) (collectively, “**Losses**”) resulting from, arising out of or related to Prime Clerk’s performance hereunder. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third parties against any Indemnified Party.
- (b) Prime Clerk and the Company shall notify each other in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that either party becomes aware of with respect to the Services provided hereunder.
- (c) The Company’s indemnification of Prime Clerk hereunder shall exclude Losses resulting from Prime Clerk’s gross negligence or willful misconduct.
- (d) The Company’s indemnification obligations hereunder shall survive the termination of this Agreement.

**10. Limitations of Liability**

Except as expressly provided herein, Prime Clerk’s liability to the Company for any Losses, unless due to Prime Clerk’s gross negligence or willful misconduct, shall be limited to the total amount paid by the Company for the portion of the particular work that gave rise to the alleged Loss. In no event shall Prime Clerk’s liability to the Company for any Losses arising out of this Agreement exceed the total amount actually paid to Prime Clerk for Services provided hereunder. In no event shall Prime Clerk be liable for any indirect, special or consequential damages (such as loss of anticipated profits or other economic loss) in connection with or arising out of the Services provided hereunder.

**11. Company Data**

- (a) The Company is responsible for, and Prime Clerk does not verify, the accuracy of the programs, data and other information it or any Company Party submits for processing to Prime Clerk and for the output of such information, including, without limitation, with respect to preparation of statements of financial affairs and schedules of assets and liabilities (collectively, “**SOFAs and Schedules**”). Prime Clerk bears no responsibility for the accuracy and content of SOFAs and Schedules, and the Company is deemed hereunder to have approved and reviewed all SOFAs and Schedules filed on its behalf.

- (b) The Company agrees, represents and warrants to Prime Clerk that before delivery of any information to Prime Clerk: (i) the Company has full authority to deliver such information to Prime Clerk; and (ii) Prime Clerk is authorized to use such information to perform Services hereunder.
- (c) Any data, storage media, programs or other materials furnished to Prime Clerk by the Company may be retained by Prime Clerk until the Services provided hereunder are paid in full. The Company shall remain liable for all fees and expenses incurred by Prime Clerk under this Agreement as a result of data, storage media or other materials maintained, stored or disposed of by Prime Clerk. Any such disposal shall be in a manner requested by or acceptable to the Company; provided that if the Company has not utilized Prime Clerk's Services for a period of 90 days or more, Prime Clerk may dispose of any such materials, and be reimbursed by the Company for the expense of such disposition, after giving the Company 30 days' notice. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs, data or information provided by the Company to Prime Clerk.
- (d) If Prime Clerk is retained pursuant to Bankruptcy Court order, disposal of any Company data, storage media or other materials shall comply with any applicable court orders and rules or clerk's office instructions.

## **12. Non-Solicitation**

The Company agrees that neither it nor any of its subsidiaries or affiliates shall directly or indirectly solicit for employment, employ or otherwise retain as employees, consultants or otherwise, any employees of Prime Clerk during the term of this Agreement and for a period of 12 months after termination thereof unless Prime Clerk provides prior written consent to such solicitation or retention.

## **13. Force Majeure**

Whenever performance by Prime Clerk of any of its obligations hereunder is materially prevented or impacted by reason of any act of God, government requirement, strike, lock-out or other industrial or transportation disturbance, fire, flood, epidemic, lack of materials, law, regulation or ordinance, act of terrorism, war or war condition, or by reason of any other matter beyond Prime Clerk's reasonable control, then such performance shall be excused, and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

## **14. Choice of Law**

The validity, enforceability and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of New York.

## **15. Arbitration**

Any dispute arising out of or relating to this Agreement or the breach thereof shall be finally resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. There shall be three arbitrators named in accordance with such rules. The arbitration shall be conducted in the English language in New York, New York in accordance with the United States Arbitration Act.

**16. Integration; Severability; Modifications; Assignment**

- (a) Each party acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, agreements and communications between the parties relating to the subject matter hereof.
- (b) If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
- (c) This Agreement may be modified only by a writing duly executed by an authorized representative of the Company and an officer of Prime Clerk.
- (d) This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other; provided, however, that Prime Clerk may assign this Agreement to a wholly-owned subsidiary or affiliate without the Company's consent.

**17. Effectiveness of Counterparts**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which shall constitute one and the same agreement. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, which delivery may be made by exchange of copies of the signature page by fax or email.

**18. Notices**

All notices and requests in connection with this Agreement shall be sufficiently given or made if given or made in writing via hand delivery, overnight courier, U.S. Mail (postage prepaid) or email, and addressed as follows:

If to Prime Clerk: Prime Clerk LLC  
830 3<sup>rd</sup> Avenue, 9<sup>th</sup> Floor  
New York, NY 10022  
Attn: Shai Waisman  
Tel: (212) 257-5450  
Email: [swaisman@primeclerk.com](mailto:swaisman@primeclerk.com)

If to the Company: GNC Holdings, Inc.  
300 Sixth Avenue  
Pittsburgh, PA 15222  
Attn: Mr. Kevin G. Nowe  
Tel: (412) 402-7088  
Email: [kevin-nowe@gnc-hq.com](mailto:kevin-nowe@gnc-hq.com)

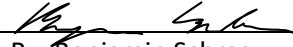
With a copy to: Latham & Watkins LLP  
300 North Wabash Avenue, Suite 2800  
Chicago, IL 60611  
Attn: Caroline Reckler

Tel: (312) 876-7663  
Email: [caroline.reckler@lw.com](mailto:caroline.reckler@lw.com)



IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

**Prime Clerk LLC**

  
\_\_\_\_\_

By: Benjamin Schrag

Title: Chief Business Development Officer

**GNC Holdings, Inc.**

\_\_\_\_\_

By: Kevin Nowe

Title: Chief Legal & Compliance Officer

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

**Prime Clerk LLC**

\_\_\_\_\_  
By:  
Title:

**GNC Holdings, Inc.**

  
\_\_\_\_\_  
By: Kevin Nowe  
Title: Chief Legal & Compliance Officer

# Rates

## Claim and Noticing Rates<sup>1</sup>

Title	Hourly Rate
<b>Analyst</b> The Analyst processes incoming proofs of claim, ballots and return mail, and physically executes outgoing mailings with adherence to strict quality control standards.	\$30 - \$45
<b>Technology Consultant</b> The Technology Consultant provides database support for complex reporting requests and administers complicated variable data mailings.	\$35 - \$95
<b>Consultant/Senior Consultant</b> The Consultant is the day-to-day contact for mailings, updates the case website, prepares and executes affidavits of service, responds to creditor inquiries and maintains the official claim register, including processing of claims objections and transfers. Prime Clerk Consultants have between three and five years of experience.  The Senior Consultant directs the data collection process for the master mailing list and Schedules & SOFA, oversees all mailings, performs quality control checks on all claims and ballots, and generates claim and ballot reports. Prime Clerk's Senior Consultants average over five years of experience.	\$65 - \$165
<b>Director</b> The Director is the lead contact for the company, counsel and advisors on the case engagement and oversees all aspects of the bankruptcy administration, including managing the internal case team. In many instances, the executives of Prime Clerk will serve in this role at this rate. Prime Clerk's Directors have over ten years of experience and are typically former restructuring attorneys or paralegals.	\$175 - \$195
<b>Chief Operating Officer and Executive Vice President</b> Michael Frishberg, Prime Clerk's COO, and Ben Schrag, Prime Clerk's Executive Vice President, both former restructuring attorneys with collectively over twenty five years of experience, will add an additional supervisory layer to this matter at no charge.	No charge

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<sup>1</sup> Prime Clerk does not charge overtime for any professional services it performs on weekends, holidays or after standard business hours. Additional professional services not covered by this rate structure will be charged at hourly rates, including any outsourced services performed under our supervision and control.

## Solicitation, Balloting and Tabulation Rates<sup>2</sup>

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**Solicitation Consultant** \$185

The Solicitation Consultant reviews, tabulates and audits ballots, and executes plan solicitation and other public securities mailings. In addition, the Solicitation Consultant prepares customized reports relating to voting and other corporate events (such as exchange offers and rights subscriptions) and interfaces with banks, brokers, nominees, depositories and their agents regarding solicitations and other communications. Solicitation Consultants average over five years of experience.

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**Director of Solicitation** \$210

The Director of Solicitation is the lead consultant in the plan solicitation process. The Director oversees and coordinates soliciting creditor votes on a plan of reorganization and will attest to solicitation processes and results. The Director also advises on public securities noticing and related actions, including voting, exchange offers, treatment elections, rights subscriptions and distributions and coordinates with banks, brokers, nominees, their agents and depositories to ensure the smooth execution of these processes. Prime Clerk's Director of Solicitation has over 15 years of experience and is a former restructuring attorney.

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## Printing and Noticing Services

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**Printing** \$0.10 per page<sup>3</sup>

**Customization/Envelope Printing** \$0.05 each

**Document folding and inserting** No charge

**Postage/Overnight Delivery** Preferred Rates

**E-mail Noticing** No charge

**Fax Noticing** \$0.10 per page

**Proof of Claim Acknowledgment Card** No charge

**Envelopes** Varies by Size

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## Newspaper and Legal Notice Publishing

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**Coordinate and publish legal notices** Available on request

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## Case Website

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**Case Website setup** No charge

**Case Website hosting** No charge

**Update case docket and claims register** No charge

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<sup>2</sup> Certain fees may be applicable to noticing, solicitation and corporate action events involving holders of public securities.

<sup>3</sup> Volume discounts will be applied to large mailings.

### Client Access

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Access to secure client login (unlimited users)	No charge
Client customizable reports on demand or via scheduled email delivery (unlimited quantity)	No charge
Real time dashboard analytics measuring claim and ballot information and document processing status	No charge

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### Data Administration and Management

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Inputting proofs of claim and ballots	Standard hourly rates (no per claim or ballot charge)
Electronic Imaging	\$0.10 per image
Data Storage, maintenance and security	\$0.10 per record per month
Virtual Data Rooms	Available on request

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### On-line Claim Filing Services

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On-line claim filing	No charge
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### Call Center Services

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Case-specific voice-mail box	No charge
Interactive Voice Response (“IVR”)	No charge
Monthly maintenance	No charge
Call center personnel	Standard hourly rates
Live chat	Standard hourly rates

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### Disbursement Services

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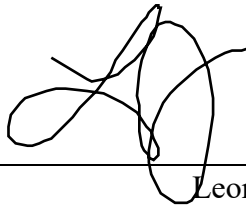
Check issuance and/or Form 1099	Available on request
W-9 mailing and maintenance of TIN database	Standard hourly rates

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TAB MM

THIS IS **EXHIBIT “MM”** REFERRED TO IN  
THE AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', written over a horizontal line.

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Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
	)	Case No. 20-11662 (___)
Debtors. <sup>1</sup>	)	
	)	(Joint Administration Requested)
	)	
	)	

**DEBTORS' SECOND (2<sup>ND</sup>) OMNIBUS MOTION FOR ENTRY OF AN  
ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES  
EFFECTIVE AS OF THE PETITION DATE AND (B) GRANTING RELATED RELIEF**

**PARTIES RECEIVING THIS MOTION SHOULD LOCATE THEIR  
NAMES AND THEIR LEASE LISTED ON SCHEDULE 1 TO THE  
PROPOSED ORDER ATTACHED HERETO AS EXHIBIT A.**

The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Order*”): (a) authorizing the rejection of certain unexpired leases and subleases, including any guaranties, amendments or modifications thereof (each, a “*Rejection Lease*,” and collectively, the “*Rejection Leases*”), a list of which is annexed as **Schedule 1** to **Exhibit A**, effective as of the Petition Date (as defined below), and (b)

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.



authorizing the Debtors to abandon the personal property located at the premises related to the Rejection Leases (collectively, the “*Premises*”) as of the Petition Date.

### **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 365(a) and 554(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “*Bankruptcy Code*”), and Rules 6006 and 6007 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

### **BACKGROUND**

3. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies' Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day Declaration**")<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

### **MOTION SPECIFIC BACKGROUND**

6. As described in detail in the First Day Declaration, the Debtors have today filed these Chapter 11 Cases amid an unprecedented health crisis with difficult social, political and economic implications. While the Debtors would have preferred to wait out the current instabilities of the financial markets and retail industry, they simply could not afford to do so. The relief sought in this Motion is critical to preserve liquidity and maintain the Debtors' viability as a going concern.

#### **I. THE REJECTION LEASES**

7. As of the Petition Date, the Debtors are parties to approximately 3,616 real property leases in the United States, Canada and Puerto Rico, 772 of which are subleased to 330 franchisees. As part of their ongoing restructuring efforts, the Debtors are engaging in a comprehensive review

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court's website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors' proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

and analysis of their lease portfolio. After careful evaluation, the Debtors have identified 100 stores to be rejected (the “*Rejection Stores*”). As such, the Debtors have determined, in the exercise of their business judgment, that it is in the best interests of their estates to seek authority to reject the Rejection Leases associated with the Rejection Stores as of the Petition Date. Rejecting the Rejection Leases will allow the Debtors to avoid the accrual of unnecessary administrative expenses with no foreseeable benefits to the Debtors’ estates. Moreover, given the obligations under the Rejection Leases and current market conditions, the Debtors have concluded, in consultation with their advisors, that the Rejection Leases are not marketable and are unlikely to generate material value for the Debtors’ estates.

8. On June 18, 2020, the Debtors sent letters to each landlord counterparty (the “*Landlords*”) to the Rejection Leases, which were delivered no later than the Petition Date, notifying them that the Debtors were unequivocally surrendering possession of the Premises and abandoning any Debtor-owned personal property in conjunction therewith as of such time.

## **II. REMAINING PROPERTY**

9. Certain Rejection Stores store property that belongs to the Debtors, including, but not limited to, inventory, books and records, equipment, fixtures, furniture and other personal property (the “*Remaining Property*”). Before the Debtors vacated the Premises, the Debtors evaluated the Remaining Property located at the Premises and determined that (a) the Remaining Property is of inconsequential value or (b) the cost of removing and storing the Remaining Property for future use, marketing, or sale exceeded its value to the Debtors’ estates. Because the Debtors have no intent to operate the stores at the Premises, the Remaining Property will no longer be necessary for the administration of the Debtors’ estates.

10. Accordingly, to reduce postpetition administrative costs and in the exercise of the Debtors' sound business judgment, the Debtors believe that the abandonment of the Remaining Property is appropriate and in the best interests of the Debtors, their estates, and their creditors.

### **BASIS FOR RELIEF**

#### **I. REJECTION OF THE REJECTION LEASES REFLECTS THE DEBTORS' SOUND BUSINESS JUDGMENT.**

11. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The purpose behind section 365(a) is "to permit the trustee or debtor-in-possession to use valuable property of the estate and to renounce title to and abandon burdensome property." *In re Republic Airways Holdings Inc.*, 547 B.R. 578, 582 (Bankr. S.D.N.Y. 2016) (quoting *In re Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993)); *see also In re Exide Techs.*, 607 F.3d 957, 967 (3d Cir. 2010) ("Courts may use § 365 to free a [debtor] from burdensome duties that hinder its reorganization."); *N.L.R.B. v. Bildisco and Bildisco (In re Bildisco)*, 465 U.S. 513, 528 (1984) ("[t]he authority to reject an executory contract is vital to the basic purpose to a Chapter 11 reorganization, because rejection can release the debtor's estate from burdensome obligations that can impede a successful reorganization."). Pursuant to Bankruptcy Rule 6006(f), a trustee or debtor in possession may file a motion for the authority to reject multiple leases. Fed. R. Bankr. P. 6006(f).

12. The standard applied by courts to determine whether the assumption or rejection of an unexpired nonresidential lease should be authorized is the "business judgment" test, which requires a debtor to have determined that the requested assumption or rejection would be beneficial to its estate. *See Grp. Of Institutional Inv'rs v. Chi., Milwaukee St. Paul & Pac. R.R.*, 318 U.S. 523, 550 (1943) (noting that "the question whether a lease should be rejected...is one of business

judgment”); *In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff’d*, 465 U.S. 513 (“The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.”); *accord In re HQ Glob. Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003).

13. In applying the business judgment standard, bankruptcy courts give deference to a debtor’s decision to assume or reject leases. *See, e.g., Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989) (affirming the rejection of a service agreement as a sound exercise of the debtor’s business judgment when the bankruptcy court found that such rejection would benefit the debtors’ estate); *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001) (“[A] debtor’s decision to reject an executory contract must be summarily affirmed unless it is the product of bad faith, or whim, or caprice.”).

14. Rejection of the Rejection Leases is well within the Debtors’ business judgment and will serve to maximize the value of their estates. The Debtors seek authority to reject the Rejection Leases to avoid the incurrence of any additional unnecessary expenses related to the Rejection Leases and the maintenance of the Rejection Stores. The Debtors have concluded that the cost of maintaining the Rejection Stores outweighs any revenues that the Rejection Stores currently generate or are likely to generate in the future.

15. After evaluation and analysis, the Debtors have determined, in the exercise of their sound business judgment, that there is no net benefit that is likely to be realized from the Debtors’ continued efforts to retain and potentially market the Rejection Leases and that there is little, if any, likelihood that the Debtors will be able to realize value from the Rejection Leases. Accordingly, the Debtors have concluded that rejection of the Rejection Leases is in the best interest of the Debtors’ estates, their creditors, and other parties in interest.

**II. THE COURT SHOULD DEEM THE REJECTION LEASES REJECTED EFFECTIVE AS OF THE PETITION DATE AND AUTHORIZE DEBTORS TO ABANDON THE REMAINING PROPERTY.**

16. Section 365 of the Bankruptcy Code does not restrict a bankruptcy court from applying rejection retroactively. *See In re Jamesway Corp.*, 179 B.R. 33, 37 (S.D.N.Y. 1995) (stating that section 365 does not include “restrictions as to the manner in which the court can approve rejection”); *see also In re CCI Wireless, LLC*, 297 B.R. 133, 138 (D. Colo. 2003) (noting that section 365 “does not prohibit the bankruptcy court from allowing the rejection of leases to apply retroactively”).

17. Courts have held that a bankruptcy court may, in its discretion, authorize rejection retroactively to a date prior to entry of an order authorizing such rejection where the balance of equities favors such relief. *See In re Thinking Machs. Corp.*, 67 F.3d 1021, 1029 (1st Cir. 1995) (stating that “rejection under section 365(a) does not take effect until judicial approval is secured, but the approving court has the equitable power, in suitable cases, to order a rejection to operate retroactively”); *In re Chi-Chi’s, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (stating “the court’s power to grant retroactive relief is derived from the bankruptcy court’s equitable powers so long as it promotes the purposes of § 365(a)”; *In re CCI Wireless, LLC*, 297 B.R. at 140 (holding that a “court has authority under section 365(d)(3) to set the effective date of rejection at least as early as the filing date of the motion to reject”).

18. Here, the equities of these Chapter 11 Cases favor the Court’s approval of the retroactive rejection of the Rejection Leases to the Petition Date. Without such relief, the Debtors will potentially incur unnecessary administrative expenses related to the Rejection Leases—agreements that provide no benefit to the Debtors’ estates in light of their goal to maximize value of the business as a going concern. *See* 11 U.S.C. § 365(d)(3).

19. Moreover, the Landlords will not be unduly prejudiced if the Rejection Leases are rejected effective as of the Petition Date because the Debtors have served this Motion on the Landlords and/or their agents or representatives by electronic mail and/or facsimile, on the date hereof, and by overnight mail, the following day, stating that the Debtors intend to reject the Rejection Leases effective as of the Petition Date. Furthermore, the Debtors have, on or before the date hereof, turned over the keys to the Premises to the Landlords or their representatives and abandoned the Premises, and in conjunction therewith indicated that they were unequivocally surrendering possession of the Premises as a result thereof. Therefore, based on the Debtors' desire to eliminate the potential for administrative claims against their estates, and to avoid the potential accrual of any further obligations under the Rejection Leases, the Debtors respectfully submit that the retroactive rejection of the Rejection Leases as of the Petition Date is appropriate.

20. Further, the abandonment of the Remaining Property is appropriate and authorized by the Bankruptcy Code. *See* 11 U.S.C. § 554(a). Section 554(a) provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” *Id.* Courts generally give a debtor in possession great deference to its decision to abandon property. *See In re Vel Rey Props., Inc.*, 174 B.R. 859, 867 (Bankr. D.D.C. 1994) (“Clearly, the court should give deference to the trustee’s judgment in such matters.”). Unless certain property is harmful to the public, once a debtor has shown that it is burdensome or of inconsequential value to the estate, a court should approve the abandonment. *Id.*

21. Before deciding to abandon any Remaining Property, the Debtors determined that the costs of moving and storing such Remaining Property outweighed any benefit to the Debtors’

estates. Further, any efforts by the Debtors to move or market the Remaining Property would have unnecessarily delayed the Debtors' rejection of the Rejection Leases.

22. Accordingly, the Debtors respectfully submit that the Court deem the Rejection Leases rejected effective as of the Petition Date and authorize the Debtors to abandon the Remaining Property as of such date.

### **RESERVATION OF RIGHTS**

23. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (f) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

### **NOTICE**

24. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange



Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; (p) the counterparties to the Rejection Leases (via overnight mail) and (q) all parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank.]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Order, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

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TAYLOR, LLP**

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*Proposed Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ____

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**SECOND (2<sup>ND</sup>) OMNIBUS ORDER  
(A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES  
EFFECTIVE AS OF THE PETITION DATE AND (B) GRANTING RELATED RELIEF**

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Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for an order (this “**Order**”), (a) authorizing the Debtors to reject certain unexpired leases of real property (each, a “**Rejection Lease**,” and collectively, the “**Rejection Leases**”), a list of which is annexed as **Schedule 1** hereto, effective as of the Petition Date; and (b) authorizing the Debtors to abandon the Remaining Property located at the Premises as of the Petition Date; and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the First Day Declaration and all of the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and Bankruptcy Rule 6006, the Rejection Leases identified in **Schedule 1** attached hereto, to the extent not already terminated in accordance with their applicable terms or upon agreement of the parties, are hereby rejected effective as of the Petition Date.
3. The Debtors are authorized, but not directed, to abandon the Remaining Property that is owned by the Debtors and located on the Premises and all such property is deemed abandoned effective as of the Petition Date. The Landlords to each Rejection Lease are authorized to dispose of the abandoned Remaining Property without liability to the Debtors or any third party and, to the extent applicable, the automatic stay is modified to allow such disposition.
4. Nothing herein shall prejudice any party's rights to assert that the Rejection Leases are not, in fact, executory within the meaning of section 365 of the Bankruptcy Code.

5. Any proofs of claim for damages in connection with the rejection of the Rejection Leases, if any, shall be filed on or before the later of (a) the claims bar date established by the Court in these Chapter 11 Cases, if any, and (b) thirty (30) days after entry of this Order.

6. Nothing in the Motion or this Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any particular claim would constitute an allowed claim. Nothing contained in this Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

7. The requirements set forth in Bankruptcy Rules 6006 and 6007 are satisfied.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**Schedule 1**

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
1.	7187	Persac Properties, Inc Petterson Companies 12500 Fair Lakes Circle, Suite 400 Fairfax, VA 22033	General Nutrition Corporation	Washingtonian Center 20 Grand Corner Avenue Gaithersburg, MD
2.	7370	Jones Lang LaSalle Inc. 3344 Peachtree Road, Suite 1200 Atlanta, GA 30326	General Nutrition Corporation	East Town Mall 2350 East Mason Street Green Bay, WI
3.	7539	Donahue Schriber Realty Group, L.P. 200 East Baker Street, Suite 100 Costa Mesa, CA 92626	General Nutrition Corporation	Rocklin Commons 5194 Commons Drive Rocklin, CA
4.	7732	Regency Properties Regency Caro LLC 380 N. Cross Pointe Blvd. Evensville, IN 47715	General Nutrition Corporation	Caro Shopping Center 1530 West Caro Road Caro, MI
5.	8155	N3 Real Estate Almo Venture One LLC 16910 Dallas Parkway, Suite 100 Dallas, TX 75248	General Nutrition Corporation	Alamo Corners 1451 Durenta Avenue Alamo, TX
6.	8233	Gilman Management Rockford Shops LLC c/o Gilpin Van Trump & Montgomery Inc., PO Box 217 Bear, DE 19701	General Nutrition Corporation	Rockford Shops 1404 North Dupont St Wilmington, DE
7.	8247	Winstanley Enterprises LLC The Plaza at Burr Corners LLC 150 Baker Avenue, Suite 303 Concord, MA 01742	General Nutrition Corporation	The Plaza At Burr Corners 1131 Tolland Pike Manchester, CT
8.	8410	CBL & Associates Properties, Inc. CBL Center 2030 Hamilton Place Boulevard, Suite 500 Chattanooga, TN 37421	General Nutrition Corporation	Park Plaza 6000 W. Markham Little Rock, AR

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
9.	8632	Plaza Guayama, S.E. State Road #3 Km 134.7 Guayama, PR 00 784	General Nutrition Corporation	Plaza Guayama State Rd Pr#3 Km 134.7 Guayama, PR
10.	8653	Brookfield Property Partners L.P. Temecula Towne Center Associates LLC c/o QIC Corporate Management Inc. 600 Superior Avenue East, Suite 1500 Cleveland, Ohio 44114	General Nutrition Corporation	The Promenade Mall 40820 Winchester Road Temecula, CA
11.	8678	Festival Companies 9841 Airport Blvd, Suite 700 Los Angeles, CA 90045	General Nutrition Corporation	Huntington Oaks Shopping 514 W. Huntington Drive Monrovia, CA
12.	8732	Brookfield Property Partners L.P. 350 N. Orleans Street, Suite 300 Chicago, IL 60654	General Nutrition Corporation	Spokane Valley Mall 14700 E Indiana Avenue Spokane Valley, WA
13.	8802	Glenwood Springs Mall LLP Time Equities Inc. 55 Fifth Avenue, 15th Floor New York, NY 10003	General Nutrition Corporation	Ohio River Plaza 13 Ohio River Plaza Gallipolis, OH
14.	8824	Signature Acquisitions LLC Woonsocket Mall LLC c/o Madison Properties 3611 14th Avenue, Suite 552 Brooklyn, NY 11218	General Nutrition Corporation	Diamond Hill Plaza 1790 Diamond Hill Road Woonsocket, RI
15.	8902	A.D. Real Estate Investors, Inc. Unicorp National Developments Inc. 7940 Via Dellagio Way, Suite 200 Orlando, FL 32819	General Nutrition Corporation	Deer Park Commons 506 Commack Deer Park, NY
16.	8918	Quong Enterprises, LLC Ramco-Gershenson Properties L.P. 31500 Northwestern Highway, Suite 300 Farmington Hills, MI 48334	General Nutrition Corporation	The Village Of Rochester 136 N Adams Road Rochester Hills, MI



	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
17.	8928	Aston Properties 610 East Morehead Street , Suite 100 Charlotte , NC 28202	General Nutrition Corporation	North Hills Shopping Cent 2435 E North Street Greenville, SC
18.	8950	DWS Group AEW Capital Management Two Searport Lane Boston, MA 02210	General Nutrition Corporation	The Wall Towne Center 2437 Route 34 Manasquan, NJ
19.	8960	Pine Tree Commercial Realty LLC CBRE 1301 Half Day Road Bannockburn, IL 60015	General Nutrition Corporation	Bannockburn Green 2569 Waukegan Rd Bannockburn, IL
20.	9096	East Bay Bridge Retail, LLC 66 Franklin Street , Suite 200 Oakland, CA 94607	General Nutrition Corporation	East Bay Bridge Center 3839 East Emery Street Emeryville, CA
21.	9108	Federal Realty Investment Trust 1626 East Jefferson Street Rockville, MD 20852	General Nutrition Corporation	Wynnewood Shopping Center 50 East Wynnewood Road Wynnewood, PA
22.	9327	Melbourne Equities, LLC 4201 Vineland Road, Suite 1-14 Orlando, FL 32811	General Nutrition Corporation	Wickham Corners Shopping 1070 North Wickham Road Melbourne, FL
23.	9409	US REIF Parkway Fee, LLC USPG Portfollo Five LLC 3665 Fishinger Blvd. Hilliard, OH 43026	General Nutrition Corporation	Shoppes At Montage 2105 Shoppes Blvd Moosic, PA
24.	9412	NorthPark Partners, LP NorthPark Realty LP 100 N. Pacific Coast Highway, Suite 1925 El Segundo, CA 90245	General Nutrition Corporation	Northpark Mall 1200 East County Line Road Ridgeland, MS
25.	9768	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Orland Square Mall 852 Orland Square Orland Park, IL

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
26.	9837	RPI Turtle Creek Mall, LLC RPI Turtle Creek Mall LLC Attn: General Counsel 1114 Avenue of the Americas, Suite 2800 New York, NY 10036	General Nutrition Corporation	The Mall @ Turtle Creek 3000 East Highland Ave Jonesboro, AR
27.	9852	US General Services Administration PBS Leasing Division Retail Program Specialist 230 South Dearborn Street, Suite 3300 Chicago , IL 60604	General Nutrition Corporation	244 State Street Chicago, IL
28.	9866	Gateway West, LP 200 Westgate Circle , Suite 502 Annapolis , MD 21401	General Nutrition Corporation	Gateway West Shopping Cen 1030 Forest Ave Dover, DE
29.	9910	Bayer Properties G&I VII Reno Operating LLC c/o Bayer Properties LLC. 2222 Arlington Avenue Birmingham, AL 35205	General Nutrition Corporation	The Summit Sierra 13987 South Virginia Street Reno, NV
30.	44	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Auburn Mall 385 Southbridge St Auburn, MA
31.	70	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Battlefield Mall Space # 337 Springfield, MO
32.	77	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Briarwood Mall 850 Briarwood Circle Ann Arbor, MI

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
33.	116	Namdar Realty Group 150 Great Neck Road, Suite 304 Great Neck, NY 11021	General Nutrition Corporation	Northwest Arkansas Plaza 4201 North Shiloh Dr Fayetteville, AR
34.	124	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	North East Mall 1101 Melbourn Road Hurst, TX
35.	135	Namdar Realty Group 150 Great Neck Road, Suite 304 Great Neck, NY 11021	General Nutrition Corporation	The Citadel 750 Citadel Drive East Colorado Springs, CO
36.	183	Washington Prime Group Inc. 180 East Broad Street, 21st Floor Columbus, OH 43215	General Nutrition Corporation	Anderson Mall 3139 N Main Anderson, SC
37.	186	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Prien Lake Mall 484 West Prein Road Lake Charles, LA
38.	197	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Mccain Mall Shp Ctr 3929 Mccain Blvd North Little Rock, AR
39.	227	Namdar Realty Group 150 Great Neck Road, Suite 304 Great Neck, NY 11021	General Nutrition Corporation	Logan Valley Mall 300 Logan Valley Mall Altoona, PA
40.	304	Namdar Realty Group 150 Great Neck Road, Suite 304 Great Neck, NY 11021	General Nutrition Corporation	University Mall 1225 University Mall Carbondale, IL
41.	478	Brookfield Property Partners L.P. 350 N. Orleans Street, Suite 300 Chicago, IL 60654	General Nutrition Corporation	Florence Mall 2122 Florence Mall Florence, KY

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
42.	683	Jones Lang LaSalle Inc. 3344 Peachtree Road, Suite 1200 Atlanta, GA 30326	General Nutrition Corporation	Peru Mall 3940 Rt 251 Peru, IL
43.	686	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Ingram Park Mall 6301 Northwest Loop 410 San Antonio, TX
44.	755	Washington Prime Group Inc. 180 East Broad Street, 21st Floor Columbus, OH 43215	General Nutrition Corporation	Charlottesville Fashion S 1588 Fashion Square Mall Charlottesville, VA
45.	756	Namdar Realty Group 150 Great Neck Road, Suite 304 Great Neck, NY 11021	General Nutrition Corporation	Gulf View Square Mall 9409 Us 19 North Port Richey, FL
46.	770	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Bay Park Square 311-A Bay Park Square Green Bay, WI
47.	841	CBL & Associates Properties, Inc. CBL Center 2030 Hamilton Place Boulevard, Suite 500 Chattanooga, TN 37421	General Nutrition Corporation	West Park Mall 3049 Route K Cape Girardeau, MO
48.	1019	Elat Properties, Inc. d/b/a Cranberry Mall 1300 West Olympic Blvd, Suite 500 Los Angeles, CA 90015	General Nutrition Corporation	Cranberry Mall Pa Rt 257 & Rt 322 Cranberry, PA
49.	1037	Namdar Realty Group 150 Great Neck Road, Suite 304 Great Neck, NY 11021	General Nutrition Corporation	Chapel Hills Mall 1710 Briargate Blvd Colorado Springs, CO

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
50.	1349	Midland Atlantic Development Company LLC 9000 Keystone Crossing, Suite 850 Indianapolis, IN 46240	General Nutrition Corporation	Putnam Plaza 35 Putnam Place Greencastle, IN
51.	1382	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Coral Square 9295 West Atlantic Blvd Coral Springs, FL
52.	1424	Washington Prime Group Inc. 180 East Broad Street, 21st Floor Columbus, OH 43215	General Nutrition Corporation	Boynton Beach Mall 801 N Congress St Boynton Beach, FL
53.	1455	Washington Prime Group Inc. 180 East Broad Street, 21st Floor Columbus, OH 43215	General Nutrition Corporation	Indian Mound Mall 771 S 30Th St Heath, OH
54.	1486	Washington Prime Group Inc. 180 East Broad Street, 21st Floor Columbus, OH 43215	General Nutrition Corporation	Sunland Park Mall 750 Sunland Park Drive El Paso, TX
55.	1505	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Emerald Square Mall 999 South Washington Street North Attleboro, MA
56.	1527	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	St. Charles Towne Ctr 1110 Mall Circle Waldorf, MD
57.	1528	Washington Prime Group Inc. 180 East Broad Street, 21st Floor Columbus, OH 43215	General Nutrition Corporation	Lincolnwood Town Ctr 3333 West Touhy Ave Lincolnwood, IL

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
58.	1599	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Liberty Tree Mall 100 Independence Way Danverse, MA
59.	1629	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Southdale Center 2525 Southdale Center Edina, MN
60.	1818	M & J Wicklow Properties, LLC Meridian CenterCal LLC 3600 E. Fairview Avenue Meridian, ID 83642	General Nutrition Corporation	Cascade Station 10207 NE Cascades Pkwy Portland, OR
61.	1822	Madison Retail LLC Essex Broadway LLC 1100 Park Place, Suite 200 San Mateo, CA 94403	General Nutrition Corporation	The Joule 509 Broadway Seattle, WA
62.	2596	Brookfield Property Partners L.P. 350 N. Orleans Street, Suite 300 Chicago, IL 60654	General Nutrition Corporation	West Valley Mall 3200 N. Naglee Rd. Tracy, CA
63.	2693	Washington Prime Group Inc. 180 East Broad Street, 21st Floor Columbus, OH 43215	General Nutrition Corporation	Cottonwood Mall 10000 Coors Bypass Nw Albuquerque, NM
64.	2747	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Menlo Park S.C. 329 Menlo Park Edison, NJ
65.	2798	Karcher Capital LP c/o Milan Capital Management Inc. 888 South Disneyland Drive, Suite 101 Anaheim, CA 92802	General Nutrition Corporation	Karcher Mall 1509 Caldwell Blvd. Nampa, ID

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
66.	3108	Kimco Realty Corporation Attention: Legal Department 1621 B South Melrose Drive Vista, CA 92081	General Nutrition Corporation	Jefferson Square 4722 West 42Nd Ave Sw Seattle, WA
67.	3553	Lerner Corporation Dulles 28 Centre Retail Group LLC c/o Lerner Corporation 2000 Tower Oaks Blvd, 8th Floor Rockville, MD 20852	General Nutrition Corporation	Dulles 28 22000 Dulles Retail Plaza Sterling, VA
68.	3610	Jones Lang LaSalle Inc. 3344 Peachtree Road, Suite 1200 Atlanta, GA 30326	General Nutrition Corporation	Myrtle Beach Mall 10177 N. Highway 17 Myrtle Beach, SC
69.	3660	Helco Corporation c/o HHS Management Co. 1515 Chicago Ave. Evanston, IL 60201	General Nutrition Corporation	McHenry Plaza 1774 N. Richmond Road McHenry, IL
70.	3702	Jones Lang LaSalle Inc. 3344 Peachtree Road, Suite 1200 Atlanta, GA 30326	General Nutrition Corporation	Everett Mall 1402 SE Everett Mall Everett, WA
71.	3762	Brookfield Property Partners L.P. 1340 East 9th Street Realty Corp. Lakewood, NJ 08701	General Nutrition Corporation	Fairview Center 556 Fairview Center Kendallville, IN
72.	3812	UB Properties UC Retail LLC 6312 Kingston Pike, Suite C Knoxville, TN 37919	General Nutrition Corporation	University Commons 2459 University Commons W Knoxville, TN
73.	5335	JBL Asset Management JBL Asset Management LLC 766 Riverside Drive Coral Springs, FL 33071	General Nutrition Corporation	Horizon Village 2855 Lawrenceville Suwane Suwanee, GA
74.	5389	Taubman Company Short Hills Associates LLC 200 East Long Lake Road Bloomfield Hills, MI 48303	General Nutrition Corporation	Mall @ Short Hills Rt 24 & J.F. Kennedy Pkw Short Hills, NJ

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
75.	5435	Meadow Retail LLC (successor to Meadow Park Plaza LLC) 9380 Montgomery Road, Suite 202 Cincinnati , OH 45242	General Nutrition Corporation	Meadow Park Plaza 1659 Rombach Ave Wilmington, OH
76.	5899	Crescent Resources LLC Cooper Realty Investments Inc. 903 North 47th Street Rogers, AR 72756	General Nutrition Corporation	North Park Village S/C 103 North Park Dr Monticello, AR
77.	5903	Colliers International 1 Allied Drive, Suite 1500 Little Rock, AR 72202	General Nutrition Corporation	Benton Commons 1402 Military Road Benton, AR
78.	5946	Choice New York Management American Realty & Development 709 Highway 28 W. Belle, MO 65013	General Nutrition Corporation	Walmart Center 2504 South Santa Fe Dr Chanute, KS
79.	6039	302 Washington St., LLC 287 Bowman Ave. Purchase, NY 10577	General Nutrition Corporation	302 Washington St 302 Washington St Hoboken, NJ
80.	6051	Phillips Realty Phillips Commercial Management 3940 Broad Street, Suite 8 San Luis Obispo, CA 93401	General Nutrition Corporation	Yucaipa Valley Center 33676 Yucaipa Blvd Yucaipa, CA
81.	6411	Widewaters Belmont Gardens Management Company and the Scuderi Family Limited Partnership c/o The Widewaters Group 5786 Widewaters Parkway DeWitt, NY 13214	General Nutrition Corporation	Northgate Plaza 3848 Dewey Ave Greece, NY
82.	6699	Greenbrier Valley Mall, LLC 2964 Peachtree Road, Suite 620 Atlanta, GA 30305	General Nutrition Corporation	Greenbrier Valley Mall 75 Seneca Trail Fairlea, WV



	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
83.	6723	Brookhill Management Corporation Brookside Properties Inc. 2002 Richard Jones Road- C-200 Nashville, TN 37215	General Nutrition Corporation	Franklin Commons 144 Council Drive Franklin, VA
84.	6995	South Miami Properties, Inc Southpointe Plaza LLC PO Box 3334 Clarksville, IN 47131	General Nutrition Corporation	South Point Plaza 3189 State Rd 3 S New Castle, IN
85.	7397	Mission Grove Plaza LP Mission Lakes LLC 7900 Glades Road, Suite 320 Boca Raton, FL 33434	General Nutrition Corporation	The Shops @ Mission Lakes 5516 South State Rd 7 Lake Worth, FL
86.	7669	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Wolfchase Galleria 2760 N Germantown Pkwy Memphis, TN
87.	7738	Westford Plaza Trust JMYL Development 41623 Margarita Rd , Ste 100 Temeculah, CA 92590	General Nutrition Corporation	Centrepointe Plaza 1100 Mount Vernon Ave Colton, CA
88.	7865	Washington Prime Group Inc. 180 East Broad Street, 21st Floor Columbus, OH 43215	General Nutrition Corporation	Town Center Plaza 4837 West 117th Street Leawood, KS
89.	8030	Newport Capital Partners 353 N. Clark Street, Suite 43625 Chicago, IL 60654	General Nutrition Corporation	Eden's Plaza 3232 Lake Avenue Wilmette, IL
90.	8150	Simon Property Group Simon Property Group c/o M.S Management Associates Inc. 225 West Washington Street Indianapolis, IN 46204-3438	General Nutrition Corporation	Southpark Mall 4400 Sharon Rd Charlotte, NC

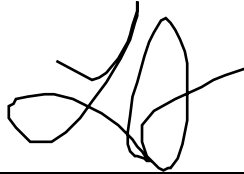
	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
91.	8421	Gateway Pinole Vista LLC Cypres Properties Incorporated 2191 E. Bayshore Boulevard, Suite 220 Palo Alto, CA 94303	General Nutrition Corporation	Gateway Plaza S/C 580B River St Santa Cruz, CA
92.	8453	Centennial Real Estate Management, LLC Centennial Real Estate Management LLC 8750 N. Central Expressway, Suite 1740 Dallas, TX 75231	General Nutrition Corporation	Westfield Shoppingtown Ma 2800 North Main Street Santa Ana, CA
93.	81	Ameream, LLC c/o Ameream Management, LLC One Meadowlands Plaza, 3rd Floor East Rutherford, NJ 7073	General Nutrition Corporation	American Dream 1 American Dream Way Rutherford, NJ
94.	173	Nelson Retail II, LLC 3100 Monticello, Suite 300 Dallas, TX 75205	General Nutrition Corporation	Neilson Square 3322 W Owen K Garriott Rd Enid, OK
95.	1785	River Landing Development, LLC; Riverlanding Acquisition, LLC River Landing Development LLC Attn: Andrew B. Hellinger Catalonia Avenue, Suite 100 Coral Gables, FL 33134	General Nutrition Corporation	Shoppes at River Landing Miami, FL
96.	9697	The First City Company Pine Creek Properties LP c/o Zappala Group Inc. 400 Broad Street, Suite 106 Sewickley, PA 15143	General Nutrition Corporation	Pine Creek Center 195 Blazier Drive Pittsburgh, PA
97.	9145	Ramco-Gershenson Properties Trust Ramco-Gershenson Properties L.P. 31500 Northwestern Highway, Suite 300 Farmington Hills, MI 48334	General Nutrition Corporation	Livonia Plaza 30983 Five Mile Road Livonia, MI

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
98.	8821	Urban Edge Properties P.O. Box 645738 Pittsburgh, PA 15264	General Nutrition Corporation	Town Brook Commons 840 Route 35 S Middletown, NJ
99.	534	Coastland Center, LLC c/o Brookfield Property Partners, L.P. 350 N. Orleans Street, Suite 300 Chicago, IL 60654	General Nutrition Corporation	Coastland Mall 2034 Tamiam Trail North Naples, FL
100.	1084	Simon Property Group 225 W. Washington Street Indianapolis, IN 46204	General Nutrition Corporation	Santa Rosa Plaza 600 Santa Rosa Plaza Santa Rosa, CA



TAB NN

THIS IS **EXHIBIT “NN”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

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Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**MOTION OF DEBTORS FOR  
ORDERS (A) APPROVING PROCEDURES  
FOR STORE CLOSING SALES, (B) AUTHORIZING CUSTOMARY  
BONUSES TO MANAGERS OF STORES, (C) AUTHORIZING ASSUMPTION  
OF THE CONSULTING AGREEMENTS AND (D) GRANTING RELATED RELIEF**

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The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** (the “*Interim Order*”) and **Exhibit B** (the “*Final Order*,” and together with the Interim Order, the “*Proposed Orders*”), respectively: (a) authorizing and approving, on an interim and final basis, store closing or similar themed sales (“*Store Closings*”) in accordance with the terms of the U.S. store closing sale procedures (the “*U.S. Store Closing Procedures*”) for the Store Closings in the U.S. and the Canadian store closing sale procedures for the Store Closings in Canada (the “*Canadian Store Closing Procedures*”, and together with the

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

U.S. Store Closing Procedures, the “*Store Closing Procedures*”) attached as **Exhibit 1** to **Exhibit A** and **Exhibit B** hereto, with such sales to be free and clear of all liens, claims, and encumbrances; (b) authorizing the Debtors to pay customary bonuses to non-insider managers of the stores where Store Closing sales will occur; (c) upon entry of the Final Order, (i) authorizing the Debtors to assume that certain Consulting Agreement, dated as of June 10, 2020 (the “*U.S. Consulting Agreement*”), by and between GNC Holdings, Inc. and a joint venture comprised of Tiger Capital Group, LLC and Great American Group, LLC (the “*U.S. Consultant*”), a copy of which is attached as **Exhibit 3** to **Exhibit B** hereto and (ii) authorizing the Debtors to assume that certain Consulting Agreement, dated as of June 18, 2020 (the “*Canada Consulting Agreement*” and together with the U.S. Consulting Agreement, the “*Consulting Agreements*”), by and between General Nutrition Centres Company and a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (the “*Canada Consultant*” and together with the U.S. Consultant, the “*Consultant*”), a copy of which is attached as **Exhibit 4** to **Exhibit B** hereto; and (d) granting related relief.

### **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C.

§§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, 365 and 554(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “*Bankruptcy Code*”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Local Rule 9013-1(m).

### **BACKGROUND**

3. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies’ Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List) (the “*CCAA Court*”).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the “*First Day Declaration*”)<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court’s website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors’ proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.



## **MOTION SPECIFIC BACKGROUND**

### **I. THE STORE CLOSING DECISIONS AND THE CONSULTING AGREEMENTS**

6. As described more fully in the First Day Declaration, in the wake of extreme market conditions and faced with limited liquidity, the Debtors seek to wind down approximately 726 store locations (the “*Closing Stores*”) listed on Exhibit 2 to Exhibit A and Exhibit B attached hereto throughout the U.S. and Canada through a going-out-of-business sales process. As described in the First Day Declaration, given continuously declining profitability and operational challenges, and despite the best efforts of the Debtors and their advisors to secure the capital necessary to preserve the entire business as a going concern, the Debtors are simply unable to meet their financial obligations. The Debtors have worked in concert with their secured lenders to facilitate an expedited sale and orderly wind-down process for certain stores that will maximize value and recoveries for stakeholders in these cases.

7. Concurrently, the Debtors, with the assistance of A&G Realty Partners, LLC and MPA Inc., are negotiating lease modifications with many of the Debtors’ landlords in the U.S. and Canada, respectively, for certain rent concessions and early termination rights (the “*Lease Negotiations*”), with the goal of improving the financial performance of the Debtors’ remaining store base. These Lease Negotiations are ongoing and the Debtors’ ability to negotiate more favorable lease terms and rent reductions will drive the determination of whether or not to close additional stores. Where the Debtors are unable to obtain sufficient relief in the Lease Negotiations concerning stores that are on the cusp of failing to meet certain performance standards, such stores may close as part of the Store Closings (which may begin simultaneously or on a rolling basis, depending on the relative timing the various Lease Negotiations conclude).

8. The Debtors selected and engaged the Consultant to (a) manage the Store Closings; (b) sell their store inventory (the “*Merchandise*”), owned furniture, furnishings, trade fixtures,

machinery, equipment, office supplies, supplies and other tangible personal property (the “*FF&E*”) under the Consulting Agreements, and solely with respect to the U.S. Consulting Agreement, the “Additional Consultant Goods” (the “*Additional Consultant Goods*” and together with the FF&E and the Merchandise, the “*Store Assets*”) located in the stores; and (c) surrender the stores to the Debtors on the terms set forth in the Consulting Agreements, including, without limitation, the terms of the sale guidelines attached to the Canada Consulting Agreement (such guidelines, the “*Canadian Sale Guidelines*”) in the case of Store Closings in Canada. The Debtors have a historical relationship with the Consultant, who has helped the Debtors with annual appraisals of inventory and accounts receivable, making the Consultant familiar with the Debtors’ businesses. In early 2020, the Debtors retained the Consultant for a store closing test, at which time the Consultant was subject to an evaluation process that included, among other things, review of proposals from other service providers, providing candidates with equal access to all information (such as store level volume, margins, and inventory) provided by the Debtors; seeking references; providing standard requirements for the submission or recovery assumptions; conducting forecasts and analysis; and phone and in-person meetings with the Debtors’ management. Given the Consultant’s longstanding familiarity with the Debtors’ business, the efficiencies resulting from the same to the Debtors’ estates, and the Consultant’s experience in conducting store closings on an expedited timeline, the Debtors’ management, in consultation with the Debtors’ advisors, selected the Consultant to manage the Store Closings. The Canadian Store Closing Procedures in respect of Store Closings in Canada incorporate the Canadian Sale Guidelines, which guidelines are substantially consistent with the store closing process that is typically used in Canada, and which Canadian Store Closing Procedures shall control such Store Closings. To the extent that the Canadian Store Closing Procedures differ from the U.S. Store

Closing Procedures, it is to reflect such sale guidelines and such typical Canadian store closing process.

9. By this Motion, the Debtors seek to assume the Consulting Agreements so that the Consultant may continue in its role as Consultant for the Store Closings on a postpetition basis without interruption. The Debtors have determined, in an exercise of their business judgment, that (a) the continuation of services by the Consultant is necessary for efficient large-scale execution of the Store Closings, and to maximize the value of the assets being sold, and (b) any change in or elimination of the Consultant would significantly disrupt the Store Closing process and impair the value of the remaining assets in the stores.

10. Further, the Store Closings are a critical component of the Debtors' go-forward business plan, and assumption of the Consulting Agreements will allow the Debtors to conduct the Store Closings in an efficient, controlled manner that will maximize value for the Debtors' estates. The relief requested in this Motion is integral to maximizing the value of the Debtors' estates. It will permit the Debtors to commence the Store Closings in a timely manner as contemplated by this Motion and will establish fair and uniform store closing procedures to assist the Debtors and their creditors through the Debtors' transition to a smaller, more profitable enterprise.<sup>4</sup>

11. For the convenience of the Court and interested parties, a summary of the salient terms of the Consulting Agreements is set forth below.<sup>5</sup>

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<sup>4</sup> By this Motion, the Debtors' seek approval of the conduct of the Store Closings and the associated disposition of the Merchandise and the owned FF&E in a manner consistent with customary practices in this jurisdiction and in jurisdictions throughout the country in connection with the Store Closings. However, nothing in this Motion seeks approval of the Debtors' assumption and assignment of any of their non-residential real property leases or executory contracts. To the extent that the Debtors', through the services of the Consultant, find one or more buyers of stores, the Debtors' would file one or more separate motions seeking approval of such asset sales on as expedited a basis as the circumstances and/or economics of such sale dictate.

<sup>5</sup> The following summary chart is for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Consulting Agreements, the Consulting Agreements shall govern in all respects. Any capitalized terms used in the summary chart but not defined therein are used as defined in the Consulting Agreements.

TERM	CONSULTING AGREEMENTS <sup>6</sup>
<p><b>Services Provided by Consultant</b></p>	<p>Consultant shall: (a) conduct a review and assessment of Merchant’s current store closing plan and accompanying assumptions in light of the current market environment, (b) make recommendations in order to minimize expenses and maximize the return from the sale of Merchandise, (c) consult with Merchant as to which stores to close immediately (or to not reopen) and at which to conduct the Sale, and (d) consult with Merchant as to the logistics of transferring merchandise from the Closing Stores to the GOB Stores (i.e. where Store Closings will be conducted). During the Sale Term, Consultant shall, in collaboration with Merchant, (a) provide one or more qualified supervisors (the “<i>Supervisors</i>”) engaged by Consultant and reasonably approved in advance by Merchant to oversee the Sale and management of the GOB Stores in an effort to maximize revenue and sell all of the Merchandise prior to the end of the Sale; (b) determine appropriate point-of-sale and external advertising, reasonably approved in advance by Merchant; (c) determine appropriate discounts of Merchandise, staffing levels, and appropriate bonus and incentive programs, if any, for the GOB Stores’ employees, in each case reasonably approved in advance by Merchant; (d) oversee display of Merchandise for the GOB Stores; (e) evaluate sales of Merchandise by category, provide sales reporting and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information regarding Merchant in accordance with the provisions of the confidentiality agreement signed by the Parties and for Merchant Confidential Information; (g) assist Merchant in connection with managing and controlling loss prevention and employee relations matters; (h) to the extent necessary, assist Merchant in obtaining all required permits and governmental consents required to conduct the Sale; (i) price, market, and sell the FF&amp;E on behalf of Merchant; and (j) provide such other related services deemed necessary or appropriate by Merchant and Consultant. In addition, pursuant to the Canada Consulting Agreement, Canada Consultant shall: (x) provide such information and reporting as may be requested by the Information Officer; (y) comply with all applicable Orders entered in this Bankruptcy Case or granted in the CCAA Proceedings; and (z) comply with the Canadian Sale Guidelines with respect to the conduct of the Sale in Canada.</p>
<p><b>Term of Sale</b></p>	<p>For GOB Stores that are currently operating, the Sale shall commence on or about June 25, 2020, and (b) for GOB Stores that are not currently operating, the Sale shall commence on or about the later of the date upon which Merchant reopens each such GOB Store and June 25, 2020 (the “<i>Sale Commencement Date</i>”). Pursuant to the Canada Consulting Agreement, the commencement of the Sale is subject to obtaining the Approval Order. The Sale shall conclude no later than September 30, 2020 (the “<i>Sale Termination Date</i>”); <u>provided, however</u>, that Merchant may agree in writing in its sole discretion to extend or terminate the Sale at any GOB Store prior to the Sale Termination Date (it being understood that, if the timing set forth herein changes, Merchant and Consultant shall mutually agree on any adjustments to the Expense Budget (as defined below) and Consultant’s compensation); <u>provided further, however</u>, that Merchant may agree in writing in its sole discretion to make any GOB Store a Closing Store prior to the Sale Termination Date. The period between the Sale Commencement Date and the Sale Termination Date shall be referred to as the “<i>Sale Term</i>.” Upon the removal of Merchandise from each Store and at the conclusion of the Sale at each GOB Store, (a) Consultant shall surrender the premises for such Store to Merchant in broom clean condition with any unsold FF&amp;E abandoned in place at such Store, and (b) Consultant shall reasonably assist Merchant to photographically document the condition of each such Store upon the conclusion of the Sale there. Pursuant to the Canada Consulting Agreement, the Canada Consultant shall comply with the Canadian Sale Guidelines with respect to the conduct of the Sale in Canada.</p>

<sup>6</sup> Except as otherwise noted, the terms of the U.S. Consulting Agreement and Canada Consulting Agreement are substantially the same.

<p><b>Expenses of Consultant</b></p>	<p>Merchant shall be responsible for all reasonable and documented costs and expenses of the Sale, including all Store level operating expenses. To control expenses of the Sale, Merchant and Consultant have established a budget (the “<i>Expense Budget</i>”) of certain delineated expenses in connection with the Sale, including supervision (including Supervisors’ wages, fees, travel and any other compensation and any travel expenses of Consultant), advertising costs and signage. The Expense Budget for the Sale is attached to each of the Consulting Agreements as <u>Exhibit B</u>. The Expense Budget may only be modified by mutual written agreement of Consultant and Merchant, and, pursuant to the Canada Consulting Agreement, with the approval of the Information Officer from and after the date of the Approval Order. Unless otherwise agreed to by Merchant, Merchant shall not be obligated to pay costs of supervision, advertising costs and signage that exceed the budgeted amount, on an aggregate basis. The Parties acknowledge that the Expense Budget will be updated as appropriate in connection with any modification of the lists of GOB Stores or the terms of the Sale and agree to cooperate in good faith with respect to such updates or to any Additional Stores.</p>								
<p><b>Compensation for Consultant</b></p>	<p>In consideration of its services, Consultant shall earn a base fee of USD\$1,000 per GOB Store and USD\$500 per Closing Store (the “<i>Base Fee</i>”) payable as follows for the U.S Consulting Agreement: (x) 50% upon entry of an interim Approval Order of the Court authorizing the Sale pursuant to the terms and conditions of the U.S. Consulting Agreement and (y) 50% upon entry of the final Approval Order; and payable as follows for the Canada Consulting Agreement: (x) 50% upon entry of the Interim Order (as defined in the Canada Consulting Agreement) and (y) 50% upon entry of the Final Order (as defined in the Canada Consulting Agreement). In addition, Merchant may earn an additional incentive fee (the “<i>Incentive Fee</i>” and together with the Base Fee, the “<i>Consulting Fee</i>”) based upon the following thresholds of Gross Proceeds received during the Sale divided by the Cost Value of the Merchandise sold during the Sale (the “<i>Gross Recovery Percentage</i>”) calculated back to the first dollar received:</p> <table border="1" data-bbox="626 1073 1295 1199"> <thead> <tr> <th>Gross Recovery Percentage</th> <th>Total Incentive Fee</th> </tr> </thead> <tbody> <tr> <td>Between 120% to 134.99%</td> <td>.50% of Gross Proceeds</td> </tr> <tr> <td>Between 135% to 149.99%</td> <td>.75% of Gross Proceeds</td> </tr> <tr> <td>150.0% or above</td> <td>1.25% of Gross Proceeds</td> </tr> </tbody> </table> <p>After it is determined that Consultant has earned an Incentive Fee, Merchant shall pay such Incentive Fee as earned as part of the weekly reconciliations and in any event no later than the Final Reconciliation.</p> <p>Consultant shall also be entitled to a commission equal to fifteen percent of the Gross FF&amp;E Proceeds.</p>	Gross Recovery Percentage	Total Incentive Fee	Between 120% to 134.99%	.50% of Gross Proceeds	Between 135% to 149.99%	.75% of Gross Proceeds	150.0% or above	1.25% of Gross Proceeds
Gross Recovery Percentage	Total Incentive Fee								
Between 120% to 134.99%	.50% of Gross Proceeds								
Between 135% to 149.99%	.75% of Gross Proceeds								
150.0% or above	1.25% of Gross Proceeds								
<p><b>Merchant’s Insurance Obligations</b></p>	<p>Merchant shall maintain, throughout the Sale Term, liability insurance policies (including products liability in the amounts currently provided, commercial general liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the Stores, and shall cause Consultant to be included as an additional insured with respect to all such policies. At Consultant’s request, Merchant shall provide Consultant with a certificate or certificates evidencing the insurance coverage required hereunder and that Consultant is an additional insured thereunder. In addition, Merchant shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all applicable statutory requirements.</p>								

<p><b>Consultant's Insurance Obligations</b></p>	<p>As an expense of the Sale and as set forth on the Expense Budget, Consultant shall maintain, throughout the Sale Term, liability insurance policies (including products liability/completed operations, contractual liability, comprehensive commercial general liability, without limitation, including auto liability insurance) on an occurrence basis in an amount of at least one million dollars (\$1,000,000) per occurrence and an aggregate basis of at least five million dollars (\$5,000,000) for commercial general liability covering injuries to persons and property in or in connection with Consultant's provision of services at the Stores and \$5,000,000 per occurrence combined single limit for auto. Consultant shall name Merchant as an additional insured and loss payee under such policies, and upon execution of this Agreement provide Merchant with a certificate or certificates of insurance evidencing the insurance coverage required hereunder. In addition, Consultant shall maintain throughout the Sale Term workers compensation insurance compliant with all statutory requirements. Further, should Consultant employ or engage third parties to perform any of Consultant's undertakings with regard to this Agreement, Consultant will ensure that such third parties are covered by Consultant's insurance or maintain all of the same insurance as Consultant is required to maintain pursuant to this paragraph and name Merchant as an additional insured and loss payee under the policy for each such insurance.</p>
<p><b>Indemnification by Consultant</b></p>	<p>Consultant shall, on a joint and several basis, indemnify, defend and hold Merchant and its affiliates and their respective consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, principals, and affiliates (other than the Consultant or the Consultant Indemnified Parties) (collectively, "<b>Merchant Indemnified Parties</b>") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (a) the willful or grossly negligent acts or omissions of Consultant or the Consultant Indemnified Parties; (b) the breach of any provision of, or the failure to perform any obligation under, this Agreement by Consultant; (c) any liability or other claims made by Consultant's Indemnified Parties or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to Consultant's conduct of the Sale, except claims arising from Merchant's negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Merchant Indemnified Parties or Merchant's customers by Consultant or any of the Consultant Indemnified Parties and (e) any claims made by any party engaged by Consultant as an employee, agent, representative or independent contractor arising out of such engagement.</p>

<b>Indemnification by Merchant</b>	<p>Merchant shall indemnify, defend, and hold each party comprising Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, principals, affiliates, and Supervisors (collectively, "<b>Consultant Indemnified Parties</b>") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to: (a) the willful or grossly negligent acts or omissions of Merchant or the Merchant Indemnified Parties; (b) the material breach of any provision of this Agreement by Merchant; (c) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding Consultant Indemnified Parties) against Consultant or a Consultant Indemnified Party, except claims arising from Consultant's negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Consultant's Indemnified Parties or Merchant's customers by Merchant or Merchant's Indemnified Parties; (e) Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by Merchant during the Sale Term in accordance with applicable law, and, pursuant to the Canada Consulting Agreement, Merchant's failure to collect, remit and pay over to the appropriate taxing authority all sales and other taxes required to be collected, remitted or paid by Merchant during the Sale Term in accordance with applicable law; and (f) any claims of Merchant's employees for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Merchant's employment, hiring or retention of its employees, and, pursuant to the Canada Consulting Agreement, any claims of Merchant's employees for wages, benefits (including pension related benefits and obligations), severance pay, termination pay, accrued vacation, vacation pay, pay in lieu of notice of termination or any other liability arising from Merchant's employment, hiring, retention, furlough, layoff or termination of its employees.</p>
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## II. THE STORE CLOSING PROCEDURES

12. In connection with, and in facilitation of, the Store Closings, the Debtors further seek approval of the Store Closing Procedures, the form and substance of which are consistent with the procedures utilized by debtors in this and many other jurisdictions in connection with similar such store closing processes. In particular, the Canadian Store Closing Procedures in respect of Store Closings in Canada incorporate the Canadian Sale Guidelines, which guidelines are substantially consistent with the store closing process that is typically used in Canada. To the extent that the Canadian Store Closing Procedures differ from the U.S. Store Closing Procedures described below, it is to reflect such Canadian Sale Guidelines and such typical Canadian store closing process.

13. As is customary, the Store Closing Procedures provide, among other things, that: (a) all sales of Store Assets will be deemed free and clear of all liens, claims, interests, and other encumbrances; (b) the Merchandise and the FF&E will be sold with the benefit of various marketing techniques and price markdowns to promote efficient liquidation; and (c) certain unsold FF&E and other Store Assets that cannot be promptly liquidated may be abandoned if and when the Debtors determine, in their business judgment, that retaining, storing, or removing such assets would result in unnecessary expense with little or no benefit to the estates. The Debtors seek approval of the Store Closing Procedures to, among other things, provide local regulatory authorities and media in which the Store Closings may be advertised with knowledge that the Debtors are conducting the Store Closings in compliance with the Court's order.

14. The Debtors also respectfully request a waiver of any contractual restrictions that could otherwise inhibit or prevent the Debtors from maximizing value for creditors through the Store Closings. In certain cases, the contemplated Store Closings may be inconsistent with various provisions of leases, subleases, or other documents with respect to the premises in which the Debtors operate, including, without limitation, reciprocal easement agreements, agreements containing covenants, conditions, and restrictions (including, without limitation, "go dark" provisions and landlord recapture rights), or other similar documents or provisions. Such restrictions, unless waived, would hamper the Debtors' ability to maximize value in selling their inventory.

15. The Debtors also request that no entity, including, without limitation, utilities, landlords, shopping center managers and personnel, creditors, and all persons acting for or on the behalf of the foregoing parties shall interfere with or otherwise impede the conduct of the Store Closings, nor institute any action against the Debtors in any court (other than this Court) or before



any administrative body that in any way directly or indirectly interferes with, obstructs, or otherwise impedes the conduct of the Store Closings or the advertising and promotion (including through the posting of signs) of the Store Closings.

16. The Debtors have determined, in the exercise of their business judgment and in consultation with their advisors, that the Store Closing Procedures will provide the best, most efficient, and most organized means of selling the Merchandise and the FF&E to maximize the value of the Debtors' estates. The Debtors intend to facilitate the Store Closings using current personnel at no increased cost (except as set forth herein), and estimate that, with perhaps a few exceptions, the Stores Closings will be completed by no later than September 30, 2020, provided that the Debtors may unilaterally agree in writing to extend or terminate the Store Closings at certain stores prior to the Sale Termination Date.

### **III. LIQUIDATION SALE LAWS AND DISPUTE RESOLUTION PROCEDURES**

17. Certain states in which the Debtors operate stores have or may have licensing or other requirements governing the conduct of store closing, liquidation, or other inventory clearance sales, including, without limitation, state and local laws, statutes, rules, regulations, and ordinances (the "*Liquidation Sale Laws*"). Liquidation Sale Laws may establish licensing, permitting, or bonding requirements, waiting periods, time limits, and bulk sale restrictions and augmentation limitations that would otherwise apply to the Store Closings. Such requirements hamper the Debtors' ability to maximize value in selling their inventory. Subject to the Court's approval, the Debtors intend to conduct the Store Closings in accordance with the Store Closing Procedures, and to the extent such procedures conflict with the Liquidation Sale Laws, the Store Closing Procedures should control. In the case of Store Closings in Canada, the Canadian Store Closing Procedures shall control.

18. To facilitate the orderly resolution of any disputes between the Debtors and any Governmental Units (as defined in section 101(27) of the Bankruptcy Code) arising due to the Store Closing Procedures and the alleged applicability of any Liquidation Sale Laws, the Debtors respectfully request that the Court authorize the Debtors to implement the following dispute resolution procedures (the “**Dispute Resolution Procedures**”), on an interim and final basis:

- a. Provided that the Store Closings are conducted in accordance with the terms of the Interim Order or the Final Order, as applicable, and the applicable Store Closing Procedures, and in light of the provisions in the laws of many Governmental Units (as defined in the Bankruptcy Code) that exempt court-ordered sales from their provisions, the Debtors will be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct Store Closings in accordance with the terms of the Interim Order or the Final Order, as applicable, and the applicable Store Closing Procedures, without the necessity of further showing compliance with any such Liquidation Sale Laws.
- b. Within three business days after entry of the Interim Order, the Debtors will serve by email, facsimile, or first-class mail, copies of the Interim Order, the proposed Final Order and the Store Closing Procedures on the following: (i) the landlords for the Closing Stores; (ii) the Attorney General’s office for each state in which the Store Closings are being held; (iii) the county consumer protection agency or similar agency for each county in which the Store Closings are being held; (iv) the division of consumer protection for each state in which the Store Closings are being held; and (v) the chief legal counsel for each local jurisdiction in which the Store Closings are being held (collectively, the “**Dispute Notice Parties**”).
- c. With respect to any additional Closing Stores, within three business days after Court authorization to close additional stores (each, an “**Additional Closing Store List**”), the Debtors will serve by email, facsimile, or first-class mail, copies of the Interim Order or Final Order, as applicable, and the Store Closing Procedures on the Dispute Notice Parties. To the extent that there is a dispute arising from or relating to the Store Closings, the Interim Order, the proposed Final Order, or the Store Closing Procedures, as applicable, which dispute relates to any Liquidation Sale Laws (a “**Reserved Dispute**”), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days following entry of the Interim Order or service of any Additional Closing Store List, as applicable, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the “**Dispute Notice**”) explaining the nature of the dispute to: (a) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com) and Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: Caroline Reckler,

Asif Attarwala, and Brett Newman (caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com); (b) the U.S. Trustee, 844 King Street, Suite 2207, Lock Box 35, Wilmington, DE 19801, Attn: Jane Leamy (jane.m.leafy@usdoj.gov); (c) counsel to the administrative agent under the DIP Term Facility (the “**DIP Term Agent**”), Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, NY 10019, Attn: Erin E. Trigg and Samuel S. Kohn (trigg.erin@dorsey.com and kohn.samuel@dorsey.com); (d) counsel to the Ad Hoc Group of Crossover Lenders, Milbank LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067, Attn: Mark Shinderman (mshinderman@milbank.com) and Daniel B. Denny (ddenny@milbank.com); (e) counsel to the administrative agent under the DIP ABL FILO Facility (the “**DIP ABL FILO Agent**”), Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, NY 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); (f) counsel to the Ad Hoc FILO Term Lender Group, (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (g) the indenture trustee for the Debtors’ prepetition convertible notes, The Bank of New York Mellon Trust Company, N.A., 525 William Penn Place, 38th Floor, Pittsburgh, PA 15259, Attn: Corporate Trust Administration and BNY Mellon Corporate Trust, US Corporate Client Service Management, 500 Ross Street, 12th Floor, Pittsburgh, PA 15262, Attn: Mindy M. Wrzesinski (Melinda.m.wrzesinski@bnymellon.com); (h) lead counsel to the Consultant, Tiger Capital Group, 60 State Street, 11<sup>th</sup> Floor, Boston, MA 02109, Attn: Mark P. Naughton (MNaughton@tigergroup.com); and (i) counsel to any statutory committee appointed in these Chapter 11 Cases. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within 15 days after service of the Dispute Notice, the Governmental Unit may file a motion with the Court requesting that the Bankruptcy Court resolve the Reserved Dispute (a “**Dispute Resolution Motion**”).

- d. In the event that a Dispute Resolution Motion is filed, nothing in the Interim Order or the Final Order, as applicable, shall preclude the Debtors, a landlord, or any other interested party from asserting (i) that the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code, or (ii) that neither the terms of the Interim Order or the Final Order nor the conduct of the Debtors pursuant to the Interim Order or the Final Order violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of the Interim Order or the Final Order or to limit or interfere with the Debtors’ ability to conduct or to continue to conduct the Store Closings pursuant to the Interim Order or the Final Order, absent further order of the Court. Upon the entry of the Interim Order or the Final Order, as applicable, the Court grants authority for the Debtors to conduct the Store Closings pursuant to the terms of the Interim Order or the Final Order, as applicable, the Store Closing Procedures and to take all actions reasonably related thereto or arising in connection therewith. The Governmental Unit will be

entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in the Interim Order or the Final Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.

- e. If, at any time, a dispute arises between the Debtors and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in the Interim Order or the Final Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (c) and (d) above by serving a notice to the other party and proceeding thereunder in accordance with those subparagraphs. Any determination with respect to whether a particular law is a Liquidation Sale Law shall be made *de novo*.

#### IV. FAST PAY LAWS

19. Many states in which the Debtors operate have laws and regulations that require the Debtors to pay their employees in the U.S. Closing Stores contemporaneously with his or her termination (the “*Fast Pay Laws*” and, together with the Liquidation Sale Laws, the “*Applicable State Laws*”). These laws often require payment to occur immediately or within a period of only a few days from the date an employee is terminated.

20. The nature of the Store Closings contemplated by this Motion will result in many employees being terminated at or near the end of the Store Closings. To be clear, the Debtors intend to pay their terminated employees as expeditiously as possible, under normal payment procedures, and pursuant to applicable Court order.<sup>7</sup> Moreover, the Debtors’ postpetition debtor-in-possession financing budget expressly contemplates the payment of employee wages in the ordinary course during the Store Closings. The Debtors therefore believe that their current systems will allow their employees to be paid expeditiously and in accordance with any Applicable State Laws. However, given the number of employees who will likely be terminated in connection with

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<sup>7</sup> The Debtors are seeking such relief pursuant to the *Motion of Debtors for Orders (A) Authorizing Payment of Certain Prepetition Workforce Obligations, (B) Authorizing Continuance of Workforce Programs, (C) Authorizing Payment of Withholding and Payroll-Related Taxes, and (D) Authorizing Payment of Prepetition Claims Owing to Workforce Program Administrators*, (the “*Wages Motion*”) filed contemporaneously herewith.

the Store Closings, the Debtors request a waiver of compliance with the Applicable State Laws to the extent that the Debtors' payroll systems limit their ability to so comply.

#### **V. STORE CLOSING BONUS PLAN**

21. Through this Motion, the Debtors are requesting the authority, but not the obligation, to pay a one thousand dollar (\$1,000) incentive payment (the "***Store Closing Bonuses***") to non-insider store managers (and in some cases associates in charge of a store, if the store does not have a store manager) at the stores where Store Closings will occur in the U.S. and Canada who remain in the employ of the Debtors during the Store Closings (the "***Store Closing Bonus Plan***"). The total aggregate cost of the Store Closing Bonus Plan will vary depending on how many stores ultimately conduct Store Closings. The Debtors believe that the Store Closing Bonus Plan will motivate managers during the Store Closings and will enable the Debtors to retain those managers necessary to successfully complete the Store Closings.

22. Providing such non-insider bonus benefits is critical to ensuring that key employees that will be affected by the reduction in the Debtors' workforce due to the Store Closings will continue to provide critical services to the Debtors during the ongoing Store Closing process. For the avoidance of doubt, the Debtors do not propose to make any payment on account of Store Closing Bonuses to any insiders.

23. Accordingly, the Debtors respectfully submit that the Store Closing Bonus Plan is in the best interests of their estates and request that the Court authorize the payments under the Store Closing Bonus Plan as a sound exercise of their business judgment.

## BASIS FOR RELIEF

### **I. THE DEBTORS HAVE A VALID BUSINESS JUSTIFICATION FOR THE STORE CLOSINGS.**

24. Section 363(b)(1) of the Bankruptcy Code, which governs asset sales outside of a debtor's ordinary course of business, provides that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). When selling assets outside of the ordinary course of business, a debtor must articulate a valid business justification to obtain court approval. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 394–95 (3d Cir. 1996) (citation omitted); *In re Abbotts Dairies, Inc.*, 788 F.2d 143, 147-48 (3d Cir. 1986) (implicitly adopting the "sound business judgment" test of *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070-71 (2d Cir. 1983)); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991) (concluding that the Third Circuit adopted the "sound business judgment" test in the *Abbotts Dairies* decision). When a debtor demonstrates a valid business justification for a decision, a strong presumption arises "that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (holding that the Delaware business judgment rule has "vitality by analogy" in chapter 11 cases, especially where the debtor is a Delaware corporation).

25. Store closing or liquidation sales are a routine occurrence in chapter 11 cases involving retail debtors. *See, e.g., In re Ames Dep't Stores, Inc.*, 136 B.R. 357, 359 (S.D.N.Y. 1992) (noting that liquidation sales are an important part of "overriding federal policy requiring [a] Debtor to maximize estate assets").

26. Sufficient business justification exists to approve the proposed Store Closings under section 363(b)(1) of the Bankruptcy Code. The Debtors, with the assistance of their advisors, have determined that the Store Closings represent the best alternative to maximize recoveries to the Debtors' estates with respect to the Merchandise and the FF&E and provide the Debtors with much-needed liquidity. There are meaningful amounts of Merchandise, in the aggregate, that will be monetized most efficiently and quickly through an orderly process conducted in consultation with an experienced liquidation firm. Further, delay in commencing the Store Closings would diminish the recovery tied to monetization of the Merchandise and the FF&E for several important reasons. Many of the Closing Stores fail to generate positive cash flow currently, or will fail to do so in the short term, and therefore will become a significant drain on liquidity. As such, the Debtors will realize an immediate benefit in terms of financial liquidity upon the sale of the Merchandise and the FF&E and the termination of operations at the Closing Stores. Further, uninterrupted and orderly Store Closings will allow the Debtors to timely reject leases associated with the Closing Stores and, therefore, avoid the accrual of unnecessary administrative expenses for rent and related costs. Suspension of the Store Closings until entry of the Final Order may cause the Debtors to incur claims for rent at many of these stores, creating a further drain on the Debtors' liquidity.

27. Courts in this district and courts in other jurisdictions have approved sale guidelines in chapter 11 cases on an interim basis. Importantly, a number of courts have granted retail debtors first day authority to implement such procedures. *See, e.g., In re Destination Maternity Corporation*, No. 19-12256 (BLS) (Bankr. D. Del. Oct. 22, 2019) [Docket No. 71] (approving procedures on an interim basis); *In re Fred's, Inc.*, No. 19-11984 (CSS) (Bankr. D. Del. Sept. 11, 2019) [Docket No. 82] (same); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Mar.

15, 2019) [Docket No. 74] (same); *In re Things Remembered, Inc.*, No. 19-10234 (KG) (Bankr. D. Del. Feb. 7, 2019) [Docket No. 64] (same); *In re Payless Holdings LLC*, No. 17-42267 (Bankr. E.D. Mo. May 17, 2017) [Docket No. 786] (same).

**II. THE COURT SHOULD APPROVE THE SALE OF THE MERCHANDISE AND THE FF&E FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES, AND OTHER INTERESTS UNDER BANKRUPTCY CODE SECTION 363(F).**

28. The Debtors request approval to sell the Merchandise and the FF&E on a final “as is” basis, free and clear of any and all liens, claims, and encumbrances in accordance with section 363(f) of the Bankruptcy Code. A debtor in possession may sell property under sections 363(b) and 363(f) “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied: (a) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (b) such entity consents; (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (d) such interest is in bona fide dispute; or (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f); *see also Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that since section 363(f) is written in the disjunctive, the court may approve a sale free and clear if any one subsection is met). Moreover, the Third Circuit has indicated that a debtor possesses broad authority to sell assets free and clear of liens. *See In re TWA Inc.*, 322 F.3d 283, 289 (3d Cir. 2003).

29. Although the term “any interest” is not defined in the Bankruptcy Code, the Third Circuit has noted that the trend in modern cases is toward “a broader interpretation which includes other obligations that may flow from ownership of the property.” *Folger Adam Security, Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 258–59 (3d Cir. 2000). As the Fourth Circuit held in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581–82 (4th Cir. 1996) (cited with approval by the



Third Circuit in *Folger Adam*), the scope of section 363(f) is not limited to *in rem* interests in a debtor's assets. Thus, a debtor can sell its assets under section 363(f) "free and clear of successor liability that otherwise would have arisen under federal statute." *Folger Adam*, 209 F.3d at 258.

30. With respect to any other party asserting a lien, claim, or encumbrance against the Merchandise and the FF&E, the Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f). In connection with the sale of the Merchandise and the FF&E, the Debtors propose that any liens, claims, and encumbrances asserted against the Merchandise and the FF&E be transferred to and attach to the amounts earned by the Debtors under the Store Closings with the same force, effect, and priority as such liens currently have on the Merchandise and the FF&E.

### **III. THE COURT SHOULD WAIVE COMPLIANCE WITH APPLICABLE STATE LAWS AND APPROVE THE DISPUTE RESOLUTION PROCEDURES.**

31. The Debtors' ability to conduct the Store Closings in accordance with the applicable Store Closing Procedures and without strict compliance with all Applicable State Laws is critical to the Store Closings' success. Although the Debtors intend to comply with state and local health and safety laws and consumer protection laws in conducting the Store Closings, many Liquidation Sale Laws require special and cumbersome licenses, waiting periods, time limits, and other procedures for store closing, liquidation, or similar sales.

32. To eliminate the time, delay, and expense associated with the administrative procedures necessary to comply with the Applicable State Laws, the Debtors propose the Store Closing Procedures as a way to streamline the administrative burdens on their estates while still adequately protecting the broad and varied interests of both landlords and applicable governmental agencies charged with enforcing any Liquidation Sale Laws that may apply to the Store Closings. As such, the Debtors believe the Store Closing Procedures mitigate any concerns that their

landlords or governmental agencies may raise with respect to the Store Closings and, therefore, the requested relief is in compliance with any applicable Liquidation Sale Laws.

33. The Debtors submit that there is strong support for granting them the authority to not comply with the Liquidation Sale Laws. **First**, it is generally accepted that many state statutes and regulations provide that, if a liquidation or bankruptcy sale is court-authorized, a company need not comply with the Liquidation Sale Laws. *See, e.g.*, Ark. Code Ann. § 4-74-103 (exempting from the provisions of the chapter sales pursuant to any court order); Fla. Stat. Ann. 559.25(2) (same); Ga. Code Ann. § 10-1-393(b)(24)(C)(iv) (same); 815 ILCS 350/3 (same); La. Rev. Stat. Ann. § 51:43(1) (same); N.Y. Gen. Bus. Law § 584(a) (same); Or. Rev. Stat. Ann. § 646A.100(2)(b) (“‘Going out of business sale’ does not include a sale conducted by a bankruptcy trustee.”); Tex. Bus. & Com. Code Ann. § 17.91(3) (exempting from subchapter sales conducted pursuant to court order). **Second**, pursuant to section 105(a) of the Bankruptcy Code, the Court has the authority to permit the Store Closings to proceed notwithstanding contrary Applicable State Laws as it is essential to maximize the value of the Debtors’ business. **Third**, this Court will be able to supervise the Store Closings because the Debtors and their assets are subject to this Court’s exclusive jurisdiction. *See* 28 U.S.C. § 1334. As such, creditors and the public interest are adequately protected by notice of this Motion and the ongoing jurisdiction and supervision of the Court because the Debtors are only seeking interim relief at the outset of these cases, and parties in interest will be able to raise any further issues at the final hearing.

34. Further, bankruptcy courts have consistently recognized, with limited exception, that federal bankruptcy law preempts state and local laws that contravene the underlying policies of the Bankruptcy Code. *See Belculfine v. Aloe (In re Shenango Group, Inc.)*, 186 B.R. 623, 628 (Bankr. W.D. Pa. 1995) (“Trustees and debtors-in-possession have unique fiduciary and legal

obligations pursuant to the bankruptcy code. . . . [A] state statute [] cannot place burdens on [a debtor] where the result would contradict the priorities established by the federal bankruptcy code.”), *aff’d*, 112 F.3d 633 (3d Cir. 1997).

35. Courts in some jurisdictions have found that preemption of state law is not appropriate if the laws deal with public health and safety. *See Baker & Drake, Inc. v. Pub. Serv. Comm’n of Nev. (In re Baker & Drake, Inc.)*, 35 F.3d 1348, 1353–54 (9th Cir. 1994) (holding that Bankruptcy Code did not preempt state law prohibiting taxicab leasing that was promulgated in part as public safety measure). However, preemption is appropriate where, as is the case here, the only state laws involved concern economic regulation rather than the protection of public health and safety. *See In re Baker & Drake, Inc.*, 35 F.3d at 1353 (finding that “federal bankruptcy preemption is more likely . . . where a state statute is concerned with economic regulation rather than with protecting the public health and safety”).

36. Under the circumstances of these Chapter 11 Cases, enforcing the strict requirements of the Liquidation Sale Laws would undermine the fundamental purpose of section 363(b) of the Bankruptcy Code by placing constraints on the Debtors’ ability to maximize estate assets for the benefit of creditors. Accordingly, authorizing the Store Closings without the delays and burdens associated with obtaining various state and local licenses, observing state and local waiting periods or time limits, and/or satisfying any additional requirements with respect to advertising and similar items is necessary and appropriate. The Debtors do not seek a general waiver of all state and local law requirements, but only those that apply specifically to retail liquidation sales. Indeed, the requested waiver is narrowly tailored to facilitate the successful consummation of the Store Closings. Moreover, the Debtors will comply with applicable state and local public health and safety laws, and applicable tax, labor, employment, environmental, and consumer protection laws,

including consumer laws regulating deceptive practices and false advertising. Finally, the Dispute Resolution Procedures provide an ordered means for resolving any disputes arising between the Debtors and any Governmental Units with respect to the applicability of any Liquidation Sale Laws, and should therefore be approved.

37. Further, this Court has recognized that the Bankruptcy Code preempts certain state laws and have granted relief similar to that requested herein. *See, e.g., In re Coldwater Creek Inc.*, No. 14-10867 (BLS) (Bankr. D. Del. May 7, 2014) [Docket No. 355] (stating that debtors were authorized to conduct store closing sales under the terms of the order “without the necessity of further showing compliance” with liquidation laws); *In re Boscov’s*, No. 08-11637 (KG) (Bankr. D. Del. Aug. 15, 2008) [Docket No. 163] (ordering that “[g]overnmental units shall not fine, assess or otherwise penalize Debtors or Agent (or any of the landlords of the Closing Stores) for conducting or advertising the Store Closing Sales in a manner inconsistent with Liquidation Sales Laws, provided that the Store Closing Sales are conducted and advertised in compliance with this Order”); *In re Goody’s Family Clothing, Inc.*, No. 08-11133 (CSS) (Bankr. D. Del. June 13, 2008) [Docket No. 116] (ordering that the “Store Closing Sales at the Closing Stores shall be conducted by the Debtors and the Store Closing Agent without the necessity of compliance with any federal, state or local statute or ordinance, lease provision or licensing requirement affecting store closing, ‘going out of business’, liquidation or auction sales, or affecting advertising, including signs, banners, and posting of signage, other than Safety Laws and General Laws”).

#### **IV. THE COURT SHOULD WAIVE COMPLIANCE WITH ANY RESTRICTION IN THE LEASES AND APPROVE THE STORE CLOSING PROCEDURES.**

38. Certain of the Debtors’ leases governing the premises of the stores subject to any Store Closings may contain provisions purporting to restrict or prohibit the Debtors from conducting store closing, liquidation, or similar sales. Such provisions have been held to be

unenforceable in chapter 11 cases as they constitute an impermissible restraint on a debtor's ability to properly administer its reorganization case and maximize the value of its assets under section 363 of the Bankruptcy Code. *See Ames Dep't Stores*, 136 B.R. at 359 (deciding that enforcement of such lease restrictions would "contravene overriding federal policy requiring Debtor to maximize estate assets. . . ."); *In re R. H. Macy & Co., Inc.*, 170 B.R. 69, 73–74 (Bankr. S.D.N.Y. 1994) (holding that the lessor could not recover damages for breach of a covenant to remain open throughout the lease term, because the debtor had a duty to maximize the value to the estate and the debtor fulfilled this obligation by holding a store closing sale and closing the store); *In re Tobago Bay Trading Co.*, 112 B.R. 463, 467-68 (Bankr. N.D. Ga. 1990) (finding that a debtor's efforts to reorganize would be significantly impaired to the detriment of creditors if lease provisions prohibiting a debtor from liquidating its inventory were enforced); *In re Libson Shops, Inc.*, 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982) (holding restrictive lease provision unenforceable in chapter 11 case where debtor sought to conduct a liquidation sale).

39. This Court has long held that restrictive lease provisions affecting store liquidation sales in chapter 11 cases are unenforceable.

40. Thus, to the extent that such provisions or restrictions exist in any of the leases of the stores subject to the Store Closings, the Debtors request that the Court authorize the Debtors to conduct the Store Closings without reference to any such restrictive provisions or interference by any landlords or other persons affected, directly or indirectly, by the Store Closings; provided, however, that the Canadian Store Closing Procedures, including, without limitation, the Canadian Sale Guidelines, shall control Store Closings in Canada.

**V. THE STORE CLOSING BONUS PLAN IS A SOUND EXERCISE OF THE DEBTORS' BUSINESS JUDGMENT AND SHOULD BE APPROVED.**

41. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to use property of the estate when such use has a “sound business purpose” and when the use of the property is proposed in good faith. *See In re W.A. Mallory Co., Inc.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997); *In re WBQ P’ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995).

42. Courts generally require a debtor to demonstrate that a valid business purpose exists for the use of estate property in a manner that is outside the ordinary course of business. *See, e.g., In re Lionel Corp.*, 722 F.2d 1063, 1070–71 (2d Cir. 1983). The debtor’s articulation of a valid business justification raises a presumption that the debtor’s decision was made on an informed basis, in good faith, and with the honest belief that the action is in the best interest of the company. *See In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992). Furthermore, once “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). The business judgment rule shields a debtor’s management from judicial second-guessing. *See In re Integrated Res., Inc.*, 147 B.R. at 656; *Johns-Manville*, 60 B.R. at 615–16 (noting that “the Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions”). Thus, if a debtor’s actions satisfy the business judgment rule, then the actions in question should be approved under section 363(b)(1) of the Bankruptcy Code.

43. In this case, the Store Closing Bonus Plan is a sound exercise of the Debtors’ business judgment and is in the best interests of the Debtors and their estates. The store

managers—along with their skills, knowledge, and hard work—are more critical now than ever. Through their commitment and performance, they can ensure that the Debtors continue to maximize stakeholder value in a challenging economic environment and at a time when those employees’ positions may soon be terminated. Additionally, the Store Closing Bonus Plan involves a compensation structure often used in other restructuring situations to incentivize employees to continue optimal performances despite the added stress inherent in the chapter 11 process.

44. The Store Closing Bonus Plan is comparable to employee incentive plans regularly paid as “expenses of sale” by liquidating agents in other “store closing” and similar-themed sales. As such, courts have approved incentive payments similar to those contemplated by the Store Closing Bonus Plan. *See, e.g., In re Destination Maternity Corporation*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 14, 2019) [Docket No. 252] (authorizing store closing retention bonus program on a final basis); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Mar. 15, 2019) [Docket No. 74] (same); *In re Toys “R” Us, Inc.*, No. 17-34665 (KLP) (Bankr. E.D. Va. Mar. 22, 2018) [Docket No. 2344] (same); *In re rue21, Inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. June 12, 2017) [Docket No. 507] (same).

45. The Debtors respectfully submit that the Store Closing Bonus Plan is a sound exercise of the Debtors’ business judgment and should be approved pursuant to section 363 of the Bankruptcy Code as it is in the best interests of the Debtors, their estates, and all parties in interest in these Chapter 11 Cases.

## **VI. THE COURT SHOULD AUTHORIZE THE ASSUMPTION OF THE CONSULTING AGREEMENTS.**

46. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract . . . of the

debtor.” The standard governing bankruptcy court approval of a debtor’s decision to assume or reject an executory contract is whether the debtor’s reasonable business judgment supports such assumption or rejection. *See, e.g., In re HQ Glob. Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that debtor’s decision to assume or reject an executory contract is governed by the business judgment standard, and that such decision may only be overturned if found to be a product of bad faith, whim, or caprice); *see also In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of leases “will be a matter of business judgment by the bankruptcy court”).

47. The business judgment test “requires only that the trustee [or debtor-in-possession] demonstrate that [assumption] or rejection of the executory contract will benefit the estate.” *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987). Any more exacting scrutiny would slow the administration of the debtor’s estate and increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially. *See Richmond Leasing Co. v. Capital Bank*, 762 F.2d 1303, 1311 (5th Cir. 1985).

48. Assumption of the Consulting Agreements is beneficial to the Debtors’ estates, and, therefore, is a reasonable exercise of the Debtors’ business judgment. In consultation with their advisors, the Debtors have determined that the stores to be closed are unduly burdensome, and the Merchandise and the FF&E should be liquidated for the benefit of the Debtors’ estates and their creditors. The Debtors determined that entering into the Consulting Agreements, after engaging in extensive negotiations with the Consultant, will provide the greatest return to the Debtors’ estates for the Merchandise and the FF&E. The Debtors believe, in their business judgment, that the terms



set forth in the Consulting Agreements constitute the best available alternative for the conduct of the Store Closings in both the U.S. and Canada.

49. The Consultant has extensive expertise in conducting liquidation sales and can oversee and assist in the management and implementation of the Store Closings in an efficient and cost-effective manner. Assumption of the Consulting Agreements upon entry of the Final Order and the granting by the CCAA Court of a recognition and approval order in respect thereof will enable the Debtors to utilize the skills and resources of the Consultant to effectively and efficiently conduct the Store Closings for the benefit of all stakeholders. Given the number of stores and the particular issues in administering the Store Closings, the Debtors may not be able to retain a liquidator able to conduct the process as efficiently and effectively as the Consultant, who already has significant experience with the Debtors' business operations and outlay of stores in both the U.S. and Canada. If the Consulting Agreements are not approved, operative, and effective on an interim basis, the Store Closings would lose the benefit of the Consultant's oversight and might be delayed or suspended entirely, leading to a loss of additional liquidity and increased administrative expenses. Moreover, it is imperative that the Consulting Agreements be approved on an interim basis so that the Debtors and the Consultant can immediately begin conducting the Store Closings and closing stores in accordance with the Store Closing Procedures, which will generate more proceeds for the Debtors and their estates.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND  
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

50. Certain aspects of the relief requested herein are subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant this relief on an expedited basis if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth

herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

51. Additionally, with respect to any aspect of the relief sought herein that constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

#### **RESERVATION OF RIGHTS**

52. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

## NOTICE

53. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; (p) the Dispute Notice Parties; (q) the counterparties to the Debtors' real property leases; and (r) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank.]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Orders, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

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*Proposed Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re. Docket No. ___

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**INTERIM ORDER GRANTING DEBTORS' MOTION FOR  
INTERIM AND FINAL ORDERS (A) APPROVING PROCEDURES  
FOR STORE CLOSING SALES, (B) AUTHORIZING CUSTOMARY  
BONUSES TO MANAGERS OF STORES, (C) AUTHORIZING ASSUMPTION  
OF THE CONSULTING AGREEMENTS AND (D) GRANTING RELATED RELIEF**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an interim order (this “*Interim Order*”), (a) authorizing and approving the conduct of store closing or similar themed sales (the “*Store Closings*”) in accordance with the terms of the U.S. and Canadian store closing sale procedures (the “*U.S. Store Closing Procedures*” and the “*Canadian Store Closing Procedures*”, respectively, and, together, the “*Store Closing Procedures*”) attached hereto as **Exhibit 1**, with such sales to be free and clear of all liens, claims and encumbrances; (b) authorizing the Debtors to pay customary bonuses to non-insider managers of the stores where Store Closing sales will occur; (c) authorizing the Debtors to assume the Consulting Agreements; and (d) granting related

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:<sup>3</sup>**

A. The Debtors have advanced sound business reasons for seeking to implement the Store Closing Procedures and assume the Consulting Agreements, as set forth in the Motion and at the Hearing, and such relief is in the best interests of the Debtors and their estates.

B. The Store Closing Procedures are reasonable, and the conduct of the Store Closings in accordance with the applicable Store Closing Procedures will provide an efficient means for the Debtors to dispose of the Merchandise and the FF&E and will maximize the returns on the Merchandise and the FF&E.

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate.

C. The Consulting Agreements were negotiated, proposed, and entered into by the Debtors and the Consultant without collusion, in good faith, and from arm's-length bargaining positions, and the operation and effectiveness of the Consulting Agreements on an interim basis is a sound exercise of the Debtors' business judgment.

D. The relief set forth herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates and the Debtors have demonstrated good, sufficient, and sound business purposes and justifications for the relief approved herein.

E. The Store Closings are in the best interest of the Debtors' estates.

F. The entry of this Interim Order is in the best interest of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein; and now therefore it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.

2. The Debtors are authorized, but not directed, to make payments under the Store Closing Bonus Plan in an amount not to exceed \$342,000 on an interim basis.

3. The Debtors and the Consultant are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion. The failure to specifically include any provisions of the Consulting Agreements in this Interim Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Consulting Agreements and all of their provisions, payments, and transactions be, and hereby are, authorized and approved as and to the extent provided in this Interim Order.

4. To the extent of any conflict between this Interim Order, the Consulting Agreements, and the Store Closing Procedures, the terms of this Interim Order shall control. Notwithstanding



any other term of this Interim Order, the Canadian Store Closing Procedures and the Canadian Sale Guidelines shall control in respect of Store Closings in Canada.

**I. AUTHORITY TO ENGAGE IN CLOSING SALES AND CONDUCT STORE CLOSINGS.**

5. The Debtors and the Consultant are authorized, on an interim basis pending the Final Hearing (as defined below), pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to conduct Store Closings at the Closing Stores in accordance with this Interim Order, the applicable Store Closing Procedures, and the Consulting Agreements as may be modified by a Side Letter (as defined below) between the Debtors and the landlords at the closing locations.

6. The Store Closing Procedures are approved in their entirety on an interim basis. The Store Closing Procedures shall be used for all permitted Store Closings in these Chapter 11 Cases, unless otherwise ordered.

7. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Interim Order, the applicable Store Closing Procedures, and the Consulting Agreements

8. All entities that are presently in possession of some or all of the Merchandise or FF&E in which the Debtors hold an interest that are or may be subject to this Interim Order hereby are directed to surrender possession of such Merchandise or FF&E to the Debtors.

9. Neither the Debtors nor any of their officers, employees, or agents shall be required to obtain the approval of any third party, including, without limitation, any Governmental Unit (as defined in Bankruptcy Code section 101(27)) or landlord, to conduct the Store Closings and to take the related actions authorized herein.

## II. CONDUCT OF THE SALES.

10. All media in which the Store Closings may be advertised and all landlords are directed to accept this Interim Order as binding authority so as to authorize the Debtors and the Consultant to conduct the Store Closings and the sale of Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement), including, without limitation, to conduct and advertise the sale of the Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement) in the manner contemplated by and in accordance with this Interim Order, the Store Closing Procedures, and the Consulting Agreements.

11. The Debtors and the Consultant are hereby authorized to take such actions as may be necessary and appropriate to conduct the Store Closings without necessity of further order of this Court as provided in this Interim Order, the Store Closing Procedures, and the Consulting Agreements, including, but not limited to, advertising the sale as a “store closing sale,” “sale on everything,” “everything must go,” or similar-themed sales through the posting of signs (including the use of exterior banners at non-enclosed mall closing locations, and at enclosed mall closing locations to the extent the applicable closing location entrance does not require entry into the enclosed mall common area), use of signwalkers, and street signage; *provided, however*, that only Debtor-approved terminology will be used at each Closing Store in connection with the Store Closings.

12. Pursuant to the U.S. Consulting Agreement, and subject to the Debtors’ prior written approval, the Consultant is authorized to supplement the Merchandise in the Closing Stores with Additional Consultant Goods pursuant to the Debtors’ prior written approval of a plan with respect to the placement and sale of such Additional Consultant Goods, and provided that any such supplementing with Additional Consultant Goods must be of like kind and no lesser quality than goods sold in the Closing Stores prior to the Petition Date. Sales of Additional Consultant Goods

shall be run through the Debtors' cash register systems; provided, however, that the Consultant shall mark the Additional Consultant Goods using either a "dummy" SKU or department number or in such other manner so as to distinguish the sale of Additional Consultant Goods from the sale of Merchandise.

13. Pursuant to the U.S. Consulting Agreement, all transactions relating to the Additional Consultant Goods are, shall be construed as, and are acknowledged by the Debtors to be, a true consignment from Consultant to the Debtors under Article 9 of the Uniform Commercial Code in effect in the State of Delaware (the "*UCC*") and not a consignment for security purposes. At all times and for all purposes, the Additional Consultant Goods and their proceeds shall be the exclusive property of the Consultant, and no other person or entity (including, without limitation, the Debtors, or any third person claiming a security interest in the Debtors' property, including any of the Debtors' secured lenders) shall have any claim against any of the Additional Consultant Goods or the proceeds thereof. The Additional Consultant Goods shall at all times remain subject to the exclusive control of the Consultant. Pursuant to the U.S. Consulting Agreement, and to the extent necessary, Consultant is hereby granted a first priority security interest in and lien upon (i) the Additional Consultant Goods and (ii) the Additional Consultant Goods proceeds.

14. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the sale of the Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement), to the extent that, prior to the Final Hearing (as defined below), disputes arise during the course of such sale regarding laws regulating the use of sign-walkers, banners, or other advertising and the Debtors are unable to resolve the matter consensually, any party may request an immediate telephonic hearing with this Court pursuant to these provisions. Such hearing will, to the extent practicable,

be scheduled initially no later than the earlier of (a) the Final Hearing (as defined below), or (b) within two (2) business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

15. The sale of the Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement) shall be conducted by the Debtors notwithstanding any restrictive provision of any lease, sublease, restrictive covenant, or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Store Closings (including the sale of the Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement)) and the rejection of leases, abandonment of assets, or “going dark” provisions, and such provisions shall not be enforceable in conjunction with the Store Closings. Breach of any such provisions in these Chapter 11 Cases in conjunction with the Store Closings shall not constitute a default under a lease or provide a basis to terminate the lease; *provided* that the Store Closings are conducted in accordance with the terms of this Interim Order and the applicable Store Closing Procedures. Subject to the approval of Debtors’ secured lenders, including the Ad Hoc Group of Crossover Lenders and the Ad Hoc FILO Term Lender Group, the Debtors and landlords of the Closing Stores are authorized to enter into agreements (“*Side Letters*”) between themselves modifying the Store Closing Procedures without further order of the Court and such Side Letters shall be binding as among the Debtors and any such landlords. In the event of any conflict between the Store Closing Procedures and any Side Letter, the terms of such Side Letter shall control. The Expense Budget attached to each of the Consulting Agreements may only be modified according to the procedures provided by the respective Consulting Agreements and after consultation with counsel to the Ad Hoc Group of Crossover Lenders and counsel to the Ad Hoc FILO Term Lender Group.

16. Except as expressly provided for herein or in the Store Closing Procedures, and except with respect to any Governmental Unit (as to which paragraphs 24 and 25 shall apply) no person or entity, including, but not limited to, any landlord, licensor, service provider, utility, or creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Store Closings or the sale of the Merchandise, FF&E, or Additional Consultant Goods (with respect to the U.S. Consulting Agreement), or the advertising and promotion (including the posting of signs and exterior banners or the use of signwalkers) of such sales, and all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, service provider, utility, and creditor and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, obstructing, or otherwise impeding the conduct of the Store Closings, and/or (b) instituting any action or proceeding in any court (other than this Court) or administrative body seeking an order or judgment against, among others, the Debtors, or the landlords at the Closing Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Store Closings or other liquidation sales at the Closing Stores and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

17. In accordance with and subject to the terms and conditions of the Consulting Agreements, the Consultant shall have the right to use the Closing Stores and all related Closing Store services, furniture, fixtures, equipment, and other assets of the Debtors for the purpose of conducting the Store Closings, free of any interference from any entity or person, subject to compliance with the applicable Store Closing Procedures and this Interim Order.

18. All sales of the Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement) shall be “as is” and final. Returns related to the purchase of Store Assets shall not be accepted at stores that are not participating in the Store Closings. However, as to the Closing Stores, all state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms “as is” or “final sales.”

19. The Consultant shall accept the Debtors’ validly-issued gift certificates and gift cards that were issued by the Debtors before the commencement of the Store Closings in accordance with the Debtors’ gift certificate and gift card policies and procedures as they existed on the Petition Date, and accept returns of merchandise sold by the Debtors before the commencement of the Store Closings for the first thirty (30) days of the Store Closings, provided that such returns are otherwise in compliance with the Debtors’ return policies in effect as of the Petition Date.

20. The Consultant shall not be liable for sales taxes except with respect to the Additional Consultant Goods (with respect to the U.S. Consulting Agreement), and as expressly provided in the Consulting Agreements, and the payment of any and all sales taxes is the responsibility of the Debtors, subject to Consultant’s obligation to collect and remit the sales taxes attributable to the sale of Additional Consultant Goods pursuant to the U.S. Consulting Agreement. The Debtors are directed to remit all taxes arising from the Store Closings to the applicable Governmental Units as and when due; *provided* that in the case of a *bona fide* dispute the Debtors are only directed to pay such taxes upon the resolution of the dispute, if and to the extent that the dispute is decided in favor of the applicable Governmental Unit. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor

or any other party, other than the applicable Governmental Unit for which the sales taxes are collected. This Interim Order does not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state law, and does not constitute a declaratory judgment with respect to any party's liability for taxes under state law.

21. Pursuant to section 363(f) of the Bankruptcy Code, the Consultant, on behalf of the Debtors, is authorized to sell Store Assets—and all sales of Store Assets whether by the Consultant or the Debtors, shall be—free and clear of any and all of any liens, claims, encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state, and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, ERISA, CERCLA, alter ego and other liabilities, causes of action, contract rights, and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all “claims” as defined in section 101(5) of the Bankruptcy Code), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable (collectively, “*Encumbrances*”); as provided for herein because in each case, one or more of the standards set forth in section 363(f)(1)–(5) has been satisfied; *provided, however*, that any such Encumbrances shall attach to the proceeds of the sale of the Merchandise and the FF&E with the same validity, in the amount, with the same priority as, and to the same extent that any such Encumbrances have with respect to the Merchandise and the FF&E, subject to any claims and

defenses that any party may possess with respect thereto and subject to the Consultant's fees and expenses (as provided in the Consulting Agreements).

22. No FF&E sold or abandoned by the Debtors will contain personal and/or confidential information about the Debtors' employees and/or customers.

23. The Debtors are authorized and empowered to transfer Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement) among, and into, the Closing Stores.

### **III. DISPUTE RESOLUTION PROCEDURES WITH GOVERNMENTAL UNITS.**

24. Nothing in this Interim Order or the Store Closing Procedures releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Interim Order. Nothing contained in this Interim Order or the Store Closing Procedures shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with its rights and obligations as debtor in possession under the Bankruptcy Code. The Store Closings shall not be exempt from laws of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, "**General Laws**"). Nothing in this Interim Order, the Consulting Agreements, or the Store Closing Procedures, shall alter or affect obligations to comply with all applicable federal safety laws and regulations. Nothing in this Interim Order shall be deemed to bar any Governmental Unit (as such term is defined in section 101(27) of the Bankruptcy Code) from enforcing General Laws, subject to the Debtors' rights to assert in that



forum or before this Court that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code or this Interim Order. Notwithstanding any other provision in this Interim Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Interim Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Interim Order shall be deemed to have made any rulings on any such issues.

25. To the extent that the sale of Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement) is subject to any Liquidation Sale Laws, including any federal, state or local statute, ordinance, or rule, or licensing requirement directed at regulating “going out of business,” “store closing,” similar inventory liquidation sales, or bulk sale laws, laws restricting safe, professional and non- deceptive, customary advertising such as signs, banners, posting of signage, and use of sign- walkers solely in connection with the sale and including ordinances establishing license or permit requirements, waiting periods, time limits, or bulk sale restrictions that would otherwise apply solely to the sale of the Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement), the Dispute Resolution Procedures in this section shall apply:

- a. Provided that the Store Closings are conducted in accordance with the terms of the Interim Order or the Final Order, as applicable, and the applicable Store Closing Procedures, and in light of the provisions in the laws of many Governmental Units (as defined in the Bankruptcy Code) that exempt court-ordered sales from their provisions, the Debtors will be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Store Closings in accordance with the terms of the Interim Order or the Final Order, as applicable, and the applicable Store Closing Procedures without the necessity of further showing compliance with any such Liquidation Sale Laws.
- b. Within three business days after entry of the Interim Order, the Debtors will serve by email, facsimile, or first-class mail, copies of the Interim Order, the proposed Final Order and the Store Closing Procedures on the following: (i) the landlords for the Closing Stores; (ii) the Attorney General’s office for each state in which the Store Closings are being held; (iii) the county consumer protection agency or

similar agency for each county in which the Store Closings are being held; (iv) the division of consumer protection for each state in which the Store Closings are being held; and (v) the chief legal counsel for each local jurisdiction in which the Store Closings are being held (collectively, the “**Dispute Notice Parties**”).

- c. With respect to any additional Closing Stores, within three business days after Court authorization to close additional stores (each, an “**Additional Closing Store List**”), the Debtors will serve by email, facsimile, or first-class mail, copies of the Interim Order or Final Order, as applicable, and the Store Closing Procedures on the Dispute Notice Parties. To the extent that there is a dispute arising from or relating to the Store Closings, the Interim Order, the proposed Final Order, or the Store Closing Procedures, as applicable, which dispute relates to any Liquidation Sale Laws (a “**Reserved Dispute**”), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days following entry of the Interim Order or service of any Additional Closing Store List, as applicable, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the “**Dispute Notice**”) explaining the nature of the dispute to: (a) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com) and Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com); (b) the U.S. Trustee, 844 King Street, Suite 2207, Lock Box 35, Wilmington, DE 19801, Attn: Jane Leamy (jane.m.leafy@usdoj.gov); (c) counsel to the DIP Term Agent, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, NY 10019, Attn: Erin E. Trigg and Samuel S. Kohn (trigg.erin@dorsey.com and kohn.samuel@dorsey.com); (d) counsel to the Ad Hoc Group of Crossover Lenders, Milbank LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067, Attn: Mark Shinderman (mshinderman@milbank.com) and Daniel B. Denny (ddenny@milbank.com); (e) counsel to the DIP ABL FILO Agent, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, NY 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); (f) counsel to the Ad Hoc FILO Term Lender Group, (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (g) the indenture trustee for the Debtors’ prepetition convertible notes, The Bank of New York Mellon Trust Company, N.A., 525 William Penn Place, 38th Floor, Pittsburgh, PA 15259, Attn: Corporate Trust Administration and BNY Mellon Corporate Trust, US Corporate Client Service Management, 500 Ross Street, 12th Floor, Pittsburgh, PA 15262, Attn: Mindy M. Wrzesinski (Melinda.m.wrzesinski@bnymellon.com); (h) lead counsel to the Consultant, Tiger Capital Group, 60 State Street, 11<sup>th</sup> Floor, Boston, MA 02109,

Attn: Mark P. Naughton (MNaughton@tigergroup.com); and (i) counsel to any statutory committee appointed in these Chapter 11 Cases. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within 15 days after service of the Dispute Notice, the Governmental Unit may file a motion with the Court requesting that the Bankruptcy Court resolve the Reserved Dispute (a “*Dispute Resolution Motion*”).

- d. In the event that a Dispute Resolution Motion is filed, nothing in the Interim Order or the Final Order, as applicable, shall preclude the Debtors, a landlord, or any other interested party from asserting (i) that the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code, or (ii) that neither the terms of the Interim Order or the Final Order nor the conduct of the Debtors pursuant to the Interim Order or the Final Order violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of the Interim Order or the Final Order or to limit or interfere with the Debtors’ ability to conduct or to continue to conduct the Store Closings pursuant to the Interim Order or the Final Order, absent further order of the Court. Upon the entry of the Interim Order or the Final Order, as applicable, the Court grants authority for the Debtors to conduct the Store Closings pursuant to the terms of the Interim Order or the Final Order, as applicable, the Store Closing Procedures and to take all actions reasonably related thereto or arising in connection therewith. The Governmental Unit will be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in the Interim Order or the Final Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.
- e. If, at any time, a dispute arises between the Debtors and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in the Interim Order or the Final Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (c) and (d) above by serving a notice to the other party and proceeding thereunder in accordance with those subparagraphs. Any determination with respect to whether a particular law is a Liquidation Sale Law shall be made *de novo*.

26. Subject to paragraphs 24 and 25 above, each and every federal, state, or local agency, departmental unit, or Governmental Unit with regulatory authority over the Store Closings, and all newspapers and other advertising media in which the Store Closings are advertised shall consider this Interim Order as binding authority that no further approval, license, or permit of any Governmental Unit shall be required, nor shall the Debtors be required, to post any bond, to conduct the Store Closings.

27. Within three business days of this Interim Order, the Debtors shall serve copies of this Interim Order and the Store Closing Procedures via e-mail, facsimile, or regular mail, on: (a) the United States Trustee for the District of Delaware; (b) counsel for the agent for the Debtors' postpetition financing facility; (c) counsel to the Ad Hoc Group of Crossover Lenders; (d) counsel to the Ad Hoc FILO Term Lender Group; (e) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (f) the indenture trustee for the Debtors' prepetition convertible notes; (g) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (h) the United States Attorney's Office for the District of Delaware; (i) the attorneys general for all 50 states and the District of Columbia; (j) the United States Department of Justice; (k) the Internal Revenue Service; (l) the Securities and Exchange Commission; (m) the United States Drug Enforcement Agency; (n) the United States Food and Drug Administration; (o) all parties who are known by the Debtors to assert liens against the Merchandise and the FF&E; (p) all state attorneys general in which the Merchandise and the FF&E are located; (q) municipalities in which the Merchandise and the FF&E are located; (r) all of the counterparties to the Debtors' real property leases; (s) all applicable state and consumer protection agencies; and (t) all parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

#### **IV. EFFECTIVENESS OF THE CONSULTING AGREEMENTS.**

28. The Consulting Agreements are operative and effective on an interim basis. The Debtors are authorized to act and perform in accordance with the terms of the Consulting Agreements, including, without limitation, reimbursing all expenses to the Consultant as required by the Consulting Agreements without the need for any application of the Consultant or a further order of the Court. For avoidance of doubt, the Debtors are also authorized to fund the Expense Budgets in accordance with the terms of each of the Consulting Agreements.

29. Subject to the restrictions set forth in this Interim Order and the applicable Store Closing Procedures, the Debtors and the Consultant are hereby authorized to take any and all actions as may be necessary or desirable to implement the Consulting Agreements and the Store Closings, and each of the transactions contemplated by the Consulting Agreements, and any actions taken by the Debtors and the Consultant necessary or desirable to implement the Consulting Agreements and the Store Closings prior to the date hereof, are hereby approved and ratified. The failure to specifically include any particular provision of the Consulting Agreements in this Interim Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Consulting Agreements and all of their provisions, payments, and transactions, be and hereby are authorized and approved as and to the extent provided for in this Interim Order.

30. Notwithstanding anything to the contrary in the Consulting Agreements, the Debtors and their estates shall not indemnify the Consultant for any damages arising primarily out of any act or omission by the Consultant constituting fraud, gross negligence, or willful misconduct.

31. To the extent that the Debtors seek to conduct Store Closings at any location not identified as a Closing Store on Exhibit 2 attached hereto (each an “*Additional Closing Store*”), the Debtors shall (a) first consult with the DIP Term Agent and the DIP ABL FILO Agent, and use commercially reasonable efforts to consult with the Ad Hoc Group of Crossover Lenders and the Ad Hoc FILO Term Lender Group, (b) file an Additional Closing Store List, and (c) serve a notice of their intent to conduct Store Closings at those locations on the Additional Closing Store landlords, counsel to the Ad Hoc Group of Crossover Lenders, counsel to the Ad Hoc FILO Term Lender Group, and applicable governmental units by email (to the extent available to the Debtors) or by overnight mail. The Additional Closing Store landlords shall have seven (7) days after

service of the applicable Additional Closing Store List to object to the application of this Interim Order to their store locations. If no timely objections are filed with respect to the application of this Interim Order to any store locations identified on any Additional Closing Store List, then the Debtors shall be authorized, pursuant to section 105(a) and section 363(b)(1) of the Bankruptcy Code, to conduct Store Closings at such store locations in accordance with this Interim Order, the applicable Store Closing Procedures, the Consultant Agreement, and any Side Letter. If any objections are filed with respect to the application of this Interim Order to any store locations identified on any Additional Closing Store List and such objections are not resolved, the objections and the application of this Interim Order to any affected store locations shall be considered by the Court at the next regularly scheduled omnibus hearing.

32. On a confidential basis and for professionals' "eyes only" and upon the written (including email) request of the U.S. Trustee, the agent for the Debtors' postpetition financing facility, the Ad Hoc Group of Crossover Lenders, the agent under the Debtors' secured term and asset-based financing facilities, the Ad Hoc FILO Term Lender Group, the indenture trustee for the Debtors' prepetition convertible notes, or the committee of unsecured creditors, if any, the Debtors shall provide such requesting party, if any, with copies of periodic reports concerning the Store Closings that are prepared by the Debtors, their professionals or the Consultant, provided, however, that the foregoing shall not require the Debtors, their professionals, or the Consultant to prepare or undertake to prepare any additional or new reporting not otherwise being prepared by the Debtors, their professionals, or the Consultant in connection with the Store Closings.

#### **V. OTHER PROVISIONS.**

33. The Consultant shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against Consultant, in each case, other than as expressly provided for in the Consulting Agreements.

34. The Debtors shall not be required to comply with any state or local law requiring that the Debtors pay an employee substantially contemporaneously with his or her termination; *provided, however*, that the Debtors shall pay any accrued wages to terminated employees as expeditiously as possible.

35. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code (other than the Consulting Agreements); or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

36. Notwithstanding anything contained in the Motion or this Interim Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a "***DIP Order***"), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the

terms of the DIP Order shall control; *provided, however*, that with respect to amounts due to the Consultant pursuant to the Consultant Agreements paid solely from proceeds of sales of the Merchandise and the FF&E, the DIP Order and any budget attached thereto shall not constitute or require a cap or reduction on amounts due to the Consultant under the Consulting Agreements other than any such cap or reduction resulting from the Consultant's required compliance with the applicable Expense Budget.

37. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

38. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Interim Order shall be effective and enforceable immediately upon entry hereof.

39. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

40. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

41. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

42. A hearing to consider entry of an order granting the Motion on a final basis (the "***Final Hearing***") shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_\_ .m. (prevailing Eastern time). Any objections or responses to the entry of such an order must be filed on or before 4:00 p.m. (prevailing Eastern time) on \_\_\_\_\_, 2020, and served on (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (email:



caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com), and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel (jeffrey.mispagel@lw.com); and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); (c) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (d) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (e) counsel to the administrative agent under the DIP ABL FILO Facility, Simpson Thacher & Bartlett LLP, 425 Lexington Ave. New York, New York 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (email: squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); and (f) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: trigger.erin@dorsey.com and kohn.samuel@dorsey.com). In

the event that no objections to entry of the Proposed Final Order on the Motion are timely received, this Court may enter such Proposed Final Order without need for the Final Hearing.

43. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order, including, but not limited to, (a) any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit banner and sign-walker advertising, including with respect to any allegations that such advertising is not being conducted in a safe, professional, and non-deceptive manner, (b) any claim of the Debtors, the landlords for protection from interference with the Store Closings, (c) any other disputes related to the Store Closings, and (d) protection of the Debtors against any assertions of any liens, claims, encumbrances, and other interests. No such parties or person shall take any action against the Debtors, the landlords, or the Store Closings until this Court has resolved such dispute. This Court shall hear the request of such parties or persons with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT 1**

**Store Closing Procedures**

## U.S. Store Closing Procedures<sup>1</sup>

1. These U.S. Store Closing Procedures shall control the Store Closings in the United States.
2. The Store Closings shall be conducted so that the stores in which Store Closings are to occur will remain open no longer than during the normal hours of operation or such hours as otherwise provided for in the respective leases for the Closing Stores.
3. The Store Closings shall be conducted in accordance with applicable state and local “Blue Laws,” where applicable, so that no Store Closing shall be conducted on Sunday unless the Debtors had been operating such Closing Stores on a Sunday prior to the commencement of the Store Closings.
4. On “shopping center” property, the Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any Closing Stores’ premises, unless permitted by the lease or if distribution is customary in the “shopping center” in which such Closing Store is located; *provided* that the Consultant may solicit customers in the Closing Stores themselves. On “shopping center” property, the Consultant shall not use any flashing lights or amplified sound to advertise the Store Closings or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
5. At the conclusion of the Store Closings, the Consultant shall, subject to the Consulting Agreements, vacate the Closing Stores in broom clean condition; *provided* that Consultant may abandon any FF&E not sold in the Store Closings at the conclusion of the Store Closings, without cost or liability of any kind to the Consultant. The Debtors will have the option to remove the FF&E at their own cost prior to the termination date. Any abandoned FF&E left in a Closing Store after a lease is rejected shall be deemed abandoned to the landlord having a right to dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Debtors. For the avoidance of doubt, as of the Sale Termination Date, the Consultant may abandon, in place and without further responsibility or liability of any kind, any FF&E.
6. The Consultant and the Debtors may advertise each Store Closing as a “store closing,” “sale on everything,” “everything must go,” or similar themed sale, and to the extent permitted in the Interim Order or Final Order, as applicable, “going out of business”. The Consultant and the Debtors may also have “countdown to closing” signs prominently displayed in a manner consistent with these Store Closing Procedures. All signs, banners, ads and other advertising collateral, promotions, and campaigns will be approved by the Debtors in accordance with these Store Closing Procedures.
7. The Consultant shall be permitted to utilize sign walkers, display, hanging signs, and interior banners in connection with the Store Closings; *provided* that such sign walkers, display,

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<sup>1</sup> Capitalized terms used but not defined in these U.S. Store Closing Procedures have the meanings given to them in the Interim Order to which these U.S. Store Closing Procedures are attached as **Exhibit 1** or the Motion to which the Interim Order is attached as **Exhibit A**, as applicable.

hanging signs, and interior banners shall be professionally produced and hung in a professional manner. The Debtors and the Consultant shall not use neon or day-glo on its sign walkers, display, hanging signs, or interior banners. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Store Closing Procedures. In addition, the Debtors and the Consultant shall be permitted to utilize exterior banners at (i) non-enclosed mall stores and (ii) enclosed mall stores to the extent the entrance to the applicable store does not require entry into the enclosed mall common area; *provided*, however, that such banners shall be located or hung so as to make clear that the Store Closings are being conducted only at the affected Closing Stores, and shall not be wider than the storefront of the Closing Stores. In addition, the Debtors and the Consultant shall be permitted to utilize sign walkers in a safe and professional manner and in accordance with the terms of the Interim Order or Final Order, as applicable. Nothing contained in these Store Closing Procedures shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease agreement.

8. Conspicuous signs shall be posted in the cash register areas of each of the affected Closing Stores to the effect that “all sales are final.”

9. Except with respect to the hanging of exterior banners, the Consultant shall not make any alterations to the storefront or exterior walls of any Closing Stores, except as authorized by the applicable lease.

10. The Consultant shall not make any alterations to interior or exterior Closing Stores’ lighting, except as authorized by the applicable lease. No property of the landlord of a Closing Store shall be removed or sold during the Store Closings. The hanging of exterior banners or in-store signage and banners shall not constitute an alteration to a Closing Store.

11. The Consultant shall keep Closing Stores’ premises and surrounding areas clean and orderly consistent with present practices.

12. Subject to the provisions of the Consulting Agreements, the Consultant shall have the right to use and sell all FF&E. The Consultant may advertise the sale of the FF&E in a manner consistent with these guidelines. The purchasers of any FF&E sold during the Store Closings shall be permitted to remove the FF&E either through the back or alternative shipping areas at any time, or through other areas after applicable business hours, *provided, however* that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item can be carried out of the Closing Stores in a shopping bag. For the avoidance of doubt, as of the Sale Termination Date, the Consultant and the Debtors may abandon, in place and without further responsibility, any FF&E.

13. At the conclusion of the Store Closings at each Closing Store, pending assumption or rejection of applicable leases, the landlords of the Closing Stores shall have reasonable access to the Closing Stores’ premises as set forth in the applicable leases. The Debtors, the Consultant, and their representatives and agents shall continue to have access to the Closing Stores as provided for in the Consulting Agreements.

14. The rights of landlords against the Debtors for any damages to a Closing Store shall be reserved in accordance with the provisions of the applicable lease.

15. If and to the extent that the landlord of any Closing Store affected hereby contends that the Debtors or the Consultant is in breach of or default under these Store Closing Procedures, such landlord shall email or deliver written notice by overnight delivery to the Debtors, the Ad Hoc Group of Crossover Lenders, the Ad Hoc FILO Term Lender Group, and the Consultant as follows:

If to the Debtors:

300 Sixth Avenue,  
Pittsburgh, Pennsylvania 15222  
Attn: Amy Nathan

with copies (which shall not constitute notice) to:

Young Conaway Stargatt & Taylor, LLP  
Rodney Square, 1000 North King Street  
Wilmington, DE 19801  
Attn: Michael R. Nestor & Kara Hammond Coyle

-and-

Latham & Watkins LLP  
330 North Wabash Avenue, Suite 2800  
Chicago, IL 60611  
Attn: Richard A. Levy & Caroline A. Reckler

If to the Ad Hoc Group of Crossover Lenders:

Milbank LLP  
2029 Century Park East, 33rd Floor  
Los Angeles, CA 90067  
Attn: Mark Shinderman & Daniel B. Denny

If to the Ad Hoc FILO Term Lender Group:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Attn: Andrew Rosenberg & Jacob Adlerstein

If to the Consultant:

Tiger Capital Group  
60 State Street, 11<sup>th</sup> Floor  
Boston, MA 02109  
Attn: Mark P. Naughton

with copies (which shall not constitute notice) to:

Great American Group, LLC  
21255 Burbank Blvd., Suite 400  
Woodland Hills, CA 91367  
Attn: Scott K. Carpenter and Marina Fineman

If the parties are unable to resolve the dispute, either the landlord or the Debtors shall have the right to schedule a hearing before the Court on no less than five (5) days' written notice to the other party, served by email or overnight delivery.

## Canadian Store Closing Procedures<sup>2</sup>

These Canadian Store Closing Procedures shall control the Store Closings in Canada. Each of the U.S. Store Closing Procedures and the Canadian Sale Guidelines are incorporated by reference herein, as described herein.

The Canadian Store Closing Procedures shall be conducted pursuant to the U.S. Store Closing Procedures and the Canadian Sale Guidelines (attached as Exhibit A hereto), as each may be modified hereby; provided, however, that in the event of a conflict between the terms of the U.S. Store Closing Procedures and the terms of the Canadian Sale Guidelines, the terms of the Canadian Sale Guidelines shall control.

If and to the extent that the landlord of any Closing Store in Canada affected hereby contends that the Debtors or the Consultant is in breach of or default under these Canadian Store Closing Procedures, such landlord shall email or deliver written notice by overnight delivery to the Debtors, the Ad Hoc Group of Crossover Lenders, the Ad Hoc FILO Term Lender Group, and the Consultant as follows:

If to the Debtors:

300 Sixth Avenue,  
Pittsburgh, Pennsylvania 15222  
Attn: Amy Nathan

with copies (which shall not constitute notice) to:

Young Conaway Stargatt & Taylor, LLP  
Rodney Square, 1000 North King Street  
Wilmington, DE 19801  
Attn: Michael R. Nestor & Kara Hammond Coyle

-and-

Latham & Watkins LLP  
330 North Wabash Avenue, Suite 2800  
Chicago, IL 60611  
Attn: Richard A. Levy & Caroline A. Reckler

-and-

Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower

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<sup>2</sup> Capitalized terms used but not defined in these Canadian Store Closing Procedures have the meanings given to them in the Interim Order to which these Canadian Store Closing Procedures are attached as **Exhibit 1** or the Motion to which the Interim Order is attached as **Exhibit A**, as applicable.



Toronto, ON M5K 1N2  
Attn: Scott A. Bomhof & Adam M. Slavens

If to the Ad Hoc Group of Crossover Lenders:

Milbank LLP  
2029 Century Park East, 33rd Floor  
Los Angeles, CA 90067  
Attn: Mark Shinderman & Daniel B. Denny

-and-

Cassels Brock & Blackwell LLP  
Suite 2100, Scotia Plaza, 40 King St. W.  
Toronto, ON Canada M5H 3C2 Canada  
Attn: R. Shayne Kukulowicz & Ryan C. Jacobs

If to the Ad Hoc FILO Term Lender Group:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Attn: Andrew Rosenberg & Jacob Adlerstein

If to the Consultant:

Tiger Capital Group  
60 State Street, 11<sup>th</sup> Floor  
Boston, MA 02109  
Attn: Mark P. Naughton

with copies (which shall not constitute notice) to:

Great American Group, LLC  
21255 Burbank Blvd., Suite 400  
Woodland Hills, CA 91367  
Attn: Scott K. Carpenter and Marina Fineman

If the parties are unable to resolve the dispute, either the landlord or the Debtors shall have the right to schedule a hearing before the Court on no less than five (5) days' written notice to the other party, served by email or overnight delivery.

## Exhibit A

### Canadian Sale Guidelines

The following procedures shall apply to the Sale to be conducted at the Stores of General Nutrition Centres Company (the “**Merchant**”). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (collectively with their respective U.S. affiliates, the “**Consultant**”) and the Merchant dated as of June 18, 2020 (the “**Consulting Agreement**”).

1. Except as otherwise expressly set out herein, and subject to: (i) the orders granted or issued in the Merchant’s bankruptcy case (the “**Bankruptcy Case**”) in the United States of America under Chapter 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) and the Merchant’s ancillary proceedings (the “**CCAA Proceedings**”) in Canada under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) before the Ontario Superior Court of Justice (Commercial List) (individually, an “**Order**”, and, collectively, the “**Orders**”); or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a “**Landlord**” and, collectively, the “**Landlords**”) and approved by each of the Consultant and Information Officer in writing, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected Landlords are privy for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remains open during its normal hours of operation provided for in its respective Lease until the respective Sale Termination Date for such Store. The Sale at the Stores shall end by no later than the Sale Termination Date. Rent payable under the respective Leases shall be paid in accordance with the terms of the Orders, as applicable.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as an “everything on sale”, an “everything must go”, a “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “going out of business” or a “liquidation” sale it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon written request from a Landlord, the Landlord’s counsel, the Merchant or the Information Officer, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the

Merchant pursuant to the Consulting Agreement) by e-mail to such Landlord(s) or to their counsel of record and the Information Officer. Where the provisions of the Lease conflict with these Canadian Sale Guidelines, these Canadian Sale Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including “you pay” or “topper” signs). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with “store closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord’s concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are “final”.
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord, and no advertising trucks shall be used on a Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are materially in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the applicable Landlord's written consent unless

otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

10. Subject to the terms of paragraph 9 above, the Consultant may sell Offered FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise the sale of Offered FF&E consistent with these guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the applicable Landlord, acting reasonably. Additionally, the purchasers of any Offered FF&E sold during the Sale shall only be permitted to remove the Offered FF&E either through the back shipping areas designated by the applicable Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the Offered FF&E can fit in a shopping bag, with applicable Landlord's supervision as required by the applicable Landlord. The Consultant shall repair any damage to the Stores resulting from the removal of any Offered FF&E by Consultant or by third party purchasers of Offered FF&E from Consultant.
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove Offered FF&E from the Stores. The Merchant will arrange a walk through with each Landlord that requests a walk through with the Consultant to identify the Offered FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or pursuant to the dispute resolution section of the Canadian Store Closing Procedures. If the Merchant has rejected the Lease governing such Store in accordance with the Bankruptcy Code, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for under the Bankruptcy Code), and the rejection of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a rejection notice is delivered to a Landlord pursuant to the Bankruptcy Code while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of such rejection, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the rejection, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the applicable

Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).

14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or Offered FF&E at any of the Stores.
15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Consultant shall be Daniel Richer who may be reached by phone at 416-865-4445 or email at driche@fasken.com. Contact persons for the Merchant and the Information Officer are set out in the Canadian Store Closing Procedures. If the parties are unable to resolve the dispute between themselves, the notice and dispute sections of the Canadian Store Closing Procedures shall be followed by the parties. For the duration of any such dispute, the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, for greater certainty, that if a banner has been hung in accordance with these Canadian Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.
16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Canadian Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Canadian Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court).

**EXHIBIT 2**

**Closing Stores**

Loc Number	Location Name	Location Address	Location City	Location State / Province
4297	Hillside Shopping Centre	1644 Hillside Avenue	Victoria	BC
4232	Robson Streetfront	1126 Robson Street	Vancouver	BC
4193	Guildford Town Center	10355 152 St	Surrey	BC
4243	Kelowna Mall	2271 Harvey Ave	Kelowna	BC
4038	Smart Centres Central @ G	1825-4720 McClelland Road	Richmond	BC
4016	Scotia Plaza	40 King St West Box 108	Toronto	ON
4043	Sunridge Mall	2525-36Th Street Ne	Calgary	AB
4065	Market Mall	3625 Shaganappi Trail	Calgary	AB
4239	Deerfoot Mall	#107 951 64 Av Ne	Calgary	AB
4188	Harvest Pointe Sc	5233 Ellerslie Rd Sw	Edmonton	AB
4048	Halifax Shopping Center	7001 Mumford Road	Halifax	NS
4124	Carrefour Angrignon	7077 Newman Boulevard	Lasalle	PQ
4022	St. Laurent S.C.	1200 St Laurent Blvd	Ottawa	ON
4028	Cornwall Square	1 Water Street East	Cornwall	ON
4059	Northgate Square	489 Albert Street North	Regina	SK
4184	Oshawa Centre	419 King Street West	Oshawa	ON
4050	Markville Town Centre	5000 Hwy 7 East	Markham	ON
4127	Stone Road Mall	435 Stone Road West	Guelph	ON
4117	Vaughan Mills	1 Bass Pro Mills Dr	Vaughan	ON
4201	Shoppes On Queen West	601 Queen Street West	Toronto	ON
4090	Argyle Mall	332 Clarke Road	London	ON
4174	Walker Place	4140 Walker Rd	Windsor	ON
4072	Driftwood Mall	2751 Cliffe Ave	Courtenay	BC
4235	Coquitlam Centre	2929 Barnet Highway	Coquitlam	BC
4278	Village Green Centre	4900 27Th Street	Vernon	BC
4504	Woodgrove Centre	6631 Island Highway N	Nanaimo	BC
4061	Londonderry Mall	137Th Ave & 66Th St	Edmonton	AB
4170	Erin Ridge Power Centre	935 St.Albert Trail	St Albert	AB
4180	Manning Town Centre	15733 37 Street	Edmonton	AB
4183	The Quarry	20 Quarry Street East	Cochrane	AB
4191	York Station	275 Broadway St E	Yorkton	SK
4286	Southlands Crossing	1991 Strachan Rd	Medicine Hat	AB
4503	Deerfoot Meadows	840-8180 11Th Street Se	Calgary	AB
4177	Avalon Mall	48 Kenmount Rd	St. Johns	NL
4131	Yarmouth Mall	76 Starrs Road	Yarmouth	NS
4052	Place D'Orleans	110 Place D'Orleans Dr	Ottawa	ON
4008	Southhill Shopping Centre	9325 Yonge Street	Richmond Hill	ON
4086	Bridgeport Plaza	13/14-94 Bridgeport Rd Ea	Waterloo	ON
4162	Gladstone Queen West Reta	4 Gladstone Ave	Toronto	ON
4171	Smartcentres Vaughan	3604 Major Mackenzie Dr	Vaughan	ON
4181	Shops At Don Mills	1090 Don Mills Rd	Toronto	ON
4186	North Park Sc	1405 Lawrence Ave W	Toronto	ON
4196	Shoppers World Danforth	3003 Danforth Ave	Toronto	ON
4204	Smartcentres St. Catharin	420 Vansickle Road	St. Catharines	ON
4248	Crossroads	2625B Weston Road	North York	ON
4256	Rio Centre Oakville	478 Dundas Street West	Oakville	ON
4506	Smart Centres Bradford	547 Holland St West	Bradford	ON
4150	Sudbury S Shopping Center	2408 Long Lake Rd	Sudbury	ON
4198	Collingwood Centre	99 Balsam Street	Collingwood	ON
4206	Smartcentres St. Thomas	1063 Talbot Street	St. Thomas	ON
4032	Lougheed Mall	9855 Austin Ave	Burnaby	BC
4084	Haney Place Mall	149-11900 Haney Pl	Maple Ridge	BC
4234	Tamarack Centre	1500 Cranbrook St N.#115	Cranbrook	BC
4280	Capilano Mall	935 Marine Dr	N. Vancouver	BC
4199	Tsawwassen Mills	5000 Canoe Pass Way	Tsawwassen	BC
4267	Bankers Hall	315 8Th Avenue Sw Ste 345	Calgary	AB
4039	St. Vital Center	130-1225 St Mary'S Rd	Winnipeg	MB
4054	Kildonan Place	1555 Regent Ave West	Winnipeg	MB
4066	Cornwall Mall	2102-11Th Ave	Regina	SK
4283	Southcentre Mall	100 Anderson Rd. S.E.	Calgary	AB
4207	Outlet Collection Winnipe	555 Sterling Lyon Parkway	Winnipeg	MB
4208	Premium Outlet Collection	#1 Outlet Collection Way	Edmonton Airport	AB

Loc Number	Location Name	Location Address	Location City	Location State / Province
4067	Mayflower Mall	800 Grand Lake Road	Sydney	NS
4229	Regent Mall	1381 Regent Street	Fredericton	NB
4200	Colby Village	920 Cole Harbour Road	Dartmouth	NS
4159	Quartier Dix 30	8900 Blvd Leduc	Brossard	PQ
4192	Smartcentres Mascouche	117 Montee Masson	Mascouche	PQ
4179	Les Promenades Gatineau	1000 Blvd Maloney Quest	Gatineau	PQ
4185	Kemptville Colonnade Reta	304 Colonnade Dr	Kemptville	ON
4000	The Promenade Mall	1 Promenade Circle	Thorn Hill	ON
4017	Upper Canada Mall	17600 Yonge St	Newmarket	ON
4026	Burlington Mall	777 Guelph Line	Burlington	ON
4037	Eglinton Square S.C.	1431-1437 Victoria Park A	Toronto	ON
4075	Cloverdale Mall	250 The East Mall	Toronto	ON
4144	Georgetown Market Place	280 Guelph Street	Georgetown	ON
4189	Centerpoint Mall	6464 Younge St	Toronto	ON
4203	Yonge Sheppard Centre	4841 Yonge Street	Toronto	ON
4157	Riocan Marketplace	2181 Steele Ave West	Toronto	ON
4194	410 At Steeles	35 Resolution Dr	Brampton	ON
4287	Rio-Can Milton	1155 Maple Avenue	Milton	ON
4091	Heritage Place	1350 16Th Street East	Owen Sound	ON
4225	Lambton Mall	1380 London Road Unit33	Sarnia	ON
4263	White Oaks Mall	1105 Wellington Rd	London	ON
4270	Northgate Square	1500 Fisher St	North Bay	ON
4510	Station Mall	293 Bay Street	Sault Ste Marie	ON
4020	Intercity S/C	1000 Fort William Rd	Thunder Bay	ON
7467	330 5TH AVE	330 5Th Ave	New York	NY
1208	31 65 STEINWAY ST	31 65 Steinway St	Astoria	NY
3800	125 PARK AVENUE	125 Park Ave	New York	NY
9118	684 THIRD AVENUE	684 Third Avenue	New York	NY
1569	220 O'FARRELL ST	220 O'Farrell St	San Francisco	CA
2564	1034-1036 THIRD AVE	1034-1036 Third Ave	New York	NY
2479	HOLLYWOOD & HIGHLAND	6801 Hollywood Blvd	Los Angeles	CA
7621	159 COLUMBUS AVE	159 Columbus Ave	New York	NY
7123	BRATTLE SQUARE	One Brattle Square	Cambridge	MA
8841	349 NEWBURY STREET	349 Newbury St	Boston	MA
1324	70 S 69TH ST	70 S 69Th St	Upper Darby	PA
2384	812 DAVIS ST	812 Davis St	Evanston	IL
6247	QUEENS CENTER	90-15 Queens Boulevard	Elmhurst	NY
8523	FASHION SHOW MALL	3200 Las Vegas Blvd	Las Vegas	NV
5047	ROOSEVELT FIELD MALL	630 Old Country Road	Garden City	NY
1443	PHEASANT LANE MALL	310 Daniel Webster Highway	Nashua	NH
560	WESTFIELD BRANDON	356 Brandon Town Ctr Mall	Brandon	FL
360	DEPTFORD MALL	1750 Deptford Center Rd	Deptford	NJ
3079	STAMFORD TOWN CENTER	100 Greyrock Place	Stamford	CT
1220	WESTWOOD MALL	1754 West Michigan Ave	Jackson	MI
817	WESTFIELD ANNAPOLIS	1032 Annapolis Mall	Annapolis	MD
846	WHITE MARSH MALL	8200 Perry Hall Blvd.	Baltimore	MD
6273	PROVIDENCE PLACE MALL	54 Providence Place	Providence	RI
358	WESTLAND MALL	35000 W. Warren Road	Westland	MI
2956	BAYSHORE TOWNE CENTER	440 W Northshore Drive	Glendale	WI
5130	GURNEE MILLS	6170 W Grand Avenue	Gurnee	IL
3531	GLOUCESTER PREMIUM OUTLET	1125 S. Blackhorse Pike	Blackwood	NJ
1584	POTOMAC MILLS	2700 Potomac Mills Circle	Woodbridge	VA
366	CINCINNATI PREMIUM OUTLET	400 Premium Outlets Drive	Monroe	OH
88	TWIN CITIES PREMIUM OUTLE	3965 Eagan Outlets Pkwy	Eagan	MN
130	TANGER OUTLETS	400 South Wilson Road	Sunbury	OH
590	TANGER OUTLET - HWY 501	4635 Factory Stores Blvd	Myrtle Beach	SC
5333	TANGER OUTLETS SOUTHAVEN	5205 Airways Blvd	Southaven	MS
5920	PASEO COLORADO	300 E. Colorado Blvd	Pasadena	CA
2376	RIVERMARK VILLAGE	3935 Rivermark Plaza	Santa Clara	CA
7038	UNIVERSITY TC	140 University Tc	Sarasota	FL
5053	PHILIPS PLAZA	675 Sunrise Highway	Lynbrook	NY
8180	MARKETPLACE CENTER	1361 Covell Blvd	Davis	CA



Loc Number	Location Name	Location Address	Location City	Location State / Province
9283	CROSS KEYS COMMONS	3501 Rt 42	Turnersville	NJ
349	SHOPS AT NANUET	5107 Fashion Dr	Nanuet	NY
3474	CRANBERRY PLAZA	2991-J Cranberry Highway	East Wareham	MA
2644	EAST HANOVER SC	240 State Route 10	East Hanover	NJ
7121	SHOPS AT FALLEN TIMBERS	6832 Russell Road	Maumee	OH
5273	HERSHEY SQUARE S. C.	1138 Mae Street	Hummelstown	PA
7230	NORTH HILLS CENTRE	1144 Lonnie Abbott Blvd	Ada	OK
5574	HAMPTON VILLAGE CENTER	2771 South Rochester Rd	Rochester Hills	MI
6101	PARKSIDE SC	7800 John Davis Drive	Frankfort	KY
7781	875 SIXTH AVE	875 Avenue Of Americas	New York	NY
2927	1569 FLATBUSH AVENUE	1569 Flatbush Ave	Brooklyn	NY
4358	EIELSON AFB	Building 405 Broadway	Eielson	AK
9860	TYSENS PARK S/C	2722 Hylan Blvd	Staten Island	NY
5296	BRADLEE CENTER	3690 North King Street	Alexandria	VA
255	THE YARDS BOILERMAKER SHO	300 Tingey St Se	Washington	DC
5431	EL CERRITO PLAZA	230 El Cerrito Plaza	El Cerrito	CA
8759	CULVER CENTER	3810 Midway Avenue	Culver City	CA
1267	EAST HILLS VILLAGE	2671 Oswell Street	Bakersfield	CA
3389	SIMSBURY COMMONS	530 Bushy Hill Road	Simsbury	CT
9584	THE SHOWCASE AT INDIO	42425 C Jackson Street	Indio	CA
5150	PLAZA CAYEY	Pr 1 Km 55.2	Cayey	PR
6165	MONTVILLE COMMONS	2020 Norwich-New London T	Montville	CT
5219	SAN FELIPE PLAZA	1735 South Voss	Houston	TX
9028	VALLEY CENTRAL SC	44418 Valley Central Way	Lancaster	CA
8234	COLLEGE SQUARE	210 College Square	Newark	DE
311	WALMART PLAZA	656 New Haven Ave	Derby	CT
5085	WESTCLIFF PLAZA	1036 Irvine Ave	Newport Beach	CA
7354	KMART SHOPPING CENTER	3036 Route 35 South	Hazlet	NJ
2272	FOUNTAINS OF MIRAMAR	2933 Sw 160Th Ave	Miramar	FL
7421	JANTZEN BEACH HAYDEN ISLA	12152 N Pavilion Ave	Portland	OR
5463	BURBANK CROSSING	7929 S Harlem Avenue	Burbank	IL
5720	CORNERSTONE @ LAKE HEART	10524 Moss Park Rd	Orlando	FL
8866	CHERRY HILL SHOPPING CENT	462 Hempstead Turnpike	West Hempstead	NY
2416	EDGEWOOD TOWN CENTER	438-D E Edgewood Blvd	Lansing	MI
104	ORCHARD SC	208 S 72Nd Ave	Yakima	WA
5547	KENTLANDS SQUARE	251 Kentlands Boulevard	Gaithersburg	MD
9001	JACKSONVILLE PLAZA	2050 John Harden Drive	Jacksonville	AR
2025	OLD TOWN SQUARE	1237 North Clybourn Ave	Chicago	IL
5257	FIESTA TRAILS PLAZA	5238 Dezavala Road	San Antonio	TX
9673	ELMHURST CROSSING SHOPPIN	177 South Route 83	Elmhurst	IL
3504	BRENTWOOD PLAZA	8485 Winton Road	Cincinnati	OH
5190	HILLSBORO SHOPPING CENTER	649 Route 206 Door 8	Hillsborough	NJ
7000	BAYSHORE GARDENS	6028 14Th Street West	Bradenton	FL
2271	ROCHESTER CROSSING	160-162 Washington Street	Rochester	NH
7655	ORO VALLEY MARKETPLACE	2060 E Tangerine Road	Oro Valley	AZ
9801	SOUTHBRIDGE CROSSING	8082 Oak Carriage Court N	Shakopee	MN
2078	MASSILLON MARKET	38 Massillon Marketplace	Massillon	OH
2092	MERCHANTS PARK SHOPPING C	953 N Shepherd Dr	Houston	TX
5157	PLAZA SQUARE	667 Hamburg Turnpike	Wayne	NJ
2091	THE MARKET AT OAKLAND	3006 S Morgan'S Pt Rd	Mt Pleasant	SC
977	VIERA MARKETCENTER	6729 Colonnade Ave	Viera	FL
5289	COMMONS AT ISSAQUAH	755 West Gilman Blvd.	Issaquah	WA
1292	PINEHURST SQUARE	1001 W Interstate Ave	Bismarck	ND
9513	TRENTON CROSSING	7600 N. 10Th St	Mcallen	TX
8557	PIERPOINT CENTRE	716 Venture Drive	Morgantown	WV
7207	GOLDEN GATE SHOPPING CTR	1513 Golden Gate Rd	Mayfield Heights	OH
833	SUSSEX PLAZA	22881 Sussex Highway	Seaford	DE
617	HEARTLAND VILLAGE SHOPPES	8411 Windfall Lane	Camby	IN
5585	BATTLEGROUND PLAZA	3724-H Battleground Ave	Greensboro	NC
7810	SHOPPES @ PARADISE KEY	4433 Commons Drive East	Destin	FL
1268	AMSTERDAM COMMONS	330 Amsterdam Commons	Amsterdam	NY
7959	BLUE RIDGE CROSSING	4173 Sterling Ave	Kansas City	MO

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8507	SUNSHINE SQUARE	546 East Woolbright Rd	Boynton Beach	FL
5160	WEST VOLUSIA REGIONAL S/C	2707 South Woodland	Deland	FL
1864	SHELBYVILLE SC	114 Lee Blvd	Shelbyville	IN
7323	HAVENDALE SQUARE	382 Havendale Square	Auburndale	FL
138	SHOPPES AT PRAIRIE RIDGE	9901 77Th Street	Pleasant Prairie	WI
24	BROOKDALE CORNER	5605 Xerxes Ave	Brooklyn Center	MN
9540	FRANCIS POINTE	106 Francis Lane	Beaver Dam	WI
1812	TRAMONTO MARKETPLACE S/C	3134 W. Carefree Hgwy	Phoenix	AZ
7388	MIDDLEBURG CROSSINGS	2640 Blanding Blvd	Middleburg	FL
5461	RIVER RUN SHOPPING CENTER	9929 Miramar Parkway	Miramar	FL
294	GRAVOIS BLUFFS	#35 Gravois Bluffs Plaza	Fenton	MO
3923	HICKORY FLAT VILLAGE	6175 Hickory Flat Highway	Canton	GA
7158	FRANKLIN CENTRE	915 B Hwy 321	Lenoir	TN
2023	OAK HOLLOW SQUARE	1589 Skeet Club Rd	High Point	NC
2861	CULVER RIDGE PLAZA	2255 East Ridge Rd	Rochester	NY
3618	EPHRATA MARKETPLACE	852 East Main Street	Ephrata	PA
2249	TUDOR SHOPS	975 Ne Rice Road	Lee'S Summit	MO
6812	OSWEGO PLAZA	140 State Rt 104	Oswego	NY
9124	BEAR VALLEY SHOPPING CENT	3100 South Sheridan Blvd	Denver	CO
8684	TRI STATE MALL	10 E Route 23 N	Montague	NJ
3989	MOANALUA SHOPPING CTR	930 Valkenburgh St	Honolulu	HI
1733	SOUTHERN CROSSING	10922 South Memorial Dr	Tulsa	OK
1722	VALLEY STATION	1268 South Us189	Heber	UT
9786	PINE TREE PLAZA	550 36Th Ave South West	Altoona	IA
6059	POPLAR CREEK PLAZA	305 Leonardwood Dr	Frankfort	KY
3678	THE PROMENADE	16255 N Scottsdale Rd	Scottsdale	AZ
8909	METRO JUNCTION	4894 Highway 18 West	Jackson	MS
7407	MCDONOUGH MARKETPLACE	117 Willow Lane	Mcdonough	GA
5608	TOWER PLAZA	1386 S Centerville Rd	Sturgis	MI
8637	BROOKDALE SQUARE	22351 Pontiac Trail	South Lyon	MI
1364	WHITNALL SQUARE	4698 S Whitnall Avenue	Milwaukee	WI
8771	MARKS SQUARE	4600 Mobile Highway #11	Pensacola	FL
8770	MIDTOWN SQUARE SHOPPING C	1573 Gause Boulevard	Slidell	LA
1999	UNIVERSITY COMMONS	1930 1St Capitol Drive	St Charles	MO
702	GAINES MARKETPLACE	1827 Marketplace Dr Se	Caledonia	MI
2827	MARKETPLACE S.C.	I-79 & Route 33	Weston	WV
1300	FOREST PLAZA WEST BLD 1	3207-B Forest Brook Rd	Lynchburg	VA
6138	TWIN OAKS CENTER	2001 5Th Street	Silvis	IL
1441	1882 3RD AVENUE	1882 3Rd Avenue	New York	NY
9656	3453 JEROME AVE	3453 Jerome Ave	Bronx	NY
1393	1609 WESTCHESTER AVE	1609 Westchester Ave	Bronx	NY
3841	5530 WALNUT STREET	5530 Walnut Street	Pittsburgh	PA
4340	CAMP PENDLETON (MINI)	15100 Camp Pendleton	Camp Pendleton	CA
4360	FORT BRAGG (82ND)	82Nd Abn Troop Store	Fort Bragg	NC
4335	SAN DIEGO NB (DOCKSIDE)	Naval Station	San Diego	CA
4430	LEMOORE NAS	Building #795	Lemore Nas	CA
4484	FORT BLISS (COMM CENTER)	Bldg 20752 Gulf Victory W	El Paso	TX
4354	MOUNTAIN HOME AFB	625 Gunfighter Ave	Mountain Home Afb	ID
4322	BARKSDALE AFB	455 Curtis Road	Barksdale Afb	LA
4323	FAIRCHILD AFB	Building 2465	Fairchild Afb	WA
4356	VANDENBERG AFB	Building 10400	Vandenberg Afb	CA
4363	FORT LEE (PXTRA)	Building 9025	Fort Lee	VA
4414	PATUXENT RIVER NAS	22099 Cuddihy Road	Patuxent River	MD
4456	LOS ANGELES AFB	483 N. Aviation Blvd	El Segundo	CA
4339	EDWARDS AFB	Abx Exchange	Edwards Afb	CA
4404	SEYMOUR JOHNSON AFB	1350 Edwards Street	Goldsboro	NC
4398	BELLE CHASE NAS JRB	400 Russell Ave	Belle Chasse	LA
4478	FORT BLISS (MINI)	13471 Sergeant Major Blvd	El Paso	TX
4418	HUNTER ARMY AIRFIELD	130 Haley Ave	Savannah	GA
4462	BEAUFORT MCAS	Building 1283 Giegor Ave	Beaufort	SC
4352	F.E. WARREN AFB	617 Missile Drive	Cheyenne	WY
4304	DOVER AFB	266 Galaxy Way	Dover Afb	DE

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4370	GULFPORT NCBC	Bldg. 470	Gulfport	MS
4435	PORTSMOUTH NAVAL HOSPITAL	Store 39/30 Bldg 3	Portsmouth	VA
4498	DYESS AFB	260 Commissary Road	Abilene	TX
4371	TYNDALL AFB	220 Mall Ln Ste 2	Tyndall Afb	FL
4497	PARRIS ISLAND MCRD	Building 406	Parris Island	SC
4361	EGLIN AFB (MINI)	4310 77Th Special Forces	Eglin Afb	FL
2328	CHULA VISTA CENTER	555 Broadway	Chula Vista	CA
2540	PEAR TREE SHOPPING CENTER	532 East Perkins Street	Ukiah	CA
1131	LOS ALTOS CENTER	5555 Stearns St	Long Beach	CA
5820	CLAYTON STATION	5435H Clayton Road	Clayton	CA
7155	66-69 FRESH POND RD	66-69 Fresh Pond Rd	Ridgewood	NY
7657	TIMBERHILLS S.C.	1067 Mono Way	Sonora	CA
6782	SHOPPES @ FOXCHASE	4651 Duke St	Alexandria	VA
1856	NAPA JUNCTION	6040 Main Street	American Canyon	CA
7690	MILL POND VILLAGE	380-Cs Egg Harbor Road	Sewell	NJ
7120	SOUTHPORT TOWN CENTER	2050 Town Center Plaza	West Sacramento	CA
3303	TRI CITY PLAZA	160 Tri City Road	Somersworth	NH
2707	THE PROMENADE AT BOLINGBR	639 E Boughton Rd	Bolingbrook	IL
5511	BEARDS HILL PLAZA	971 Beards Hill Road	Aberdeen	MD
6216	MEADOWVIEW SQUARE	2500 State Rte 59 Ste # 8	Kent	OH
1387	PLAZA PRADOS DEL SUR LOCA	Intersection Of State Rds	Santa Isabel	PR
51	THE SHOPPES AT CINNAMINSON	127 Route 130 South	Cinnaminson	NJ
652	CROSSING AT LISBON	193 River Road	Lisbon	CT
7895	LONDON GROVE VILLAGE	905 Gap Newport Pike	Avondale	PA
3031	PINE CREEK S.C.	716-A Freeman Lane	Grass Valley	CA
3945	FOOD FOR THOUGHT	45 Northern Boulevard	Greenvale	NY
1245	PENNISULA CROSSING	26670 Centerview Drive	Millsboro	DE
2893	TANTALLON CENTER	10729 Indian Highway	Fort Washington	MD
2797	MISSION PLAZA	1412 N. H Street Suite C	Lompoc	CA
3433	NORTH PROVIDENCE MARKET	11 Smithfield Road	North Providence	RI
3719	TWINSBURG TOWN CENTER	8934 Darrow Road	Twinsburg	OH
5051	NISQUALLY PLAZA	1010 Yelm Ave E	Yelm	WA
9360	ALDEN BRIDGE SHOPPING CEN	8000 Research Forest Driv	The Woodlands	TX
8984	PLAZA DEL OESTE	Ave Casto Perez #313	San German	PR
2327	BERLIN CIRCLE PLAZA	116 Walker Ave	West Berlin	NJ
3028	SHILOH CENTER	6400 Hembree Lane	Windsor	CA
1479	GREENPORT COMMONS	424 Fairview Ave	Hudson	NY
2254	NORTH HAVEN PAVILION	200 Universal Drive North	North Haven	CT
7802	ROMEOWILLE TOWNE CENTER	427 North Weber Road	Romeoville	IL
8360	SUFFOLK SHOPPING CENTER	4046 Nesconset Hghwy #1B	East Setauket	NY
7624	GIBBSTOWN S.C.	401 Harmony Road	Gibbstown	NJ
2474	MEADOW BROOK CROSSING	124 State Road 101A	Amherst	NH
6173	LEXINGTON STATION	3833 Lexington Avenue	Arden Hills	MN
6512	VILLAGE COMMONS AT WESLEY	5922 Weddington Monroe Rd	Wesley Chapel	NC
5387	DUNLAWTON SQUARE	3859 South Nova Road	Port Orange	FL
8531	NEWPORT NORTH SC	1280 Bison Avenue	Newport Beach	CA
5351	NEW HOPE CITY CENTER	4237 Winnetka Ave	New Hope	MN
2765	REYNOLDA MANOR	2828 Reynolda Rd Nw	Winston Salem	NC
6292	GEORGESVILLE SQUARE	1617 Georgesville Square	Columbus	OH
8710	SANTA FE SHOPPING CENTER	13505 South Mur-Len	Olathe	KS
5727	WINTER SPRINGS TC	1188 Cliff Rose Dr	Winter Springs	FL
7322	BATTLE GROUND MARKET CTR	2210W Main Streetsuite113	Battle Ground	WA
9859	SHERWOOD MARKET CENTER	16008 Sw Tualatin-Sherwoo	Sherwood	OR
6237	THE VILLAGE IN BLAINE	4335 Pheasant Ridge Dr	Blaine	MN
1368	MONROE PLAZA	19817 State Route 2	Monroe	WA
7445	DANIEL'S CROSSING S/C	6900 Daniels Parkway	Fort Myers	FL
5482	CORALWOOD MALL	2301 Del Prado Blvd H-6	Cape Coral	FL
5573	COLLEGE PARK SHOPPING CTR	3455 West 86Th Street	Indianapolis	IN
6524	NORTH MOUNTAIN VILLAGE	3431 W Thunderbird Rd	Phoenix	AZ
5855	YAKIMA 40TH AVE S.C	1300 N. 40Th Ave.	Yakima	WA
5567	SHOPS AT MALTA	15 Kendall Way	Malta	NY
9341	SAWGRASS PROMENADE	1335 South Military Trai	Deerfield Beach	FL

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6316	WATERBURY PLAZA	152 Chase Ave	Waterbury	CT
2647	WARETOWN TOWN CENTER	501 Route 9 Suite 300	Waretown	NJ
5307	PENN HILLS CENTER	28 Federal Drive	Penn Hills	PA
2670	SAM HOUSTON TC	12709 Interstate Hwy 45 N	Willis	TX
2094	PARADISE SHOPPES OF SUMME	1585 Central Ave	Summerville	SC
322	BROOKDALE SHOPPING CENTER	9651-100 Brookdale Drive	Charlotte	NC
7428	SETH CHILD COMMONS	830 Commons Place	Manhattan	KS
184	PALOMAR PLAZA	961 Palomar Airport Rd	Carlsbad	CA
1865	ANTIOCH CROSSING S/C	417 E II Rte 173	Antioch	IL
5460	KMART PLAZA EAST	4445 Buffalo Road	Erie	PA
3583	GIG HARBOR NORTH	11430 51st Ave Nw	Gig Harbor	WA
8831	SIGNAL MT VILLAGE SC	541 Signal Mountain Rd -	Chattanooga	TN
2336	OTTER CREEK S.C.	248 S. Randall Road	Elgin	IL
1376	SHOPRITE SHOPPING CENTER	360 Connecticut Ave	Norwalk	CT
6064	SUWANNEE PLAZA	6824 Suwannee Plaza Ln	Live Oak	FL
8364	WHEATLAND MARKET PLACE	3108 S. Route 59	Naperville	IL
1575	TORRINGTON COMMONS	225 High Street	Torrington	CT
7619	SPRINGS VILLAGE S.C.	3953 S. State Hwy 97	Sand Springs	OK
8401	KNOX VILLAGE SQUARE	1504-B Coshacton Ave	Mt. Vernon	OH
7348	DESERT MOUNTAIN PLAZA	4650 Woodrow Bean	El Paso	TX
5171	NORTHWEST PROMENADE	6737 Manatee Ave W	Bradenton	FL
7282	PARKWAY PLAZA	285 Cumberland Pkwy	Mechanicsburg	PA
3779	WAHIAWA TOWN CENTER	935 California Avenue	Wahiawa	HI
6882	OZARK TOWN CENTER 1	1721 S 20Th St	Ozark	MO
2406	SURPRISE LAKE SQUARE	900 East Meridian #22	Milton	WA
5885	POKEGAMA ROAD	2046 S Pokegama Ave	Grand Rapids	MN
9190	WAYNE AVENUE PLAZA	949 Wayne Avenue	Chambersburg	PA
2166	NEWPORT COAST PLAZA	21151 Newport Coast Dr	Newport Beach	CA
7636	COBB PARKWAY SC	2774 N Cobb Parkway	Kennesaw	GA
1873	OVERLAND PLAZA	9126 Page Avenue	Overland	MO
3926	NORWALK KORNNERS S.C.	201 Milan Avenue	Norwalk	OH
5537	NORTHWOOD PLAZA	1966 Northwood Plaza	Franklin	IN
5430	TRAIL PLAZA	1056 S.W. 67Th Ave	Miami	FL
1045	SHOREGATE S.C.	30010 Lakeshore Avenue	Willowick	OH
2236	BROOKGATE SHOPPING CENTER	5773 Smith Road	Brook Park	OH
7672	FOUNTAIN OAKS SC	4920 Roswell Rd	Atlanta	GA
9097	BLOOMFIELD AVENUE SHOPPES	6089 Haggerty Road	West Bloomfield	MI
8051	EDGEWOOD TOWN CENTER	1725 South Braddock Ave	Pittsburgh	PA
8611	WEST SHORE PLAZA	1831 Sherman Blvd	Muskegon	MI
1690	PRESIDENTIAL PARKWAY PLAZ	168 Keul Rd	Dixon	IL
626	PHOENIX CENTER II	3016 Phoenix Center Drive	Washington	MO
8846	THE WALNUT GROVE	4010 University Ave	Madison	WI
6587	PLAZA SHOPPING CENTER	1027 South Muskogee	Talequah	OK
27	LUMBERTON PLAZA	1636 Rt 38 & Earyestown	Lumberton	NJ
8193	COLONY SQUARE	726 East Main Street	Lebanon	OH
1571	JORDAN LANE	1416 Berlin Turnpike	Wethersfield	CT
2104	NAMEOKI VILLAGE	3455 Nameoki Road	Granite City	IL
7406	POST COMMONS	4100 North Wickham Rd	Melbourne	FL
6363	MERRY MEETING PLACE	147 Bath Road	Brunswick	ME
6845	APPLETREE MALL	Orchard View Drive &	Londonderry	NH
8905	SHOPS AT EAGLE PROMENADE	3116 E State St	Eagle	ID
75	MANHATTAN PLACE	1801 Manhattan Blvd	Harvey	LA
3953	GEIST CROSSING	9805 Fall Creek Road	Indianapolis	IN
65	ONE YANKTON PLACE	3013 Broadway Ave Suite 4	Yankton	SD
5578	MIRASOL WALK	6231 Pga Blvd	Palm Beach Gardens	FL
6683	SUGAR CREEK CENTER	36 Sugar Creek Center	Bella Vista	AR
5921	SOUTHLAND CROSSINGS	1220 Doral Rd	Youngstown	OH
6696	TOWN & COUNTRY S.C.	494 C.W. Plaza Drive	Columbia City	IN
1883	MOUNTAIN VIEW VILLAGE	4608 W Partridgehill Lane	Riverton	UT
5734	PUBLIX @ FISHHAWK RANCH	5662 Fishhawk Crossing Bl	Lithia	FL
6536	INDIAN TRAIL SQUARE	5739 Preston Hwy	Louisville	KY
835	BROOKS EDGE PLAZA	81A South Main Street	Marlboro	NJ

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1145	CIRCLEVILLE PLAZA	1442 Circleville Plaza Dr	Circleville	OH
6661	CASTLE ROCK SQUARE	1163 East Main Street	Price	UT
5919	LAKEWOOD RANCH TC	8338 Market Street	Bradenton	FL
3692	GLENNWOOD COMMONS	820 Sunbury Rd	Delaware	OH
8695	LAKESHORE PLAZA	4137 Mountain Road	Pasadena	MD
6354	COCOA COMMONS	2301 State Hgwy #524	Cocoa	FL
5246	NORTH STATION S.C.	1486 Garner'S Station Blv	Raleigh	NC
1266	SENTRY PLAZA	10244 W. National Ave	West Allis	WI
5421	FESTIVAL @ OLD BRIDGE	12359 Dillingham Square	Lake Ridge	VA
2722	FLEMING PLACE	4023 Sw 10Th Street	Topeka	KS
5603	KROGER CENTER	2028 S. Highway 53	Lagrange	KY
528	MAPLE PARK PLAZA	283 North Weber Road	Boilingbrook	IL
6761	ELIZABETHTOWN S.C.	1575 South Market Street	Elizabethtown	PA
6037	WHISPERING WOODS PLAZA	20773 Gibralter	Brownstone	MI
2026	WESTRIDGE SQUARE	1059 West Patrick St	Frederick	MD
637	RANDALL'S CRYSTAL FALLS T	3501 N Lakeline Blvd	Leander	TX
7794	SHOPS OF MARCO	167 S. Barfield Dr	Marco Island	FL
8612	SOUTH VILLAGE S/C	1850-C 172Nd Ave	Grand Haven	MI
5374	SOUTHLAND SC	6855 Southland Dr	Middleburg Heights	OH
3580	MINER PLAZA	2625 N. Mesa	El Paso	TX
2744	KEYSTONE PLAZA	3574 Highway 31 South	Pelham	AL
7461	SHAW'S PLAZA	770 Roosevelt Trail Road	Windham	ME
5797	WALTERBORO PLAZA	321 Bells Highway	Walterboro	SC
1630	CLIFF LAKE S.C.	1960 Cliff Lake Road	Eagan	MN
3933	HOPEWELL CROSSING SC	800 Denow Road	Hopewell Twp	NJ
5447	TRADEWINDS SHOPPING CTR	101457 Us 1	Key Largo	FL
6783	MERCHANTS WALK S.C.	215 Merchant'S Walk S.C.	Summersville	WV
2037	IMLAY PLAZA	1801 S. Cedar St	Imlay	MI
355	PINE RIDGE SQUARE	1417 West Main St	Gaylord	MI
490	DOTHAN PAVILION	4521 Montgomery Highway	Dothan	AL
8560	ROEBUCK MARKETPLACE	9172 Parkway East # 15	Birmingham	AL
2096	FOX LAKE RETAIL CENTER	1390 Us Route 12	Fox Lake	IL
7460	BELLAIR PLAZA	2661 North Atlantic Ave	Daytona Beach	FL
847	HILLCREST SHOPPING CENTER	233 Hillcrest Shopping Ct	Lower Burrell	PA
2863	WATSON CROSSING SHOPPING	33939 La Highway 16	Denham Springs	LA
2757	MCCARTY CROSSING	1026 Main Street	Jackson	OH
6773	TARGET CENTER	955 Rockland Rd	Lake Bluff	IL
7325	BOGEY HILLS PLAZA	2039 Zumbelhl Road	Saint Charles	MO
40	SHOPS AT VICTORIA	4109 Houston Highway	Victoria	TX
8807	GATEWAY COMMONS	3000 Pepperell Pkwy	Opelika	AL
6240	HARWOOD CENTRAL VILLAGE	2101 Harwood Road	Bedford	TX
8934	OLYMPIAD CENTER	23052 Alicia Parkway	Mission Viejo	CA
8501	SHENANDOAH SQUARE	13704 State Road 84	Davie	FL
1456	PARKWAY COMMONS	3046 Columbia Ave	Franklin	TN
2901	DEER CREEK CENTER	3218 Laclede Station Rd	Maplewood	MO
1320	NEWBERRY POINTE	144 Newberry Parkway	Etters	PA
2763	EMBASSY LAKES SHOPPING CE	2631 N. Hiatus Road	Cooper City	FL
3091	VILLAGE SHOP CENTER	1421 Losey Blvd.	La Crosse	WI
9063	WILLOW OAKS CROSSING	5011 Weddington Road	Concord	NC
8828	KENHORST PLAZA	1895 New Holland Rd	Kenhorst	PA
7465	HERITAGE MARKETPLACE	1800 Unser Blvd. Nw	Albuquerque	NM
9610	NEWTON CROSSROADS	5340 Ga Hwy 20	Covington	GA
293	ALOMA SC	2275 Aloma Ave	Winter Park	FL
5933	MABELVALE SHOPPING CENTER	10101 Mabelvale Plaza Dr	Little Rock	AR
1289	HASTINGS MARKETPLACE	1793 Market Blvd	Hastings	MN
3836	RAPIDS PLAZA	4551 8Th Street South	Wisconsin Rapids	WI
6318	MOCKSVILLE TOWN COMMONS	223 Cooper Creek Dr	Mocksville	NC
8879	PINECREST PLAZA	324 Pinecrest Plaza	Morehead	KY
5652	POTRANCO OAKS VILLAGE	9230 Potranco Road	San Antonio	TX
8942	GREAT SOUTH BAY SHP CTR	709 W Montauk Highway	West Babylon	NY
6125	LA MARQUE CROSSING	6608 Gulf Freeway	La Marque	TX
3640	SEMINOLE CENTER	3631 Orlando Drive	Sanford	FL

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8936	SHOPPES AT TRINITY LAKES	12472 Sr 54	Odessa	FL
3512	PLAZA PALMA REAL	Carr Pr-3, Km 77.8, Int	Humacao	PR
7162	SAN ANGELO PLAZA	614 W 29Th St #114	San Angelo	TX
3429	EAST VIKING PLAZA	421 Viking Plaza Dr #500	Cedar Falls	IA
8957	1890 RANCH SHOPPING CTR	1335 E. Whitestone Blvd	Cedar Park	TX
8964	CORTLANDT TOWNE CENTER	3141 East Main Street	Mohegan Lake	NY
1736	LOWE'S OUTLOT	2007 Us Highway 27	Somerset	KY
1371	NAVY BLVD	503 N Navy Blvd	Pensacola	FL
6657	STAFFORD SQUARE S/C	297 Route 72 W	Manahawkin	NJ
8858	NORTH POINT VILLAGE	1456 North Point Village	Reston	VA
318	PORT CHARLOTTE MARKETPLAC	19400 Cochran Blvd	Port Charlotte	FL
8878	DURANT SHOPPING CENTER	519 University Place	Durant	OK
8568	PLAZA @ LANDMARK	6244-F Little River TrnPk	Alexandria	VA
3925	NORTHEAST PARK SHOPPING C	210 37Th Avenue N	St. Petersburg	FL
8961	MIRA MESA MALL	8250 Mira Mesa Blvd	San Diego	CA
9378	5TH AVENUE SHOPS	1954 Ne 5Th Avenue	Boca Raton	FL
9495	WILLIAMSBURG DOWNS	5338 Central Florida Pkwy	Orlando	FL
8405	218 FIRST AVE	218 1st Ave	New York	NY
2943	470 THIRD AVENUE/32ND STR	470 Third Avenue	New York	NY
2907	124 8TH AVENUE	124 8Th Avenue	New York	NY
2930	299 BROADWAY	1St Floor	New York	NY
3301	897 8TH AVE	897 8Th Ave	New York	NY
2884	302 CANAL ST	302 Canal St	New York	NY
2098	163 WEST 72ND STREET	163 West 72Nd Street	New York	NY
7466	305 6TH AVE	305 6Th Ave	New York	NY
1824	107 SUMMER STREET	107 Summer St 1St Fl	Boston	MA
9468	2049 86TH ST	2049 86Th St	Brooklyn	NY
547	145 EAST 116TH STREET	145 East 116Th Street	New York	NY
7243	STEINWAY STREET	30-62 Steinway Street	Astoria	NY
7473	ALAMEDA LANDING	2610 5Th St	Alameda	CA
2915	75-28 37TH AVE	75-28 37Th Ave	Queens	NY
5058	1212 KINGS HIGHWAY	1212 Kings Highway	Brooklyn	NY
2119	313A HARVARD STREET	313A Harvard St	Brookline	MA
3052	REGO PARK	96-16 Queens Blvd.	Rego Park	NY
2162	CITY CENTER	2675 Geary Blvd	San Francisco	CA
2850	1336 WISCONSIN AVE	1336 Wisconsin Ave	Washington	DC
5258	7017 18TH AVENUE	7017 18Th Avenue	Brooklyn	NY
6868	1003 BISHOP ST	1003 Bishop St	Honolulu	HI
9967	116-06 QUEENS BLVD	116-06 Queens Blvd	Forest Hills	NY
3958	1940 BEACON STREET	1940 Beacon Street	Brighton	MA
6659	247 3RD AVENUE	247 3Rd Avenue	New York	NY
575	14 W. 8TH STREET	14 W. 8Th Street	Holland	MI
9664	AMTRAK STATION	2955 Market St	Philadelphia	PA
3596	GALLERIA MALL	1210 S. University	Ann Arbor	MI
2841	17 WEST	1220 17Th Street	Miami Beach	FL
4453	ELLSWORTH AFB	2725 Lemay Blvd Bldg 4020	Ellsworth Afb	SD
4374	SAN DIEGO MCRD	3800 Chosin Ave	San Diego	CA
4364	FORT HAMILTON	123 General Lee Ave	Brooklyn	NY
4349	HANSCOM AFB	100 Eglin Street	Bedford	MA
4405	COLUMBUS AFB	Bldg #160	Columbus Afb	MS
4443	HOMESTEAD ARS	29242 Coral Sea Blvd	Homestead Afb	FL
3744	INTERNATIONAL MARKET PLAC	2330 Kalakaua Avenue	Honolulu	HI
33	WILLOW BROOK MALL	1524 Willow Brook Mall	Wayne	NJ
737	WOODFIELD MALL	5 Woodfield Mall	Schaumburg	IL
327	PARK PLACE	5870 East Broadway	Tucson	AZ
816	STONERIDGE MALL	1304 Stoneridge Mall Road	Pleasanton	CA
7125	PALISADES CENTER	3490 Palisades Center Dr	West Nyack	NY
3695	WESTFIELD OAKRIDGE	925 Blossom Hill	San Jose	CA
3547	BAYSHORE MALL	3300 Broadway	Eureka	CA
2015	KING OF PRUSSIA PLAZA	160 North Gulph Road	King Of Prussia	PA
5076	APACHE MALL	646 Apache Mall	Rochester	MN
439	EASTRIDGE MALL	2200 Eastridge Loops	San Jose	CA

Loc Number	Location Name	Location Address	Location City	Location State / Province
436	SUN VALLEY MALL	112A Sun Valley Mall	Concord	CA
90	NORTHPARK MALL	101 North Rangeline	Joplin	MO
444	MONTCLAIR PLAZA	5090 Montclair Plaza Lane	Montclair	CA
1255	STONESTOWN GALLERIA	3251 20Th Avenue	San Francisco	CA
232	WESTFIELD SOUTH SHORE	1701 Sunrise Highway	Bay Shore	NY
1436	FLORIDA MALL	8001 S Orange Blossom Tra	Orlando	FL
342	CROSS CREEK MALL	419 Cross Creek Mall	Fayetteville	NC
9836	PANORAMA CITY MALL	8401 Van Nuys Blvd	Panorama City	CA
60	SMITH HAVEN MALL	110 Smith Haven Mall	Lake Grove	NY
5213	PARK MEADOWS TOWN CENTER	8505 Park Meadows Center	Lone Tree	CO
505	WHITE OAKS MALL	2501 W. Wabash Ave.	Springfield	IL
5581	WESTFIELD FASHION SQUARE	14006 Riverside Drive	Sherman Oaks	CA
3659	MALL OF LOUISIANA	6401 Bluebonnet Blvd	Baton Rouge	LA
85	CAPE COD MALL	769 Iyanough Road	Hyannis	MA
862	DESERT SKY MALL	7611 West Thomas Road	Phoenix	AZ
2471	THE WESTCHESTER	125 Westchester Ave	White Plains	NY
843	CONNECTICUT POST	1201 Boston Post Road	Milford	CT
5203	SQUARE ONE MALL	1201 Broadway Drive	Saugus	MA
1452	ROGUE VALLEY MALL	1600 North Riverside	Medford	OR
492	SOUTH HILL MALL	3500 S. Meridian	Puyallup	WA
50	WESTLAND MALL	1675 West 49Th Street	Hialeah	FL
784	CROSSROADS MALL	6650 South Westnedge	Portage	MI
1032	TUCSON MALL	4500 North Oracle Road	Tucson	AZ
388	OCEAN COUNTY MALL	1201 Hooper Avenue	Toms River	NJ
35	PARK CITY CENTER	581 Park City Center	Lancaster	PA
468	WOODLAND HILLS MALL	7021 South Memorial	Tulsa	OK
1444	MARLEY STATION	7900 Governor Ritchie Hwy	Glen Burnie	MD
73	KINGS PLAZA SHOPPING CTR	5283 Kings Plaza	Brooklyn	NY
5591	VISALIA MALL	2157 South Mooney Blvd	Visalia	CA
1219	SCOTTSDALE FASHION SQ	7014 E Camelback Rd	Scottsdale	AZ
718	ACADIANA MALL	5725 Johnston	Lafayette	LA
1098	WINDWARD MALL	46056 Kam Highway	Kaneohe	HI
285	SOUTHLAKE MALL	2014 Southlake Mall	Merrillville	IN
1506	LANSING MALL	5234 West Saginaw Hwy	Lansing	MI
7792	STONEWOOD CENTER	173 Stonewood	Downey	CA
1602	APPLE BLOSSOM MALL	1850 Apple Blossom Drive	Winchester	VA
1062	ARDEN FAIR MALL	1689 Arden Way	Sacramento	CA
2654	HUDSON MALL	Rt 440	Jersey City	NJ
245	SOUTHPARK MALL	4600 16 Street	Moline	IL
380	NORTH RIVERSIDE PARK	7501 West Cermak Road	North Riverside	IL
1502	PENN SQUARE MALL	2078 Penn Square	Oklahoma City	OK
386	HANES MALL	3320 Silas Creek Parkway	Winston-Salem	NC
1251	WESTFIELD PALM DESERT	72840 Highway Iii	Palm Desert	CA
377	QUAKER BRIDGE MALL	150 Quaker Bridge Mall	Lawrenceville	NJ
326	SANTA ROSA MALL	300 Mary Esther Cutoff	Mary Esther	FL
1583	CHICO MALL	1950 E. 20Th Street	Chico	CA
412	INLAND CENTER	154 Inland Center Dr	San Bernardino	CA
9548	NORTHLAKE MALL	6801 Northlake Mall Dr	Charlotte	NC
406	CHERRYVALE MALL	7200 Harrison Ave	Rockford	IL
1036	WILLOWBROOK MALL	1658 Willowbrook Mall	Houston	TX
7693	FLAT IRON CROSSING MALL	1 Flat Iron Circle	Broomfield	CO
693	HICKORY POINT MALL	1395 Hickory Point Mall	Forsyth	IL
3879	FRANCIS SCOTT KEY	5500 Buckeystown Pike	Frederick	MD
314	COUNTRYSIDE MALL	27001 Us Highway 19 North	Clearwater	FL
5186	MONMOUTH S.C.	180 Route 35 South	Eatontown	NJ
1420	MCKINLEY MALL	3601 Mckinley Parkway	Buffalo	NY
178	LIVINGSTON MALL	112 Eisenhower Parkway	Livingston	NJ
163	SUNRISE MALL	6073 Sunrise Mall	Citrus Heights	CA
7685	POLARIS FASHION PLACE	1500 Polaris Parkway	Columbus	OH
923	EASTWOOD MALL	5555 Youngstown-Warren Rd	Niles	OH
8682	NORTHTOWN MALL	N 4750 Division Street	Spokane	WA
1627	ROSEDALE CENTER	10 Rosedale Center	Roseville	MN

Loc Number	Location Name	Location Address	Location City	Location State / Province
269	MILLCREEK MALL	Space #160	Erie	PA
392	OAK PARK MALL	11161 West 95Th Street	Overland Park	KS
3055	RIDGEDALE CENTER	12505 Wayzata Blvd.	Minnnetonka	MN
369	OAKDALE MALL	3111 E. Main Street	Johnson City	NY
1434	TOWN CENTER AT COBB	400 Earnest Barrett Pkwy	Kennesaw	GA
340	ORANGE PARK MALL	1910 Wells Rd	Orange Park	FL
773	OAKLAND MALL	422 W 14 Mile Rd	Troy	MI
1395	WIREGRASS COMMONS MALL	900 Common Ave	Dothan	AL
1039	GREAT NORTHERN MALL	232 Great Northern Mall	North Olmsted	OH
147	CITY CREEK CENTER	51 South Main St	Salt Lake City	UT
1440	EDEN PRAIRIE CENTER	8251 Flying Cloud Drive	Eden Prairie	MN
1169	YORKTOWN SHOPPING CENTER	203 Yorktown S/C	Lombard	IL
6294	MACARTHUR CENTER	300 Monticello Avenue	Norfolk	VA
9395	THE SHOPS AT WILLOW RD	6121 W Park Blvd	Plano	TX
55	SOUTHERN PARK MALL	7401 Market St	Youngstown	OH
3703	CAPITAL MALL	625 Black Lake Blvd Sw	Olympia	WA
5378	CASCADE MALL	414 Cascade Mall	Burlington	WA
571	SOUTHLAND MALL	20505 South Dixie Highway	Miami	FL
2752	SANTA MARIA TOWN CTR	222 Town Center East	Santa Maria	CA
9564	GALLERIA AT SOUTH BAY	1815 Hawthorne Blvd	Redondo Beach	CA
226	FASHION SQUARE MALL	4724 Fashion Square Mall	Saginaw	MI
7295	PACIFIC VIEW	3301 E. Main Street	Ventura	CA
1427	NORTHTOWNE MALL	1500 N Clinton St	Defiance	OH
204	NORTHTOWN SHOPPING CENTER	275 Northtown Dr	Blaine	MN
110	SOUTHRIDGE MALL	5300 S 76Th Street	Greendale	WI
2803	LAKELINE MALL	11200 Lakeline Mall Blvd	Cedar Park	TX
1546	SUPERSTITION SPRINGS	6555 East Southern Ave.	Mesa	AZ
874	LYNNHAVEN MALL	701 Lynnhaven Pkwy	Virginia Beach	VA
510	WESTLAND MALL	550 South Gear Ave	West Burlington	IA
37	KENNEDY MALL	555 John F Kennedy Road	Dubuque	IA
166	BELTWAY PLAZA	6080 Green Belt Road	Greenbelt	MD
310	CUMBERLAND MALL	Delsea Drive & Route 47	Vineland	NJ
190	CONCORD MALL	4737 Concord Pike	Wilmington	DE
8420	CENTER AT SALISBURY	2300 N. Salisbury Blvd.	Salisbury	MD
7898	WESTFIELD BROWARD	8000 W. Broward Blvd	Plantation	FL
500	THE COMMONS AT FEDERAL WA	1823 South Commons	Federal Way	WA
2641	HUTCHINSON MALL	1060 Highway 15 South	Hutchinson	MN
1449	PEMBROKE MALL	4554 Virginia Beach Blvd	Virginia Beach	VA
641	MEADOWS	4300 Meadows Lane	Las Vegas	NV
3390	SOLOMON POND MALL	601 Donald Lynn Blvd	Marlborough	MA
481	THE SHOPS AT ITHACA MALL	40 Catherwood Road	Ithaca	NY
3438	SOUTHSIDE MALL	Rd 2 Southside	Oneonta	NY
820	FAIR OAKS MALL	11850 U Fair Oaks Road	Fairfax	VA
2848	BUFFALO MALL	2400-8Th Ave Sw	Jamestown	ND
1421	COLUMBIA MALL	2300 Bernadette Dr.	Columbia	MO
7090	WAKEFIELD MALL	Tower Hill Road &	Wakefield	RI
159	WESTFIELD NORTH COUNTY	200 East Via Rancho Parkw	Escondido	CA
799	OLD HICKORY MALL	2021 North Highland Ave	Jackson	TN
503	MONTGOMERY MALL	712 Montgomery Mall	North Wales	PA
1265	JEFFERSON VALLEY MALL	650 Lee Boulevard	Yorktown Hgts	NY
636	CARY TOWNE CENTER	1105 Walnut Street	Cary	NC
1469	MID RIVER MALL	1080 Mid Rivers Mall Driv	Saint Peters	MO
1578	WESTFIELD MERIDEN	470 Lewis Avenue	Meriden	CT
38	MARION CENTRE S/C	1475 Marion Waldo Rd	Marion	OH
5883	BAY CITY TOWN CENTER	4101 Wilder Road	Bay City	MI
809	THE GALLERY AT SOUTH DEKA	24 South Dekalb Mall	Decatur	GA
1425	VILLAGE MALL	2917 Vermillion St	Danville	IL
836	QUAIL SPRINGS MALL	2501 West Memorial Road	Oklahoma City	OK
5498	MERIDAN MALL	1982 West Grand River	Okemos	MI
3105	WILTON MALL	3065 Rte 50 Space B-12	Saratoga Springs	NY
5138	THE LAKES MALL	5600 Harvey Road	Muskegon	MI
224	NORTHWOODS MALL	2200 War Memorial Drive	Peoria	IL



Loc Number	Location Name	Location Address	Location City	Location State / Province
1472	HAMILTON MALL	4403 Black Horse Pike	Mays Landing	NJ
277	VOLUSIA MALL	1700 W Internatl Sdwy Blv	Daytona Beach	FL
1352	TOWSON TOWN CENTER	825 Dulaney Valley Road	Towson	MD
5411	THE GALLERY AT THE HARBOR	200 East Pratt St	Baltimore	MD
1666	SALEM CENTER	480 Center Street Ne	Salem	OR
8882	FASHION PLACE MALL	6191 State St	Murray	UT
2662	VILLAGE SQUARE MALL	83 Village Square Mall	Effingham	IL
1592	ENFIELD SQUARE MALL	90 Elm Street	Enfield	CT
41	COURTLAND CENTER	4190 East Court St	Burton	MI
9443	WINONA MALL	1213 Gilmore Ave	Winona	MN
9788	MERLE HAY MALL	3800 Merle May Mall	Des Moines	IA
1076	CRYSTAL RIVER MALL	1801 Nw Hwy 19	Crystal River	FL
353	FOX VALLEY MALL	2356 Fox Valley Center	Aurora	IL
1448	GOLF MILL SHOPPING CENTER	247 Golf Mill Center	Niles	IL
2432	SANTA ROSA MALL	Pr 2	Bayamon	PR
414	FAIRLANE TOWN CENTER	18900 Michigan Avenue	Dearborn	MI
9956	EDGEWATER PLAZA	2600 Beach Blvd	Biloxi	MS
3904	THUNDERBIRD MALL	1421 B 12Th Ave S	Virginia	MN
1111	EAST HILLS MALL	3700 Frederick Ave	St. Joseph	MO
1471	THE MALL OF MONROE	2121 N Monroe St	Monroe	MI
291	INDEPENDENCE CENTER	18813 East 39Th St South	Independence	MO
9014	OAKWOOD SHOPPING CENTER	197 West Bank Expressway	Terrytown	LA
701	SEMINOLE TOWNE CENTER	200 Towne Center Circle	Sanford	FL
25	ALMEDA MALL	12200 Gulf Freeway	Houston	TX
501	RIDGMAR MALL	2178 Green Oaks Road	Fort Worth	TX
208	LINDALE MALL	4444 First Ave N E	Cedar Rapids	IA
3591	HOLIDAY VILLAGE MALL	1753 Highway 2 W	Havre	MT
5584	PARAMUS PARK MALL	2040 Paramus Park Mall	Paramus	NJ
5642	MARSHFIELD MALL	503 East Ives Street	Marshfield	WI
3169	OLD ORCHARD MALL	4999 Old Orchard Center	Skokie	IL
514	MALL ST. VINCENT	1133 St. Vincent #110	Shreveport	LA
5264	WESTFIELD SARASOTA SQUARE	8201 S Tamiami Trail	Sarasota	FL
695	PARADISE VALLEY MALL	4550 East Cactus Rd.	Phoenix	AZ
3082	STEEPLEGATE	270 Loudon Road	Concord	NH
5028	LEE PREMIUM OUTLETS	50 Water Street	Lee	MA
5139	TANGER OUTLET CENTER DAYT	1100 Cornerstone Blvd	Daytona Beach	FL
8903	TANGER OUTLETS @ THE ARCH	1387 The Arches Circle	Deer Park	NY
2776	OUTLETS OF DES MOINES	545 Bass Pro Drive Nw	Altoona	IA
3776	THE OUTLET SHOPPES AT LAR	1600 Water Street	Laredo	TX
5026	TANGER OUTLET CENTER JEFF	8000 Factory Shops Blvd	Jeffersonville	OH
3613	NEBRASKA CROSSING OUTLET	21355 Nebraska Crossing D	Gretna	NE
3745	LOUISIANA BOARDWALK OUTLE	490 Boardwalk Blvd	Bossier City	LA
3600	EMPIRE OUTLETS	35B Richmond Terrace	Staten Island	NY
8804	OUTLETS AT CORPUS CHRISTI	500 North lh 69	Robstown	TX
1124	LAGUNA 99 PLAZA	8451 Elk Grove Blvd	Elk Grove	CA
3220	VINTAGE OAKS	120 Vintage Way	Novato	CA
7995	HERTITAGE PARK PLAZA	448 North Main Street	East Longmeadow	MA
14	CENTURY CENTER	353 Memorial Blvd	West Springfield	MA
8672	VILLAGE SHOPS	95 Washington Street	Canton	MA
8527	UNIVERSITY CENTER	4237 Campus Drive	Irvine	CA
9959	ESPLANADE SHOPPING CENTER	365 West Esplanade Drive	Oxnard	CA
9637	BLUE STAR SHOPPING CENTER	1701 Rt 22 West	Watchung	NJ
5587	SULLY PLAZA	13936 Lee Jackson Hwy	Chantilly	VA
2355	SHOPS @ DUNES ON MONTEREY	130 General Stilwell Dr	Marina	CA
8558	ARLINGTON SHOPPING CENTER	804 Us Highway 46	Parsippany	NJ
7338	WAREHAM CROSSING	2421 Cranberry Hwy	Wareham	MA
8974	LANTANA SQUARE	206 Lantana Drive	Hokessin	DE
5916	GREAT LAKES MALL	7850 Mentor Avenue	Mentor	OH
47	THE SHOPS AT LA CANTERA	15900 La Cantera Pkwy	San Antonio	TX
6604	PARROT PLAZA	1401 W. North Avenue	Melrose Park	IL
8232	WESTFORD PLAZA	175 Littleton Rd	Westford	MA
2726	CATHEDRAL VILLAGE	69185 Ramon Road	Cathedral City	CA

Loc Number	Location Name	Location Address	Location City	Location State / Province
5125	ARLINGTON SQUARE	4725 Reed Road	Columbus	OH
971	PAVILIONS PLACE	16420 Beach Blvd	Westminster	CA
8314	MORGAN HILL SHOPPING CENT	1057 Cochrane Rd	Morgan Hill	CA
7432	HIGHLAND COMMONS	56 Highland Commons East	Hudson	MA
7884	CROSS POINT CENTRE	101 E. Alex Bell Rd	Centerville	OH
9737	COPPER TREE PLAZA	350 Ramapo Valley Rd	Oakland	NJ
1135	NORTHBOROUGH CROSSING	9113 Shops Way	Northborough	MA
8731	SILVERNAIL SHOPPING CENTE	2116 Silvernail Rd	Pewaukee	WI
8357	TRIANGLE SHOPPING CENTER	20 Triangle Center	Yorktown Heights	NY
585	WOODBURN PLAZA SHOPPING C	3040 Sprague Lane	Woodburn	OR
8566	ROCKFORD PLAZA	4190 Vinewood Lane	Plymouth	MN
9230	THE ORCHARD TOWN CENTER	14583 Orchard Parkway	Westminster	CO
5221	COMMERCE TOWN CENTER	3050 Union Lake Rd	Commerce	MI
7876	THE SHOPPES AT HAWK RIDGE	6115 Ronald Reagan Drive	Lake St. Louis	MO
8733	RIVERVIEW WEST MARKETPLAC	3770 W. Mcfadden Ave	Santa Ana	CA
2724	GIBBS CROSSING	350 Palmer Rd	Ware	MA
9963	SHARP'S PLAZA	175 Route 70 East	Medford	NJ
9107	COTTONWOOD SHOPPING CENTE	1100 S. Hwy 260 #17A	Cottonwood	AZ
9353	PORT PLAZA	45 Storey Ave	Newbury Port	MA
1379	CURRY HOLLOW CENTER	314 1/2 Curry Hollow Dr	Pleasant Hills	PA
3515	EDMOND CROSSING S.C.	72 S.E. 33Rd Street	Edmond	OK
9184	TRAVER VILLAGE	2627 Plymouth Road	Ann Arbor	MI
1048	CRYSTAL CITY SHOPS @1750	1670 Crystal Sq Arcade	Arlington	VA
3619	WAYLAND TOWN CENTER	77 Andrew Ave	Wayland	MA
559	MUNDELEIN CROSSINGS	3022 Route 60	Mundelein	IL
1558	SHOPPES @ PGH MILLS	2015 Pgh Mills Blvd	Tarentum	PA
5167	WALMART LAFAYETTE	1217 Diamond Circle	Lafayette	CO
1618	MIDDLESEX S.C.	1342 Eastern Blvd.	Baltimore	MD
1348	SUNRISE VILLAGE SHOPPING	4776 East Sunrise Drive	Tucson	AZ
5823	WEST MARKET SC	109 S Parket Street - 109	Olathe	KS
7371	SPRING CREEK JUNCTION	681 South Green Bay Road	Neenah	WI
8069	WINDSOR COMMONS	3143 Cape Horn Road	Red Lion	PA
6997	SOUTHGATE PLAZA	3501 S Tamiami Trail	Sarasota	FL
1691	PADUCAH TOWNE CENTER	3216 Irvin Cobb Drive	Paducah	KY
7493	RIVER HILL VILLAGE CENTER	6030 Daybreak Circle	Clarksville	MD
8941	FALLS GROVE VILLAGE CTR	14933 F Shady Grove Rd	Rocville	MD
3270	SOUNDVIEW MARKETPLACE	20 Soundview Marketplace	Port Washington	NY
8954	GREENTREE ROAD S/C	1969 Greentree Rd	Pittsburgh	PA
9258	MALL @ SIERRA VISTA	2200 El Marcado Loop	Sierra Vista	AZ
9256	WHITTWOOD TOWN CENTER	15702 Whittwood Lane	Whittier	CA
9178	TROPICANA BELTWAY CENTER	5130 S. Ft Apache Rd	Las Vegas	NV
6775	THE SHOPPES AT OLD BRIDGE	3849 Us Highway 9	Old Bridge	NJ
3894	NIAGARA CONSUMER SQUARE	7314 Niagara Falls Blvd	Niagara Falls	NY
9338	SHEEPSHEAD BAY	1710 Sheepshead Bay Rd	Brooklyn	NY

**EXHIBIT B**

**Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re. Docket Nos. ___ & ___

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**FINAL ORDER GRANTING DEBTORS' MOTION FOR  
INTERIM AND FINAL ORDERS (A) APPROVING PROCEDURES  
FOR STORE CLOSING SALES, (B) AUTHORIZING CUSTOMARY  
BONUSES TO MANAGERS OF STORES, (C) AUTHORIZING ASSUMPTION  
OF THE CONSULTING AGREEMENTS AND (D) GRANTING RELATED RELIEF**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for a final order (this “*Final Order*”), (a) authorizing and approving the conduct of store closing or similar themed sales (the “*Store Closings*”) in accordance with the terms of the U.S. and Canadian store closing sale procedures (the “*U.S. Store Closing Procedures*” and the “*Canadian Store Closing Procedures*”, respectively, and, together, the “*Store Closing Procedures*”) attached hereto as **Exhibit 1**, with such sales to be free and clear of all liens, claims and encumbrances; (b) authorizing the Debtors to pay customary bonuses to non-insider managers of the stores where Store Closing sales will occur; (c) authorizing the Debtors to assume the Consulting Agreements; and (d) granting related

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion, the First Day Declaration, and the Interim Order entered on \_\_\_\_, 2020; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the First Day Declaration and all of the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:<sup>3</sup>**

A. The Debtors have advanced sound business reasons for seeking to implement the Store Closing Procedures and assume the Consulting Agreements, as set forth in the Motion and at the Hearing, and such relief is in the best interests of the Debtors and their estates.

B. The Store Closing Procedures are reasonable, and the conduct of the Store Closings in accordance with the applicable Store Closing Procedures will provide an efficient means for the Debtors to dispose of the Merchandise and the FF&E and will maximize the returns on the Merchandise and the FF&E.

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate.

C. The Consulting Agreements were negotiated, proposed, and entered into by the Debtors and the Consultant without collusion, in good faith, and from arm's-length bargaining positions, and the operation and effectiveness of the Consulting Agreements on a final basis is a sound exercise of the Debtors' business judgment.

D. The Store Closings are in the best interest of the Debtors' estates.

E. The entry of this Final Order is in the best interest of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein; and now therefore it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.

2. The Debtors are authorized, but not directed, to make payments under the Store Closing Bonus Plan.

3. The Debtors and the Consultant are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion. The failure to specifically include any provisions of the Consulting Agreements in this Final Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Consulting Agreements and all of their provisions, payments, and transactions be, and hereby are, authorized and approved as and to the extent provided in this Final Order.

4. The assumption of the Consulting Agreements by the Debtors pursuant to section 365 of the Bankruptcy Code is approved on a final basis. The Debtors are authorized to act and perform in accordance with the terms of the Consulting Agreements, including making payments required by the Consulting Agreements to the Consultant without the need for any application of the Consultant or a further order of the Court.

5. To the extent of any conflict between this Final Order, the Consulting Agreements, and the Store Closing Procedures, the terms of this Final Order shall control. Notwithstanding any other term of this Final Order, the Canadian Store Closing Procedures and the Canadian Sale Guidelines shall control in respect of Store Closings in Canada.

**I. AUTHORITY TO ENGAGE IN CLOSING SALES AND CONDUCT STORE CLOSINGS.**

6. The Debtors and the Consultant are authorized, on a final basis pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to continue to conduct Store Closings at the Closing Stores in accordance with this Final Order, the applicable Store Closing Procedures, and the Consulting Agreements as may be modified by a Side Letter (as defined below) between the Debtors and the landlords at the closing locations.

7. The Store Closing Procedures are approved in their entirety on a final basis. The Store Closing Procedures shall be used for all permitted Store Closings in these Chapter 11 Cases, unless otherwise ordered.

8. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Final Order, the applicable Store Closing Procedures, and the Consulting Agreements.

9. All entities that are presently in possession of some or all of the Merchandise or FF&E in which the Debtors hold an interest that are or may be subject to this Final Order hereby are directed to surrender possession of such Merchandise or FF&E to the Debtors.

10. Neither the Debtors nor any of their officers, employees, or agents shall be required to obtain the approval of any third party, including, without limitation, any Governmental Unit (as defined in Bankruptcy Code section 101(27)) or landlord, to conduct the Store Closings and to take the related actions authorized herein.

## II. CONDUCT OF THE SALES.

11. All media in which the Store Closings may be advertised and all landlords are directed to accept this Final Order as binding authority so as to authorize the Debtors and the Consultant to conduct the Store Closings and the sale of Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement), including, without limitation, to conduct and advertise the sale of the Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement) in the manner contemplated by and in accordance with this Final Order, the Store Closing Procedures, and the Consulting Agreements.

12. The Debtors and the Consultant are hereby authorized to take such actions as may be necessary and appropriate to conduct the Store Closings without necessity of further order of this Court as provided in this Final Order, the Store Closing Procedures, and the Consulting Agreements, including, but not limited to, advertising the sale as a “store closing sale,” “sale on everything,” “everything must go,” or similar-themed sales through the posting of signs (including the use of exterior banners at non-enclosed mall closing locations, and at enclosed mall closing locations to the extent the applicable closing location entrance does not require entry into the enclosed mall common area), use of signwalkers, and street signage;*provided, however*, that only Debtor-approved terminology will be used at each Closing Store in connection with the Store Closings.

13. Pursuant to the U.S. Consulting Agreement, and subject to the Debtors’ prior written approval, the Consultant is authorized to supplement the Merchandise in the Closing Stores with Additional Consultant Goods pursuant to the Debtors’ prior written approval of a plan with respect to the placement and sale of such Additional Consultant Goods, and provided that any such supplementing with Additional Consultant Goods must be of like kind and no lesser quality than goods sold in the Closing Stores prior to the Petition Date. Sales of Additional Consultant Goods



shall be run through the Debtors' cash register systems; provided, however, that the Consultant shall mark the Additional Consultant Goods using either a "dummy" SKU or department number or in such other manner so as to distinguish the sale of Additional Consultant Goods from the sale of Merchandise.

14. Pursuant to the U.S. Consulting Agreement, all transactions relating to the Additional Consultant Goods are, shall be construed as, and are acknowledged by the Debtors to be, a true consignment from Consultant to the Debtors under Article 9 of the Uniform Commercial Code in effect in the State of Delaware (the "*UCC*") and not a consignment for security purposes. At all times and for all purposes, the Additional Consultant Goods and their proceeds shall be the exclusive property of the Consultant, and no other person or entity (including, without limitation, the Debtors, or any third person claiming a security interest in the Debtors' property, including any of the Debtors' secured lenders) shall have any claim against any of the Additional Consultant Goods or the proceeds thereof. The Additional Consultant Goods shall at all times remain subject to the exclusive control of the Consultant. Pursuant to the U.S. Consulting Agreement, and to the extent necessary, Consultant is hereby granted a first priority security interest in and lien upon (i) the Additional Consultant Goods and (ii) the Additional Consultant Goods proceeds.

15. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the sale of the Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement), to the extent that, prior to the final hearing, disputes arise during the course of such sale regarding laws regulating the use of sign-walkers, banners, or other advertising and the Debtors are unable to resolve the matter consensually, any party may request an immediate telephonic hearing with this Court pursuant to these provisions. Such hearing will, to the extent practicable, be scheduled initially no

later than the earlier of (a) the final hearing, or (b) within two (2) business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

16. The sale of the Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement) shall be conducted by the Debtors notwithstanding any restrictive provision of any lease, sublease, restrictive covenant, or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Store Closings (including the sale of the Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement)) and the rejection of leases, abandonment of assets, or “going dark” provisions, and such provisions shall not be enforceable in conjunction with the Store Closings. Breach of any such provisions in these Chapter 11 Cases in conjunction with the Store Closings shall not constitute a default under a lease or provide a basis to terminate the lease; *provided* that the Store Closings are conducted in accordance with the terms of this Final Order and the applicable Store Closing Procedures. Subject to the approval of Debtors’ secured lenders, including the Ad Hoc Group of Crossover Lenders and the Ad Hoc FILO Term Lender Group, the Debtors and landlords of the Closing Stores are authorized to enter into agreements (“*Side Letters*”) between themselves modifying the Store Closing Procedures without further order of the Court and such Side Letters shall be binding as among the Debtors and any such landlords. In the event of any conflict between the Store Closing Procedures and any Side Letter, the terms of such Side Letter shall control. The Expense Budget attached to each of the Consulting Agreements may only be modified according to the procedures provided by the respective Consulting Agreements and after consultation with counsel to the Ad Hoc Group of Crossover Lenders and counsel to the Ad Hoc FILO Term Lender Group.

17. Except as expressly provided for herein or in the Store Closing Procedures, and except with respect to any Governmental Unit (as to which paragraphs 25 and 26 shall apply) no person or entity, including, but not limited to, any landlord, licensor, service provider, utility, or creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Store Closings or the sale of the Merchandise, FF&E, or Additional Consultant Goods (with respect to the U.S. Consulting Agreement), or the advertising and promotion (including the posting of signs and exterior banners or the use of signwalkers) of such sales, and all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, service provider, utility, and creditor and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, obstructing, or otherwise impeding the conduct of the Store Closings, and/or (b) instituting any action or proceeding in any court (other than this Court) or administrative body seeking an order or judgment against, among others, the Debtors, or the landlords at the Closing Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Store Closings or other liquidation sales at the Closing Stores and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

18. In accordance with and subject to the terms and conditions of the Consulting Agreements, the Consultant shall have the right to use the Closing Stores and all related Closing Store services, furniture, fixtures, equipment, and other assets of the Debtors for the purpose of conducting the Store Closings, free of any interference from any entity or person, subject to compliance with the applicable Store Closing Procedures and this Final Order.

19. All sales of the Merchandise, FF&E and Additional Consultant Goods (with respect to the U.S. Consulting Agreement) shall be “as is” and final. Returns related to the purchase of Store Assets shall not be accepted at stores that are not participating in the Store Closings. However, as to the Closing Stores, all state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms “as is” or “final sales.”

20. The Consultant shall accept the Debtors’ validly-issued gift certificates and gift cards that were issued by the Debtors before the commencement of the Store Closings in accordance with the Debtors’ gift certificate and gift card policies and procedures as they existed on the Petition Date, and accept returns of merchandise sold by the Debtors before the commencement of the Store Closings for the first thirty (30) days of the Store Closings, provided that such returns are otherwise in compliance with the Debtors’ return policies in effect as of the Petition Date.

21. The Consultant shall not be liable for sales taxes except with respect to the Additional Consultant Goods (with respect to the U.S. Consulting Agreement), and as expressly provided in the Consulting Agreements, and the payment of any and all sales taxes is the responsibility of the Debtors, subject to Consultant’s obligation to collect and remit the sales taxes attributable to the sale of Additional Consultant Goods pursuant to the U.S. Consulting Agreement. The Debtors are directed to remit all taxes arising from the Store Closings to the applicable Governmental Units as and when due; *provided* that in the case of a *bona fide* dispute the Debtors are only directed to pay such taxes upon the resolution of the dispute, if and to the extent that the dispute is decided in favor of the applicable Governmental Unit. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other

party, other than the applicable Governmental Unit for which the sales taxes are collected. This Final Order does not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state law, and does not constitute a declaratory judgment with respect to any party's liability for taxes under state law.

22. Pursuant to section 363(f) of the Bankruptcy Code, the Consultant, on behalf of the Debtors, is authorized to sell Store Assets—and all sales of Store Assets whether by the Consultant or the Debtors, shall be—free and clear of any and all of any liens, claims, encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state, and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, ERISA, CERCLA, alter ego and other liabilities, causes of action, contract rights, and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all “claims” as defined in section 101(5) of the Bankruptcy Code), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable (collectively, “*Encumbrances*”); as provided for herein because in each case, one or more of the standards set forth in section 363(f)(1)–(5) has been satisfied; *provided, however*, that any such Encumbrances shall attach to the proceeds of the sale of the Merchandise and the FF&E with the same validity, in the amount, with the same priority as, and to the same extent that any such Encumbrances have with respect to the Merchandise and the FF&E, subject to any claims and

defenses that any party may possess with respect thereto and subject to the Consultant's and expenses (as provided in the Consulting Agreements).

23. No FF&E sold or abandoned by the Debtors will contain personal and/or confidential information about the Debtors' employees and/or customers.

24. The Debtors are authorized and empowered to transfer Merchandise, FF&E and Additional Consultant Goods (with respect to the U.S. Consulting Agreement) among, and into, the Closing Stores.

### **III. DISPUTE RESOLUTION PROCEDURES WITH GOVERNMENTAL UNITS.**

25. Nothing in this Final Order, or the Store Closing Procedures, releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Final Order. Nothing contained in this Final Order, or the Store Closing Procedures shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with its rights and obligations as debtor in possession under the Bankruptcy Code. The Store Closings shall not be exempt from laws of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, "**General Laws**"). Nothing in this Final Order, the Consulting Agreements, or the Store Closing Procedures, shall alter or affect obligations to comply with all applicable federal safety laws and regulations. Nothing in this Final Order shall be deemed to bar any Governmental Unit (as such term is defined in section 101(27) of the Bankruptcy Code) from enforcing General Laws, subject to the Debtors' rights to assert in that forum or before this

Court that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code or this Final Order. Notwithstanding any other provision in this Final Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Final Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Final Order shall be deemed to have made any rulings on any such issues.

26. To the extent that the sale of Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement) is subject to any Liquidation Sale Laws, including any federal, state or local statute, ordinance, or rule, or licensing requirement directed at regulating “going out of business,” “store closing,” similar inventory liquidation sales, or bulk sale laws, laws restricting safe, professional and non- deceptive, customary advertising such as signs, banners, posting of signage, and use of sign- walkers solely in connection with the sale and including ordinances establishing license or permit requirements, waiting periods, time limits, or bulk sale restrictions that would otherwise apply solely to the sale of the Merchandise, FF&E, and Additional Consultant Goods (with respect to the U.S. Consulting Agreement), the Dispute Resolution Procedures in this section shall apply:

- a. Provided that the Store Closings are conducted in accordance with the terms of the Interim Order or the Final Order, as applicable, and the applicable Store Closing Procedures, and in light of the provisions in the laws of many Governmental Units (as defined in the Bankruptcy Code) that exempt court-ordered sales from their provisions, the Debtors will be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Store Closings in accordance with the terms of the Interim Order or the Final Order, as applicable, and the applicable Store Closing Procedures without the necessity of further showing compliance with any such Liquidation Sale Laws.
- b. Within three business days after entry of the Interim Order, the Debtors will serve by email, facsimile, or first-class mail, copies of the Interim Order, the proposed Final Order and the Store Closing Procedures on the following: (i) the landlords for the Closing Stores; (ii) the Attorney General’s office for each state in which the Store Closings are being held; (iii) the county consumer protection agency or

similar agency for each county in which the Store Closings are being held; (iv) the division of consumer protection for each state in which the Store Closings are being held; and (v) the chief legal counsel for each local jurisdiction in which the Store Closings are being held (collectively, the “**Dispute Notice Parties**”).

- c. With respect to any additional Closing Stores, within three business days after Court authorization to close additional stores (each, an “**Additional Closing Store List**”), the Debtors will serve by email, facsimile, or first-class mail, copies of the Interim Order or Final Order, as applicable, and the Store Closing Procedures on the Dispute Notice Parties. To the extent that there is a dispute arising from or relating to the Store Closings, the Interim Order, the proposed Final Order, or the Store Closing Procedures, as applicable, which dispute relates to any Liquidation Sale Laws (a “**Reserved Dispute**”), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days following entry of the Interim Order or service of any Additional Closing Store List, as applicable, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the “**Dispute Notice**”) explaining the nature of the dispute to: (a) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com) and Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com); (b) the U.S. Trustee, 844 King Street, Suite 2207, Lock Box 35, Wilmington, DE 19801, Attn: Jane Leamy (jane.m.leafy@usdoj.gov); (c) counsel to the DIP Term Agent, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, NY 10019, Attn: Erin E. Trigg and Samuel S. Kohn (trigg.erin@dorsey.com and kohn.samuel@dorsey.com); (d) counsel to the Ad Hoc Group of Crossover Lenders, Milbank LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067, Attn: Mark Shinderman (mshinderman@milbank.com) and Daniel B. Denny (ddenny@milbank.com); (e) counsel to the DIP ABL FILO Agent, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, NY 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); (f) counsel to the Ad Hoc FILO Term Lender Group, (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (g) the indenture trustee for the Debtors’ prepetition convertible notes, The Bank of New York Mellon Trust Company, N.A., 525 William Penn Place, 38th Floor, Pittsburgh, PA 15259, Attn: Corporate Trust Administration and BNY Mellon Corporate Trust, US Corporate Client Service Management, 500 Ross Street, 12th Floor, Pittsburgh, PA 15262, Attn: Mindy M. Wrzesinski (Melinda.m.wrzesinski@bnymellon.com); (h) lead counsel to the Consultant, Tiger Capital Group, 60 State Street, 11<sup>th</sup> Floor, Boston, MA 02109,



Attn: Mark P. Naughton (MNaughton@tigergroup.com); and (i) counsel to any statutory committee appointed in these Chapter 11 Cases. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within 15 days after service of the Dispute Notice, the Governmental Unit may file a motion with the Court requesting that the Bankruptcy Court resolve the Reserved Dispute (a “*Dispute Resolution Motion*”).

- d. In the event that a Dispute Resolution Motion is filed, nothing in the Interim Order or the Final Order, as applicable, shall preclude the Debtors, a landlord, or any other interested party from asserting (i) that the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code, or (ii) that neither the terms of the Interim Order or the Final Order nor the conduct of the Debtors pursuant to the Interim Order or the Final Order violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of the Interim Order or the Final Order or to limit or interfere with the Debtors’ ability to conduct or to continue to conduct the Store Closings pursuant to the Interim Order or the Final Order, absent further order of the Court. Upon the entry of the Interim Order or the Final Order, as applicable, the Court grants authority for the Debtors to conduct the Store Closings pursuant to the terms of the Interim Order or the Final Order, as applicable, the Store Closing Procedures and to take all actions reasonably related thereto or arising in connection therewith. The Governmental Unit will be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in the Interim Order or the Final Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.
- e. If, at any time, a dispute arises between the Debtors and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in the Interim Order or the Final Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (c) and (d) above by serving a notice to the other party and proceeding thereunder in accordance with those subparagraphs. Any determination with respect to whether a particular law is a Liquidation Sale Law shall be made *de novo*.

27. Subject to paragraphs 25 and 26 above, each and every federal, state, or local agency, departmental unit, or Governmental Unit with regulatory authority over the Store Closings, and all newspapers and other advertising media in which the Store Closings are advertised shall consider the Final Order as binding authority that no further approval, license, or permit of any Governmental Unit shall be required, nor shall the Debtors be required, to post any bond, to conduct the Store Closings.

28. Within three business days of the Final Order, the Debtors shall serve copies of the Final Order, and the Store Closing Procedures via e-mail, facsimile, or regular mail, on: (a) the United States Trustee for the District of Delaware; (b) counsel for the agent for the Debtors' postpetition financing facility; (c) counsel to the Ad Hoc Group of Crossover Lenders; (d) counsel to the Ad Hoc FILO Term Lender Group; (e) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (f) the indenture trustee for the Debtors' prepetition convertible notes; (g) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (h) the United States Attorney's Office for the District of Delaware; (i) the attorneys general for all 50 states and the District of Columbia; (j) the United States Department of Justice; (k) the Internal Revenue Service; (l) the Securities and Exchange Commission; (m) the United States Drug Enforcement Agency; (n) the United States Food and Drug Administration; (o) all parties who are known by the Debtors to assert liens against the Merchandise and the FF&E; (p) all state attorneys general in which the Merchandise and the FF&E are located; (q) municipalities in which the Merchandise and the FF&E are located; (r) all of the counterparties to the Debtors' real property leases; (s) all applicable state and consumer protection agencies; and (t) all parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

#### **IV. EFFECTIVENESS OF THE CONSULTING AGREEMENTS.**

29. The Consulting Agreements are operative and effective on a final basis. The Debtors are authorized to act and perform in accordance with the terms of the Consulting Agreements, including, without limitation, reimbursing all expenses to the Consultant as required by the Consulting Agreements without the need for any application of the Consultant or a further order of the Court. For avoidance of doubt, the Debtors are also authorized to fund the Expense Budgets in accordance with the terms of each of the Consulting Agreements.

30. Subject to the restrictions set forth in this Final Order and the applicable Store Closing Procedures, the Debtors and the Consultant are hereby authorized to take any and all actions as may be necessary or desirable to implement the Consulting Agreements and the Store Closings, and each of the transactions contemplated by the Consulting Agreements, and any actions taken by the Debtors and the Consultant necessary or desirable to implement the Consulting Agreements and the Store Closings prior to the date hereof, are hereby approved and ratified. The failure to specifically include any particular provision of the Consulting Agreements in this Final Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Consulting Agreements and all of their provisions, payments, and transactions, be and hereby are authorized and approved as and to the extent provided for in this Final Order.

31. Notwithstanding anything to the contrary in the Consulting Agreements, the Debtors and their estates shall not indemnify the Consultant for any damages arising primarily out of any act or omission by the Consultant constituting fraud, gross negligence, or willful misconduct.

32. To the extent that the Debtors seek to conduct Store Closings at any location not identified as a Closing Store on Exhibit 2 attached hereto (each an “*Additional Closing Store*”), the Debtors shall (a) first consult with the DIP Term Agent and the DIP ABL FILO Agent, and use commercially reasonable efforts to consult with the Ad Hoc Group of Crossover Lenders and the Ad Hoc FILO Term Lender Group, (b) file an Additional Closing Store List, and (c) serve a notice of their intent to conduct Store Closings at those locations on the Additional Closing Store landlords, counsel to the Ad Hoc Group of Crossover Lenders, counsel to the Ad Hoc FILO Term Lender Group, and applicable governmental units by email (to the extent available to the Debtors) or by overnight mail. The Additional Closing Store landlords shall have seven (7) days after

service of the applicable Additional Closing Store List to object to the application of this Final Order to their store locations. If no timely objections are filed with respect to the application of this Final Order to any store locations identified on any Additional Closing Store List, then the Debtors shall be authorized, pursuant to section 105(a) and section 363(b)(1) of the Bankruptcy Code, to conduct Store Closings at such store locations in accordance with this Final Order, the applicable Store Closing Procedures, the Consultant Agreement, and any Side Letter. If any objections are filed with respect to the application of this Final Order to any store locations identified on any Additional Closing Store List and such objections are not resolved, the objections and the application of this Final Order to any affected store locations shall be considered by the Court at the next regularly scheduled omnibus hearing.

33. On a confidential basis and for professionals' "eyes only" and upon the written (including email) request of the U.S. Trustee, the agent for the Debtors' postpetition financing facility, the Ad Hoc Group of Crossover Lenders, the agent under the Debtors' secured term and asset-based financing facilities, the Ad Hoc FILO Term Lender Group, the indenture trustee for the Debtors' prepetition convertible notes, or the committee of unsecured creditors, if any, the Debtors shall provide such requesting party, if any, with copies of periodic reports concerning the Store Closings that are prepared by the Debtors, their professionals or the Consultant, provided, however, that the foregoing shall not require the Debtors, their professionals, or the Consultant to prepare or undertake to prepare any additional or new reporting not otherwise being prepared by the Debtors, their professionals, or the Consultant in connection with the Store Closings.

## **V. OTHER PROVISIONS.**

34. The Consultant shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against Consultant, in each case, other than as expressly provided for in the Consulting Agreements.

35. The Debtors shall not be required to comply with any state or local law requiring that the Debtors pay an employee substantially contemporaneously with his or her termination; *provided, however*, that the Debtors shall pay any accrued wages to terminated employees as expeditiously as possible.

36. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code (other than the Consulting Agreements); or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

37. Notwithstanding anything contained in the Motion or this Final Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a "***DIP Order***"), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP

Order shall control; *provided, however*, that with respect to amounts due to the Consultant pursuant to the Consultant Agreements paid solely from proceeds of sales of the Merchandise and the FF&E, the DIP Order and any budget attached thereto shall not constitute or require a cap or reduction on amounts due to the Consultant under the Consulting Agreements other than any such cap or reduction resulting from the Consultant's required compliance with the applicable Expense Budget.

38. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

39. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Final Order shall be effective and enforceable immediately upon entry hereof.

40. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

41. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order, including, but not limited to, (a) any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit banner and sign-walker advertising, including with respect to any allegations that such advertising is not being conducted in a safe, professional, and non-deceptive manner, (b) any claim of the Debtors, the landlords for protection from interference with the Store Closings, (c) any other disputes related to the Store Closings, and (d) protection of the Debtors against any assertions of any liens, claims, encumbrances, and other interests. No such parties or person shall take any action against the Debtors, the landlords, or the Store Closings until this Court has resolved such

dispute. This Court shall hear the request of such parties or persons with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT 1**

**Store Closing Procedures**



## U.S. Store Closing Procedures<sup>1</sup>

1. These U.S. Store Closing Procedures shall control the Store Closings in the United States.
2. The Store Closings shall be conducted so that the stores in which Store Closings are to occur will remain open no longer than during the normal hours of operation or such hours as otherwise provided for in the respective leases for the Closing Stores.
3. The Store Closings shall be conducted in accordance with applicable state and local “Blue Laws,” where applicable, so that no Store Closing shall be conducted on Sunday unless the Debtors had been operating such Closing Stores on a Sunday prior to the commencement of the Store Closings.
4. On “shopping center” property, the Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any Closing Stores’ premises, unless permitted by the lease or if distribution is customary in the “shopping center” in which such Closing Store is located; provided that the Consultant may solicit customers in the Closing Stores themselves. On “shopping center” property, the Consultant shall not use any flashing lights or amplified sound to advertise the Store Closings or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
5. At the conclusion of the Store Closings, the Consultant shall, subject to the Consulting Agreements, vacate the Closing Stores in broom clean condition; *provided* that Consultant may abandon any FF&E not sold in the Store Closings at the conclusion of the Store Closings, without cost or liability of any kind to the Consultant. The Debtors will have the option to remove the FF&E at their own cost prior to the termination date. Any abandoned FF&E left in a Closing Store after a lease is rejected shall be deemed abandoned to the landlord having a right to dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Debtors. For the avoidance of doubt, as of the Sale Termination Date, the Consultant may abandon, in place and without further responsibility or liability of any kind, any FF&E.
6. The Consultant and the Debtors may advertise each Store Closing as a “store closing,” “sale on everything,” “everything must go,” or similar themed sale, and to the extent permitted in the Interim Order or Final Order, as applicable, “going out of business”. The Consultant and the Debtors may also have “countdown to closing” signs prominently displayed in a manner consistent with these Store Closing Procedures. All signs, banners, ads and other advertising collateral, promotions, and campaigns will be approved by the Debtors in accordance with these Store Closing Procedures.

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<sup>1</sup> Capitalized terms used but not defined in these U.S. Store Closing Procedures have the meanings given to them in the Final Order to which these U.S. Store Closing Procedures are attached as **Exhibit 1** or the Motion to which the Final Order is attached as **Exhibit B**, as applicable.

7. The Consultant shall be permitted to utilize sign walkers, display, hanging signs, and interior banners in connection with the Store Closings; *provided* that such sign walkers, display, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. The Debtors and the Consultant shall not use neon or day-glo on its sign walkers, display, hanging signs, or interior banners. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Store Closing Procedures. In addition, the Debtors and the Consultant shall be permitted to utilize exterior banners at (i) non-enclosed mall stores and (ii) enclosed mall stores to the extent the entrance to the applicable store does not require entry into the enclosed mall common area; *provided*, however, that such banners shall be located or hung so as to make clear that the Store Closings are being conducted only at the affected Closing Stores, and shall not be wider than the storefront of the Closing Stores. In addition, the Debtors and the Consultant shall be permitted to utilize sign walkers in a safe and professional manner and in accordance with the terms of the Interim Order or Final Order, as applicable. Nothing contained in these Store Closing Procedures shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease agreement.

8. Conspicuous signs shall be posted in the cash register areas of each of the affected Closing Stores to the effect that “all sales are final.”

9. Except with respect to the hanging of exterior banners, the Consultant shall not make any alterations to the storefront or exterior walls of any Closing Stores, except as authorized by the applicable lease.

10. The Consultant shall not make any alterations to interior or exterior Closing Stores’ lighting, except as authorized by the applicable lease. No property of the landlord of a Closing Store shall be removed or sold during the Store Closings. The hanging of exterior banners or in-store signage and banners shall not constitute an alteration to a Closing Store.

11. The Consultant shall keep Closing Stores’ premises and surrounding areas clean and orderly consistent with present practices.

12. Subject to the provisions of the Consulting Agreements, the Consultant shall have the right to use and sell all FF&E. The Consultant may advertise the sale of the FF&E in a manner consistent with these guidelines. The purchasers of any FF&E sold during the Store Closings shall be permitted to remove the FF&E either through the back or alternative shipping areas at any time, or through other areas after applicable business hours, *provided, however* that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item can be carried out of the Closing Stores in a shopping bag. For the avoidance of doubt, as of the Sale Termination Date, the Consultant and the Debtors may abandon, in place and without further responsibility, any FF&E.

13. At the conclusion of the Store Closings at each Closing Store, pending assumption or rejection of applicable leases, the landlords of the Closing Stores shall have reasonable access to the Closing Stores’ premises as set forth in the applicable leases. The Debtors, the Consultant, and their representatives and agents shall continue to have access to the Closing Stores as provided for in the Consulting Agreements.

14. The rights of landlords against the Debtors for any damages to a Closing Store shall be reserved in accordance with the provisions of the applicable lease.

15. If and to the extent that the landlord of any Closing Store affected hereby contends that the Debtors or the Consultant is in breach of or default under these Store Closing Procedures, such landlord shall email or deliver written notice by overnight delivery to the Debtors, the Ad Hoc Group of Crossover Lenders, the Ad Hoc FILO Term Lender Group, and the Consultant as follows:

If to the Debtors:

300 Sixth Avenue,  
Pittsburgh, Pennsylvania 15222  
Attn: Amy Nathan

with copies (which shall not constitute notice) to:

Young Conaway Stargatt & Taylor, LLP  
Rodney Square, 1000 North King Street  
Wilmington, DE 19801  
Attn: Michael R. Nestor & Kara Hammond Coyle

-and-

Latham & Watkins LLP  
330 North Wabash Avenue, Suite 2800  
Chicago, IL 60611  
Attn: Richard A. Levy & Caroline A. Reckler

If to the Ad Hoc Group of Crossover Lenders:

Milbank LLP  
2029 Century Park East, 33rd Floor  
Los Angeles, CA 90067  
Attn: Mark Shinderman & Daniel B. Denny

If to the Ad Hoc FILO Term Lender Group:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Attn: Andrew Rosenberg & Jacob Adlerstein

If to the Consultant:

Tiger Capital Group

60 State Street, 11<sup>th</sup> Floor  
Boston, MA 02109  
Attn: Mark P. Naughton

with copies (which shall not constitute notice) to:

Great American Group, LLC  
21255 Burbank Blvd., Suite 400  
Woodland Hills, CA 91367  
Attn: Scott K. Carpenter and Marina Fineman

If the parties are unable to resolve the dispute, either the landlord or the Debtors shall have the right to schedule a hearing before the Court on no less than five (5) days' written notice to the other party, served by email or overnight delivery.

## Canadian Store Closing Procedures<sup>2</sup>

These Canadian Store Closing Procedures shall control the Store Closings in Canada. Each of the U.S. Store Closing Procedures and the Canadian Sale Guidelines are incorporated by reference herein, as described herein.

The Canadian Store Closing Procedures shall be conducted pursuant to the U.S. Store Closing Procedures and the Canadian Sale Guidelines (attached as Exhibit A hereto), as each may be modified hereby; provided, however, that in the event of a conflict between the terms of the U.S. Store Closing Procedures and the terms of the Canadian Sale Guidelines, the terms of the Canadian Sale Guidelines shall control.

If and to the extent that the landlord of any Closing Store in Canada affected hereby contends that the Debtors or the Consultant is in breach of or default under these Canadian Store Closing Procedures, such landlord shall email or deliver written notice by overnight delivery to the Debtors, the Ad Hoc Group of Crossover Lenders, the Ad Hoc FILO Term Lender Group, and the Consultant as follows:

If to the Debtors:

300 Sixth Avenue,  
Pittsburgh, Pennsylvania 15222  
Attn: Amy Nathan

with copies (which shall not constitute notice) to:

Young Conaway Stargatt & Taylor, LLP  
Rodney Square, 1000 North King Street  
Wilmington, DE 19801  
Attn: Michael R. Nestor & Kara Hammond Coyle

-and-

Latham & Watkins LLP  
330 North Wabash Avenue, Suite 2800  
Chicago, IL 60611  
Attn: Richard A. Levy & Caroline A. Reckler

-and-

Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower

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<sup>2</sup> Capitalized terms used but not defined in these Canadian Store Closing Procedures have the meanings given to them in the Final Order to which these Canadian Store Closing Procedures are attached as **Exhibit 1** or the Motion to which the Final Order is attached as **Exhibit B**, as applicable.

Toronto, ON M5K 1N2  
Attn: Scott A. Bomhof & Adam M. Slavens

If to the Ad Hoc Group of Crossover Lenders:

Milbank LLP  
2029 Century Park East, 33rd Floor  
Los Angeles, CA 90067  
Attn: Mark Shinderman & Daniel B. Denny

-and-

Cassels Brock & Blackwell LLP  
Suite 2100, Scotia Plaza, 40 King St. W.  
Toronto, ON Canada M5H 3C2 Canada  
Attn: R. Shayne Kukulowicz & Ryan C. Jacobs

If to the Ad Hoc FILO Term Lender Group:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Attn: Andrew Rosenberg & Jacob Adlerstein

If to the Consultant:

Tiger Capital Group  
60 State Street, 11<sup>th</sup> Floor  
Boston, MA 02109  
Attn: Mark P. Naughton

with copies (which shall not constitute notice) to:

Great American Group, LLC  
21255 Burbank Blvd., Suite 400  
Woodland Hills, CA 91367  
Attn: Scott K. Carpenter and Marina Fineman

If the parties are unable to resolve the dispute, either the landlord or the Debtors shall have the right to schedule a hearing before the Court on no less than five (5) days' written notice to the other party, served by email or overnight delivery.

## Exhibit A

### Canadian Sale Guidelines

The following procedures shall apply to the Sale to be conducted at the Stores of General Nutrition Centres Company (the “*Merchant*”). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (collectively with their respective U.S. affiliates, the “*Consultant*”) and the Merchant dated as of June 18, 2020 (the “*Consulting Agreement*”).

1. Except as otherwise expressly set out herein, and subject to: (i) the orders granted or issued in the Merchant’s bankruptcy case (the “*Bankruptcy Case*”) in the United States of America under Chapter 11 of the United States Bankruptcy Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the District of Delaware (the “*Court*”) and the Merchant’s ancillary proceedings (the “*CCAA Proceedings*”) in Canada under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “*CCAA*”) before the Ontario Superior Court of Justice (Commercial List) (individually, an “*Order*”, and, collectively, the “*Orders*”); or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a “*Landlord*” and, collectively, the “*Landlords*”) and approved by each of the Consultant and Information Officer in writing, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected Landlords are privy for each of the affected Stores (individually, a “*Lease*” and, collectively, the “*Leases*”). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remains open during its normal hours of operation provided for in its respective Lease until the respective Sale Termination Date for such Store. The Sale at the Stores shall end by no later than the Sale Termination Date. Rent payable under the respective Leases shall be paid in accordance with the terms of the Orders, as applicable.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as an “everything on sale”, an “everything must go”, a “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “going out of business” or a “liquidation” sale it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon written request from a Landlord, the Landlord’s counsel, the Merchant or the Information Officer, the Consultant shall provide the proposed signage

packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail to such Landlord(s) or to their counsel of record and the Information Officer. Where the provisions of the Lease conflict with these Canadian Sale Guidelines, these Canadian Sale Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including “you pay” or “topper” signs). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with “store closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord’s concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are “final”.
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord, and no advertising trucks shall be used on a Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are materially in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the



Merchant) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

10. Subject to the terms of paragraph 9 above, the Consultant may sell Offered FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise the sale of Offered FF&E consistent with these guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the applicable Landlord, acting reasonably. Additionally, the purchasers of any Offered FF&E sold during the Sale shall only be permitted to remove the Offered FF&E either through the back shipping areas designated by the applicable Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the Offered FF&E can fit in a shopping bag, with applicable Landlord's supervision as required by the applicable Landlord. The Consultant shall repair any damage to the Stores resulting from the removal of any Offered FF&E by Consultant or by third party purchasers of Offered FF&E from Consultant.
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove Offered FF&E from the Stores. The Merchant will arrange a walk through with each Landlord that requests a walk through with the Consultant to identify the Offered FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or pursuant to the dispute resolution section of the Canadian Store Closing Procedures. If the Merchant has rejected the Lease governing such Store in accordance with the Bankruptcy Code, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for under the Bankruptcy Code), and the rejection of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a rejection notice is delivered to a Landlord pursuant to the Bankruptcy Code while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of such rejection, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the rejection, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the applicable Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or Offered FF&E at any of the Stores.
15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Consultant shall be Daniel Richer who may be reached by phone at 416-865-4445 or email at driche@fasken.com. Contact persons for the Merchant and the Information Officer are set out in the Canadian Store Closing Procedures. If the parties are unable to resolve the dispute between themselves, the notice and dispute sections of the Canadian Store Closing Procedures shall be followed by the parties. For the duration of any such dispute, the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, for greater certainty, that if a banner has been hung in accordance with these Canadian Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.
16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Canadian Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Canadian Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court).

**EXHIBIT 2**

**Closing Stores**

Loc Number	Location Name	Location Address	Location City	Location State / Province
4297	Hillside Shopping Centre	1644 Hillside Avenue	Victoria	BC
4232	Robson Streetfront	1126 Robson Street	Vancouver	BC
4193	Guildford Town Center	10355 152 St	Surrey	BC
4243	Kelowna Mall	2271 Harvey Ave	Kelowna	BC
4038	Smart Centres Central @ G	1825-4720 McClelland Road	Richmond	BC
4016	Scotia Plaza	40 King St West Box 108	Toronto	ON
4043	Sunridge Mall	2525-36Th Street Ne	Calgary	AB
4065	Market Mall	3625 Shaganappi Trail	Calgary	AB
4239	Deerfoot Mall	#107 951 64 Av Ne	Calgary	AB
4188	Harvest Pointe Sc	5233 Ellerslie Rd Sw	Edmonton	AB
4048	Halifax Shopping Center	7001 Mumford Road	Halifax	NS
4124	Carrefour Angrignon	7077 Newman Boulevard	Lasalle	PQ
4022	St. Laurent S.C.	1200 St Laurent Blvd	Ottawa	ON
4028	Cornwall Square	1 Water Street East	Cornwall	ON
4059	Northgate Square	489 Albert Street North	Regina	SK
4184	Oshawa Centre	419 King Street West	Oshawa	ON
4050	Markville Town Centre	5000 Hwy 7 East	Markham	ON
4127	Stone Road Mall	435 Stone Road West	Guelph	ON
4117	Vaughan Mills	1 Bass Pro Mills Dr	Vaughan	ON
4201	Shoppes On Queen West	601 Queen Street West	Toronto	ON
4090	Argyle Mall	332 Clarke Road	London	ON
4174	Walker Place	4140 Walker Rd	Windsor	ON
4072	Driftwood Mall	2751 Cliffe Ave	Courtenay	BC
4235	Coquitlam Centre	2929 Barnet Highway	Coquitlam	BC
4278	Village Green Centre	4900 27Th Street	Vernon	BC
4504	Woodgrove Centre	6631 Island Highway N	Nanaimo	BC
4061	Londonderry Mall	137Th Ave & 66Th St	Edmonton	AB
4170	Erin Ridge Power Centre	935 St.Albert Trail	St Albert	AB
4180	Manning Town Centre	15733 37 Street	Edmonton	AB
4183	The Quarry	20 Quarry Street East	Cochrane	AB
4191	York Station	275 Broadway St E	Yorkton	SK
4286	Southlands Crossing	1991 Strachan Rd	Medicine Hat	AB
4503	Deerfoot Meadows	840-8180 11Th Street Se	Calgary	AB
4177	Avalon Mall	48 Kenmount Rd	St. Johns	NL
4131	Yarmouth Mall	76 Starrs Road	Yarmouth	NS
4052	Place D'Orleans	110 Place D'Orleans Dr	Ottawa	ON
4008	Southhill Shopping Centre	9325 Yonge Street	Richmond Hill	ON
4086	Bridgeport Plaza	13/14-94 Bridgeport Rd Ea	Waterloo	ON
4162	Gladstone Queen West Reta	4 Gladstone Ave	Toronto	ON
4171	Smartcentres Vaughan	3604 Major Mackenzie Dr	Vaughan	ON
4181	Shops At Don Mills	1090 Don Mills Rd	Toronto	ON
4186	North Park Sc	1405 Lawrence Ave W	Toronto	ON
4196	Shoppers World Danforth	3003 Danforth Ave	Toronto	ON
4204	Smartcentres St. Catharin	420 Vansickle Road	St. Catharines	ON
4248	Crossroads	2625B Weston Road	North York	ON
4256	Rio Centre Oakville	478 Dundas Street West	Oakville	ON
4506	Smart Centres Bradford	547 Holland St West	Bradford	ON
4150	Sudbury S Shopping Center	2408 Long Lake Rd	Sudbury	ON
4198	Collingwood Centre	99 Balsam Street	Collingwood	ON
4206	Smartcentres St. Thomas	1063 Talbot Street	St. Thomas	ON
4032	Lougheed Mall	9855 Austin Ave	Burnaby	BC
4084	Haney Place Mall	149-11900 Haney Pl	Maple Ridge	BC
4234	Tamarack Centre	1500 Cranbrook St N.#115	Cranbrook	BC
4280	Capilano Mall	935 Marine Dr	N. Vancouver	BC
4199	Tsawwassen Mills	5000 Canoe Pass Way	Tsawwassen	BC
4267	Bankers Hall	315 8Th Avenue Sw Ste 345	Calgary	AB
4039	St. Vital Center	130-1225 St Mary'S Rd	Winnipeg	MB
4054	Kildonan Place	1555 Regent Ave West	Winnipeg	MB
4066	Cornwall Mall	2102-11Th Ave	Regina	SK
4283	Southcentre Mall	100 Anderson Rd. S.E.	Calgary	AB
4207	Outlet Collection Winnipe	555 Sterling Lyon Parkway	Winnipeg	MB
4208	Premium Outlet Collection	#1 Outlet Collection Way	Edmonton Airport	AB

Loc Number	Location Name	Location Address	Location City	Location State / Province
4067	Mayflower Mall	800 Grand Lake Road	Sydney	NS
4229	Regent Mall	1381 Regent Street	Fredericton	NB
4200	Colby Village	920 Cole Harbour Road	Dartmouth	NS
4159	Quartier Dix 30	8900 Blvd Leduc	Brossard	PQ
4192	Smartcentres Mascouche	117 Montee Masson	Mascouche	PQ
4179	Les Promenades Gatineau	1000 Blvd Maloney Quest	Gatineau	PQ
4185	Kemptville Colonnade Reta	304 Colonnade Dr	Kemptville	ON
4000	The Promenade Mall	1 Promenade Circle	Thorn Hill	ON
4017	Upper Canada Mall	17600 Yonge St	Newmarket	ON
4026	Burlington Mall	777 Guelph Line	Burlington	ON
4037	Eglinton Square S.C.	1431-1437 Victoria Park A	Toronto	ON
4075	Cloverdale Mall	250 The East Mall	Toronto	ON
4144	Georgetown Market Place	280 Guelph Street	Georgetown	ON
4189	Centerpoint Mall	6464 Younge St	Toronto	ON
4203	Yonge Sheppard Centre	4841 Yonge Street	Toronto	ON
4157	Riocan Marketplace	2181 Steele Ave West	Toronto	ON
4194	410 At Steeles	35 Resolution Dr	Brampton	ON
4287	Rio-Can Milton	1155 Maple Avenue	Milton	ON
4091	Heritage Place	1350 16Th Street East	Owen Sound	ON
4225	Lambton Mall	1380 London Road Unit33	Sarnia	ON
4263	White Oaks Mall	1105 Wellington Rd	London	ON
4270	Northgate Square	1500 Fisher St	North Bay	ON
4510	Station Mall	293 Bay Street	Sault Ste Marie	ON
4020	Intercity S/C	1000 Fort William Rd	Thunder Bay	ON
7467	330 5TH AVE	330 5Th Ave	New York	NY
1208	31 65 STEINWAY ST	31 65 Steinway St	Astoria	NY
3800	125 PARK AVENUE	125 Park Ave	New York	NY
9118	684 THIRD AVENUE	684 Third Avenue	New York	NY
1569	220 O'FARRELL ST	220 O'Farrell St	San Francisco	CA
2564	1034-1036 THIRD AVE	1034-1036 Third Ave	New York	NY
2479	HOLLYWOOD & HIGHLAND	6801 Hollywood Blvd	Los Angeles	CA
7621	159 COLUMBUS AVE	159 Columbus Ave	New York	NY
7123	BRATTLE SQUARE	One Brattle Square	Cambridge	MA
8841	349 NEWBURY STREET	349 Newbury St	Boston	MA
1324	70 S 69TH ST	70 S 69Th St	Upper Darby	PA
2384	812 DAVIS ST	812 Davis St	Evanston	IL
6247	QUEENS CENTER	90-15 Queens Boulevard	Elmhurst	NY
8523	FASHION SHOW MALL	3200 Las Vegas Blvd	Las Vegas	NV
5047	ROOSEVELT FIELD MALL	630 Old Country Road	Garden City	NY
1443	PHEASANT LANE MALL	310 Daniel Webster Highway	Nashua	NH
560	WESTFIELD BRANDON	356 Brandon Town Ctr Mall	Brandon	FL
360	DEPTFORD MALL	1750 Deptford Center Rd	Deptford	NJ
3079	STAMFORD TOWN CENTER	100 Greyrock Place	Stamford	CT
1220	WESTWOOD MALL	1754 West Michigan Ave	Jackson	MI
817	WESTFIELD ANNAPOLIS	1032 Annapolis Mall	Annapolis	MD
846	WHITE MARSH MALL	8200 Perry Hall Blvd.	Baltimore	MD
6273	PROVIDENCE PLACE MALL	54 Providence Place	Providence	RI
358	WESTLAND MALL	35000 W. Warren Road	Westland	MI
2956	BAYSHORE TOWNE CENTER	440 W Northshore Drive	Glendale	WI
5130	GURNEE MILLS	6170 W Grand Avenue	Gurnee	IL
3531	GLOUCESTER PREMIUM OUTLET	1125 S. Blackhorse Pike	Blackwood	NJ
1584	POTOMAC MILLS	2700 Potomac Mills Circle	Woodbridge	VA
366	CINCINNATI PREMIUM OUTLET	400 Premium Outlets Drive	Monroe	OH
88	TWIN CITIES PREMIUM OUTLE	3965 Eagan Outlets Pkwy	Eagan	MN
130	TANGER OUTLETS	400 South Wilson Road	Sunbury	OH
590	TANGER OUTLET - HWY 501	4635 Factory Stores Blvd	Myrtle Beach	SC
5333	TANGER OUTLETS SOUTHAVEN	5205 Airways Blvd	Southaven	MS
5920	PASEO COLORADO	300 E. Colorado Blvd	Pasadena	CA
2376	RIVERMARK VILLAGE	3935 Rivermark Plaza	Santa Clara	CA
7038	UNIVERSITY TC	140 University Tc	Sarasota	FL
5053	PHILIPS PLAZA	675 Sunrise Highway	Lynbrook	NY
8180	MARKETPLACE CENTER	1361 Covell Blvd	Davis	CA

Loc Number	Location Name	Location Address	Location City	Location State / Province
9283	CROSS KEYS COMMONS	3501 Rt 42	Turnersville	NJ
349	SHOPS AT NANUET	5107 Fashion Dr	Nanuet	NY
3474	CRANBERRY PLAZA	2991-J Cranberry Highway	East Wareham	MA
2644	EAST HANOVER SC	240 State Route 10	East Hanover	NJ
7121	SHOPS AT FALLEN TIMBERS	6832 Russell Road	Maumee	OH
5273	HERSHEY SQUARE S. C.	1138 Mae Street	Hummelstown	PA
7230	NORTH HILLS CENTRE	1144 Lonnie Abbott Blvd	Ada	OK
5574	HAMPTON VILLAGE CENTER	2771 South Rochester Rd	Rochester Hills	MI
6101	PARKSIDE SC	7800 John Davis Drive	Frankfort	KY
7781	875 SIXTH AVE	875 Avenue Of Americas	New York	NY
2927	1569 FLATBUSH AVENUE	1569 Flatbush Ave	Brooklyn	NY
4358	EIELSON AFB	Building 405 Broadway	Eielson	AK
9860	TYSENS PARK S/C	2722 Hylan Blvd	Staten Island	NY
5296	BRADLEE CENTER	3690 North King Street	Alexandria	VA
255	THE YARDS BOILERMAKER SHO	300 Tingey St Se	Washington	DC
5431	EL CERRITO PLAZA	230 El Cerrito Plaza	El Cerrito	CA
8759	CULVER CENTER	3810 Midway Avenue	Culver City	CA
1267	EAST HILLS VILLAGE	2671 Oswell Street	Bakersfield	CA
3389	SIMSBURY COMMONS	530 Bushy Hill Road	Simsbury	CT
9584	THE SHOWCASE AT INDIO	42425 C Jackson Street	Indio	CA
5150	PLAZA CAYEY	Pr 1 Km 55.2	Cayey	PR
6165	MONTVILLE COMMONS	2020 Norwich-New London T	Montville	CT
5219	SAN FELIPE PLAZA	1735 South Voss	Houston	TX
9028	VALLEY CENTRAL SC	44418 Valley Central Way	Lancaster	CA
8234	COLLEGE SQUARE	210 College Square	Newark	DE
311	WALMART PLAZA	656 New Haven Ave	Derby	CT
5085	WESTCLIFF PLAZA	1036 Irvine Ave	Newport Beach	CA
7354	KMART SHOPPING CENTER	3036 Route 35 South	Hazlet	NJ
2272	FOUNTAINS OF MIRAMAR	2933 Sw 160Th Ave	Miramar	FL
7421	JANTZEN BEACH HAYDEN ISLA	12152 N Pavilion Ave	Portland	OR
5463	BURBANK CROSSING	7929 S Harlem Avenue	Burbank	IL
5720	CORNERSTONE @ LAKE HEART	10524 Moss Park Rd	Orlando	FL
8866	CHERRY HILL SHOPPING CENT	462 Hempstead Turnpike	West Hempstead	NY
2416	EDGEWOOD TOWN CENTER	438-D E Edgewood Blvd	Lansing	MI
104	ORCHARD SC	208 S 72Nd Ave	Yakima	WA
5547	KENTLANDS SQUARE	251 Kentlands Boulevard	Gaithersburg	MD
9001	JACKSONVILLE PLAZA	2050 John Harden Drive	Jacksonville	AR
2025	OLD TOWN SQUARE	1237 North Clybourn Ave	Chicago	IL
5257	FIESTA TRAILS PLAZA	5238 Dezavala Road	San Antonio	TX
9673	ELMHURST CROSSING SHOPPIN	177 South Route 83	Elmhurst	IL
3504	BRENTWOOD PLAZA	8485 Winton Road	Cincinnati	OH
5190	HILLSBORO SHOPPING CENTER	649 Route 206 Door 8	Hillsborough	NJ
7000	BAYSHORE GARDENS	6028 14Th Street West	Bradenton	FL
2271	ROCHESTER CROSSING	160-162 Washington Street	Rochester	NH
7655	ORO VALLEY MARKETPLACE	2060 E Tangerine Road	Oro Valley	AZ
9801	SOUTHBRIDGE CROSSING	8082 Oak Carriage Court N	Shakopee	MN
2078	MASSILLON MARKET	38 Massillon Marketplace	Massillon	OH
2092	MERCHANTS PARK SHOPPING C	953 N Shepherd Dr	Houston	TX
5157	PLAZA SQUARE	667 Hamburg Turnpike	Wayne	NJ
2091	THE MARKET AT OAKLAND	3006 S Morgan'S Pt Rd	Mt Pleasant	SC
977	VIERA MARKETCENTER	6729 Colonnade Ave	Viera	FL
5289	COMMONS AT ISSAQUAH	755 West Gilman Blvd.	Issaquah	WA
1292	PINEHURST SQUARE	1001 W Interstate Ave	Bismarck	ND
9513	TRENTON CROSSING	7600 N. 10Th St	Mcallen	TX
8557	PIERPOINT CENTRE	716 Venture Drive	Morgantown	WV
7207	GOLDEN GATE SHOPPING CTR	1513 Golden Gate Rd	Mayfield Heights	OH
833	SUSSEX PLAZA	22881 Sussex Highway	Seaford	DE
617	HEARTLAND VILLAGE SHOPPES	8411 Windfall Lane	Camby	IN
5585	BATTLEGROUND PLAZA	3724-H Battleground Ave	Greensboro	NC
7810	SHOPPES @ PARADISE KEY	4433 Commons Drive East	Destin	FL
1268	AMSTERDAM COMMONS	330 Amsterdam Commons	Amsterdam	NY
7959	BLUE RIDGE CROSSING	4173 Sterling Ave	Kansas City	MO

Loc Number	Location Name	Location Address	Location City	Location State / Province
8507	SUNSHINE SQUARE	546 East Woolbright Rd	Boynton Beach	FL
5160	WEST VOLUSIA REGIONAL S/C	2707 South Woodland	Deland	FL
1864	SHELBYVILLE SC	114 Lee Blvd	Shelbyville	IN
7323	HAVENDALE SQUARE	382 Havendale Square	Auburndale	FL
138	SHOPPES AT PRAIRIE RIDGE	9901 77Th Street	Pleasant Prairie	WI
24	BROOKDALE CORNER	5605 Xerxes Ave	Brooklyn Center	MN
9540	FRANCIS POINTE	106 Francis Lane	Beaver Dam	WI
1812	TRAMONTO MARKETPLACE S/C	3134 W. Carefree Hgwy	Phoenix	AZ
7388	MIDDLEBURG CROSSINGS	2640 Blanding Blvd	Middleburg	FL
5461	RIVER RUN SHOPPING CENTER	9929 Miramar Parkway	Miramar	FL
294	GRAVOIS BLUFFS	#35 Gravois Bluffs Plaza	Fenton	MO
3923	HICKORY FLAT VILLAGE	6175 Hickory Flat Highway	Canton	GA
7158	FRANKLIN CENTRE	915 B Hwy 321	Lenoir	TN
2023	OAK HOLLOW SQUARE	1589 Skeet Club Rd	High Point	NC
2861	CULVER RIDGE PLAZA	2255 East Ridge Rd	Rochester	NY
3618	EPHRATA MARKETPLACE	852 East Main Street	Ephrata	PA
2249	TUDOR SHOPS	975 Ne Rice Road	Lee'S Summit	MO
6812	OSWEGO PLAZA	140 State Rt 104	Oswego	NY
9124	BEAR VALLEY SHOPPING CENT	3100 South Sheridan Blvd	Denver	CO
8684	TRI STATE MALL	10 E Route 23 N	Montague	NJ
3989	MOANALUA SHOPPING CTR	930 Valkenburgh St	Honolulu	HI
1733	SOUTHERN CROSSING	10922 South Memorial Dr	Tulsa	OK
1722	VALLEY STATION	1268 South Us189	Heber	UT
9786	PINE TREE PLAZA	550 36Th Ave South West	Altoona	IA
6059	POPLAR CREEK PLAZA	305 Leonardwood Dr	Frankfort	KY
3678	THE PROMENADE	16255 N Scottsdale Rd	Scottsdale	AZ
8909	METRO JUNCTION	4894 Highway 18 West	Jackson	MS
7407	MCDONOUGH MARKETPLACE	117 Willow Lane	Mcdonough	GA
5608	TOWER PLAZA	1386 S Centerville Rd	Sturgis	MI
8637	BROOKDALE SQUARE	22351 Pontiac Trail	South Lyon	MI
1364	WHITNALL SQUARE	4698 S Whitnall Avenue	Milwaukee	WI
8771	MARKS SQUARE	4600 Mobile Highway #11	Pensacola	FL
8770	MIDTOWN SQUARE SHOPPING C	1573 Gause Boulevard	Slidell	LA
1999	UNIVERSITY COMMONS	1930 1St Capitol Drive	St Charles	MO
702	GAINES MARKETPLACE	1827 Marketplace Dr Se	Caledonia	MI
2827	MARKETPLACE S.C.	I-79 & Route 33	Weston	WV
1300	FOREST PLAZA WEST BLD 1	3207-B Forest Brook Rd	Lynchburg	VA
6138	TWIN OAKS CENTER	2001 5Th Street	Silvis	IL
1441	1882 3RD AVENUE	1882 3Rd Avenue	New York	NY
9656	3453 JEROME AVE	3453 Jerome Ave	Bronx	NY
1393	1609 WESTCHESTER AVE	1609 Westchester Ave	Bronx	NY
3841	5530 WALNUT STREET	5530 Walnut Street	Pittsburgh	PA
4340	CAMP PENDLETON (MINI)	15100 Camp Pendleton	Camp Pendleton	CA
4360	FORT BRAGG (82ND)	82Nd Abn Troop Store	Fort Bragg	NC
4335	SAN DIEGO NB (DOCKSIDE)	Naval Station	San Diego	CA
4430	LEMOORE NAS	Building #795	Lemore Nas	CA
4484	FORT BLISS (COMM CENTER)	Bldg 20752 Gulf Victory W	El Paso	TX
4354	MOUNTAIN HOME AFB	625 Gunfighter Ave	Mountain Home Afb	ID
4322	BARKSDALE AFB	455 Curtis Road	Barksdale Afb	LA
4323	FAIRCHILD AFB	Building 2465	Fairchild Afb	WA
4356	VANDENBERG AFB	Building 10400	Vandenberg Afb	CA
4363	FORT LEE (PXTRA)	Building 9025	Fort Lee	VA
4414	PATUXENT RIVER NAS	22099 Cuddihy Road	Patuxent River	MD
4456	LOS ANGELES AFB	483 N. Aviation Blvd	El Segundo	CA
4339	EDWARDS AFB	Abx Exchange	Edwards Afb	CA
4404	SEYMOUR JOHNSON AFB	1350 Edwards Street	Goldsboro	NC
4398	BELLE CHASE NAS JRB	400 Russell Ave	Belle Chasse	LA
4478	FORT BLISS (MINI)	13471 Sergeant Major Blvd	El Paso	TX
4418	HUNTER ARMY AIRFIELD	130 Haley Ave	Savannah	GA
4462	BEAUFORT MCAS	Building 1283 Giegor Ave	Beaufort	SC
4352	F.E. WARREN AFB	617 Missile Drive	Cheyenne	WY
4304	DOVER AFB	266 Galaxy Way	Dover Afb	DE

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4370	GULFPORT NCBC	Bldg. 470	Gulfport	MS
4435	PORTSMOUTH NAVAL HOSPITAL	Store 39/30 Bldg 3	Portsmouth	VA
4498	DYESS AFB	260 Commissary Road	Abilene	TX
4371	TYNDALL AFB	220 Mall Ln Ste 2	Tyndall Afb	FL
4497	PARRIS ISLAND MCRD	Building 406	Parris Island	SC
4361	EGLIN AFB (MINI)	4310 77Th Special Forces	Eglin Afb	FL
2328	CHULA VISTA CENTER	555 Broadway	Chula Vista	CA
2540	PEAR TREE SHOPPING CENTER	532 East Perkins Street	Ukiah	CA
1131	LOS ALTOS CENTER	5555 Stearns St	Long Beach	CA
5820	CLAYTON STATION	5435H Clayton Road	Clayton	CA
7155	66-69 FRESH POND RD	66-69 Fresh Pond Rd	Ridgewood	NY
7657	TIMBERHILLS S.C.	1067 Mono Way	Sonora	CA
6782	SHOPPES @ FOXCHASE	4651 Duke St	Alexandria	VA
1856	NAPA JUNCTION	6040 Main Street	American Canyon	CA
7690	MILL POND VILLAGE	380-Cs Egg Harbor Road	Sewell	NJ
7120	SOUTHPORT TOWN CENTER	2050 Town Center Plaza	West Sacramento	CA
3303	TRI CITY PLAZA	160 Tri City Road	Somersworth	NH
2707	THE PROMENADE AT BOLINGBR	639 E Boughton Rd	Bolingbrook	IL
5511	BEARDS HILL PLAZA	971 Beards Hill Road	Aberdeen	MD
6216	MEADOWVIEW SQUARE	2500 State Rte 59 Ste # 8	Kent	OH
1387	PLAZA PRADOS DEL SUR LOCA	Intersection Of State Rds	Santa Isabel	PR
51	THE SHOPPES AT CINNAMINSON	127 Route 130 South	Cinnaminson	NJ
652	CROSSING AT LISBON	193 River Road	Lisbon	CT
7895	LONDON GROVE VILLAGE	905 Gap Newport Pike	Avondale	PA
3031	PINE CREEK S.C.	716-A Freeman Lane	Grass Valley	CA
3945	FOOD FOR THOUGHT	45 Northern Boulevard	Greenvale	NY
1245	PENNISULA CROSSING	26670 Centerview Drive	Millsboro	DE
2893	TANTALLON CENTER	10729 Indian Highway	Fort Washington	MD
2797	MISSION PLAZA	1412 N. H Street Suite C	Lompoc	CA
3433	NORTH PROVIDENCE MARKET	11 Smithfield Road	North Providence	RI
3719	TWINSBURG TOWN CENTER	8934 Darrow Road	Twinsburg	OH
5051	NISQUALLY PLAZA	1010 Yelm Ave E	Yelm	WA
9360	ALDEN BRIDGE SHOPPING CEN	8000 Research Forest Driv	The Woodlands	TX
8984	PLAZA DEL OESTE	Ave Casto Perez #313	San German	PR
2327	BERLIN CIRCLE PLAZA	116 Walker Ave	West Berlin	NJ
3028	SHILOH CENTER	6400 Hembree Lane	Windsor	CA
1479	GREENPORT COMMONS	424 Fairview Ave	Hudson	NY
2254	NORTH HAVEN PAVILION	200 Universal Drive North	North Haven	CT
7802	ROMEOWILLE TOWNE CENTER	427 North Weber Road	Romeoville	IL
8360	SUFFOLK SHOPPING CENTER	4046 Nesconset Hghwy #1B	East Setauket	NY
7624	GIBBSTOWN S.C.	401 Harmony Road	Gibbstown	NJ
2474	MEADOW BROOK CROSSING	124 State Road 101A	Amherst	NH
6173	LEXINGTON STATION	3833 Lexington Avenue	Arden Hills	MN
6512	VILLAGE COMMONS AT WESLEY	5922 Weddington Monroe Rd	Wesley Chapel	NC
5387	DUNLAWTON SQUARE	3859 South Nova Road	Port Orange	FL
8531	NEWPORT NORTH SC	1280 Bison Avenue	Newport Beach	CA
5351	NEW HOPE CITY CENTER	4237 Winnetka Ave	New Hope	MN
2765	REYNOLDA MANOR	2828 Reynolda Rd Nw	Winston Salem	NC
6292	GEORGESVILLE SQUARE	1617 Georgesville Square	Columbus	OH
8710	SANTA FE SHOPPING CENTER	13505 South Mur-Len	Olathe	KS
5727	WINTER SPRINGS TC	1188 Cliff Rose Dr	Winter Springs	FL
7322	BATTLE GROUND MARKET CTR	2210W Main Streetsuite113	Battle Ground	WA
9859	SHERWOOD MARKET CENTER	16008 Sw Tualatin-Sherwoo	Sherwood	OR
6237	THE VILLAGE IN BLAINE	4335 Pheasant Ridge Dr	Blaine	MN
1368	MONROE PLAZA	19817 State Route 2	Monroe	WA
7445	DANIEL'S CROSSING S/C	6900 Daniels Parkway	Fort Myers	FL
5482	CORALWOOD MALL	2301 Del Prado Blvd H-6	Cape Coral	FL
5573	COLLEGE PARK SHOPPING CTR	3455 West 86Th Street	Indianapolis	IN
6524	NORTH MOUNTAIN VILLAGE	3431 W Thunderbird Rd	Phoenix	AZ
5855	YAKIMA 40TH AVE S.C	1300 N. 40Th Ave.	Yakima	WA
5567	SHOPS AT MALTA	15 Kendall Way	Malta	NY
9341	SAWGRASS PROMENADE	1335 South Military Trai	Deerfield Beach	FL



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6316	WATERBURY PLAZA	152 Chase Ave	Waterbury	CT
2647	WARETOWN TOWN CENTER	501 Route 9 Suite 300	Waretown	NJ
5307	PENN HILLS CENTER	28 Federal Drive	Penn Hills	PA
2670	SAM HOUSTON TC	12709 Interstate Hwy 45 N	Willis	TX
2094	PARADISE SHOPPES OF SUMME	1585 Central Ave	Summerville	SC
322	BROOKDALE SHOPPING CENTER	9651-100 Brookdale Drive	Charlotte	NC
7428	SETH CHILD COMMONS	830 Commons Place	Manhattan	KS
184	PALOMAR PLAZA	961 Palomar Airport Rd	Carlsbad	CA
1865	ANTIOCH CROSSING S/C	417 E II Rte 173	Antioch	IL
5460	KMART PLAZA EAST	4445 Buffalo Road	Erie	PA
3583	GIG HARBOR NORTH	11430 51st Ave Nw	Gig Harbor	WA
8831	SIGNAL MT VILLAGE SC	541 Signal Mountain Rd -	Chattanooga	TN
2336	OTTER CREEK S.C.	248 S. Randall Road	Elgin	IL
1376	SHOPRITE SHOPPING CENTER	360 Connecticut Ave	Norwalk	CT
6064	SUWANNEE PLAZA	6824 Suwannee Plaza Ln	Live Oak	FL
8364	WHEATLAND MARKET PLACE	3108 S. Route 59	Naperville	IL
1575	TORRINGTON COMMONS	225 High Street	Torrington	CT
7619	SPRINGS VILLAGE S.C.	3953 S. State Hwy 97	Sand Springs	OK
8401	KNOX VILLAGE SQUARE	1504-B Coshacton Ave	Mt. Vernon	OH
7348	DESERT MOUNTAIN PLAZA	4650 Woodrow Bean	El Paso	TX
5171	NORTHWEST PROMENADE	6737 Manatee Ave W	Bradenton	FL
7282	PARKWAY PLAZA	285 Cumberland Pkwy	Mechanicsburg	PA
3779	WAHIAWA TOWN CENTER	935 California Avenue	Wahiawa	HI
6882	OZARK TOWN CENTER 1	1721 S 20Th St	Ozark	MO
2406	SURPRISE LAKE SQUARE	900 East Meridian #22	Milton	WA
5885	POKEGAMA ROAD	2046 S Pokegama Ave	Grand Rapids	MN
9190	WAYNE AVENUE PLAZA	949 Wayne Avenue	Chambersburg	PA
2166	NEWPORT COAST PLAZA	21151 Newport Coast Dr	Newport Beach	CA
7636	COBB PARKWAY SC	2774 N Cobb Parkway	Kennesaw	GA
1873	OVERLAND PLAZA	9126 Page Avenue	Overland	MO
3926	NORWALK KORNNERS S.C.	201 Milan Avenue	Norwalk	OH
5537	NORTHWOOD PLAZA	1966 Northwood Plaza	Franklin	IN
5430	TRAIL PLAZA	1056 S.W. 67Th Ave	Miami	FL
1045	SHOREGATE S.C.	30010 Lakeshore Avenue	Willowick	OH
2236	BROOKGATE SHOPPING CENTER	5773 Smith Road	Brook Park	OH
7672	FOUNTAIN OAKS SC	4920 Roswell Rd	Atlanta	GA
9097	BLOOMFIELD AVENUE SHOPPES	6089 Haggerty Road	West Bloomfield	MI
8051	EDGEWOOD TOWN CENTER	1725 South Braddock Ave	Pittsburgh	PA
8611	WEST SHORE PLAZA	1831 Sherman Blvd	Muskegon	MI
1690	PRESIDENTIAL PARKWAY PLAZ	168 Keul Rd	Dixon	IL
626	PHOENIX CENTER II	3016 Phoenix Center Drive	Washington	MO
8846	THE WALNUT GROVE	4010 University Ave	Madison	WI
6587	PLAZA SHOPPING CENTER	1027 South Muskogee	Talequah	OK
27	LUMBERTON PLAZA	1636 Rt 38 & Earyestown	Lumberton	NJ
8193	COLONY SQUARE	726 East Main Street	Lebanon	OH
1571	JORDAN LANE	1416 Berlin Turnpike	Wethersfield	CT
2104	NAMEOKI VILLAGE	3455 Nameoki Road	Granite City	IL
7406	POST COMMONS	4100 North Wickham Rd	Melbourne	FL
6363	MERRY MEETING PLACE	147 Bath Road	Brunswick	ME
6845	APPLETREE MALL	Orchard View Drive &	Londonderry	NH
8905	SHOPS AT EAGLE PROMENADE	3116 E State St	Eagle	ID
75	MANHATTAN PLACE	1801 Manhattan Blvd	Harvey	LA
3953	GEIST CROSSING	9805 Fall Creek Road	Indianapolis	IN
65	ONE YANKTON PLACE	3013 Broadway Ave Suite 4	Yankton	SD
5578	MIRASOL WALK	6231 Pga Blvd	Palm Beach Gardens	FL
6683	SUGAR CREEK CENTER	36 Sugar Creek Center	Bella Vista	AR
5921	SOUTHLAND CROSSINGS	1220 Doral Rd	Youngstown	OH
6696	TOWN & COUNTRY S.C.	494 C.W. Plaza Drive	Columbia City	IN
1883	MOUNTAIN VIEW VILLAGE	4608 W Partridgehill Lane	Riverton	UT
5734	PUBLIX @ FISHHAWK RANCH	5662 Fishhawk Crossing Bl	Lithia	FL
6536	INDIAN TRAIL SQUARE	5739 Preston Hwy	Louisville	KY
835	BROOKS EDGE PLAZA	81A South Main Street	Marlboro	NJ

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1145	CIRCLEVILLE PLAZA	1442 Circleville Plaza Dr	Circleville	OH
6661	CASTLE ROCK SQUARE	1163 East Main Street	Price	UT
5919	LAKEWOOD RANCH TC	8338 Market Street	Bradenton	FL
3692	GLENNWOOD COMMONS	820 Sunbury Rd	Delaware	OH
8695	LAKESHORE PLAZA	4137 Mountain Road	Pasadena	MD
6354	COCOA COMMONS	2301 State Hgwy #524	Cocoa	FL
5246	NORTH STATION S.C.	1486 Garner'S Station Blv	Raleigh	NC
1266	SENTRY PLAZA	10244 W. National Ave	West Allis	WI
5421	FESTIVAL @ OLD BRIDGE	12359 Dillingham Square	Lake Ridge	VA
2722	FLEMING PLACE	4023 Sw 10Th Street	Topeka	KS
5603	KROGER CENTER	2028 S. Highway 53	Lagrange	KY
528	MAPLE PARK PLAZA	283 North Weber Road	Boilingbrook	IL
6761	ELIZABETHTOWN S.C.	1575 South Market Street	Elizabethtown	PA
6037	WHISPERING WOODS PLAZA	20773 Gibralter	Brownstone	MI
2026	WESTRIDGE SQUARE	1059 West Patrick St	Frederick	MD
637	RANDALL'S CRYSTAL FALLS T	3501 N Lakeline Blvd	Leander	TX
7794	SHOPS OF MARCO	167 S. Barfield Dr	Marco Island	FL
8612	SOUTH VILLAGE S/C	1850-C 172Nd Ave	Grand Haven	MI
5374	SOUTHLAND SC	6855 Southland Dr	Middleburg Heights	OH
3580	MINER PLAZA	2625 N. Mesa	El Paso	TX
2744	KEYSTONE PLAZA	3574 Highway 31 South	Pelham	AL
7461	SHAW'S PLAZA	770 Roosevelt Trail Road	Windham	ME
5797	WALTERBORO PLAZA	321 Bells Highway	Walterboro	SC
1630	CLIFF LAKE S.C.	1960 Cliff Lake Road	Eagan	MN
3933	HOPEWELL CROSSING SC	800 Denow Road	Hopewell Twp	NJ
5447	TRADEWINDS SHOPPING CTR	101457 Us 1	Key Largo	FL
6783	MERCHANTS WALK S.C.	215 Merchant'S Walk S.C.	Summersville	WV
2037	IMLAY PLAZA	1801 S. Cedar St	Imlay	MI
355	PINE RIDGE SQUARE	1417 West Main St	Gaylord	MI
490	DOTHAN PAVILION	4521 Montgomery Highway	Dothan	AL
8560	ROEBUCK MARKETPLACE	9172 Parkway East # 15	Birmingham	AL
2096	FOX LAKE RETAIL CENTER	1390 Us Route 12	Fox Lake	IL
7460	BELLAIR PLAZA	2661 North Atlantic Ave	Daytona Beach	FL
847	HILLCREST SHOPPING CENTER	233 Hillcrest Shopping Ct	Lower Burrell	PA
2863	WATSON CROSSING SHOPPING	33939 La Highway 16	Denham Springs	LA
2757	MCCARTY CROSSING	1026 Main Street	Jackson	OH
6773	TARGET CENTER	955 Rockland Rd	Lake Bluff	IL
7325	BOGEY HILLS PLAZA	2039 Zumbelhl Road	Saint Charles	MO
40	SHOPS AT VICTORIA	4109 Houston Highway	Victoria	TX
8807	GATEWAY COMMONS	3000 Pepperell Pkwy	Opelika	AL
6240	HARWOOD CENTRAL VILLAGE	2101 Harwood Road	Bedford	TX
8934	OLYMPIAD CENTER	23052 Alicia Parkway	Mission Viejo	CA
8501	SHENANDOAH SQUARE	13704 State Road 84	Davie	FL
1456	PARKWAY COMMONS	3046 Columbia Ave	Franklin	TN
2901	DEER CREEK CENTER	3218 Laclede Station Rd	Maplewood	MO
1320	NEWBERRY POINTE	144 Newberry Parkway	Etters	PA
2763	EMBASSY LAKES SHOPPING CE	2631 N. Hiatus Road	Cooper City	FL
3091	VILLAGE SHOP CENTER	1421 Losey Blvd.	La Crosse	WI
9063	WILLOW OAKS CROSSING	5011 Weddington Road	Concord	NC
8828	KENHORST PLAZA	1895 New Holland Rd	Kenhorst	PA
7465	HERITAGE MARKETPLACE	1800 Unser Blvd. Nw	Albuquerque	NM
9610	NEWTON CROSSROADS	5340 Ga Hwy 20	Covington	GA
293	ALOMA SC	2275 Aloma Ave	Winter Park	FL
5933	MABELVALE SHOPPING CENTER	10101 Mabelvale Plaza Dr	Little Rock	AR
1289	HASTINGS MARKETPLACE	1793 Market Blvd	Hastings	MN
3836	RAPIDS PLAZA	4551 8Th Street South	Wisconsin Rapids	WI
6318	MOCKSVILLE TOWN COMMONS	223 Cooper Creek Dr	Mocksville	NC
8879	PINECREST PLAZA	324 Pinecrest Plaza	Morehead	KY
5652	POTRANCO OAKS VILLAGE	9230 Potranco Road	San Antonio	TX
8942	GREAT SOUTH BAY SHP CTR	709 W Montauk Highway	West Babylon	NY
6125	LA MARQUE CROSSING	6608 Gulf Freeway	La Marque	TX
3640	SEMINOLE CENTER	3631 Orlando Drive	Sanford	FL

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8936	SHOPPES AT TRINITY LAKES	12472 Sr 54	Odessa	FL
3512	PLAZA PALMA REAL	Carr Pr-3, Km 77.8, Int	Humacao	PR
7162	SAN ANGELO PLAZA	614 W 29Th St #114	San Angelo	TX
3429	EAST VIKING PLAZA	421 Viking Plaza Dr #500	Cedar Falls	IA
8957	1890 RANCH SHOPPING CTR	1335 E. Whitestone Blvd	Cedar Park	TX
8964	CORTLANDT TOWNE CENTER	3141 East Main Street	Mohegan Lake	NY
1736	LOWE'S OUTLOT	2007 Us Highway 27	Somerset	KY
1371	NAVY BLVD	503 N Navy Blvd	Pensacola	FL
6657	STAFFORD SQUARE S/C	297 Route 72 W	Manahawkin	NJ
8858	NORTH POINT VILLAGE	1456 North Point Village	Reston	VA
318	PORT CHARLOTTE MARKETPLAC	19400 Cochran Blvd	Port Charlotte	FL
8878	DURANT SHOPPING CENTER	519 University Place	Durant	OK
8568	PLAZA @ LANDMARK	6244-F Little River TrnPk	Alexandria	VA
3925	NORTHEAST PARK SHOPPING C	210 37Th Avenue N	St. Petersburg	FL
8961	MIRA MESA MALL	8250 Mira Mesa Blvd	San Diego	CA
9378	5TH AVENUE SHOPS	1954 Ne 5Th Avenue	Boca Raton	FL
9495	WILLIAMSBURG DOWNS	5338 Central Florida Pkwy	Orlando	FL
8405	218 FIRST AVE	218 1st Ave	New York	NY
2943	470 THIRD AVENUE/32ND STR	470 Third Avenue	New York	NY
2907	124 8TH AVENUE	124 8Th Avenue	New York	NY
2930	299 BROADWAY	1St Floor	New York	NY
3301	897 8TH AVE	897 8Th Ave	New York	NY
2884	302 CANAL ST	302 Canal St	New York	NY
2098	163 WEST 72ND STREET	163 West 72Nd Street	New York	NY
7466	305 6TH AVE	305 6Th Ave	New York	NY
1824	107 SUMMER STREET	107 Summer St 1St Fl	Boston	MA
9468	2049 86TH ST	2049 86Th St	Brooklyn	NY
547	145 EAST 116TH STREET	145 East 116Th Street	New York	NY
7243	STEINWAY STREET	30-62 Steinway Street	Astoria	NY
7473	ALAMEDA LANDING	2610 5Th St	Alameda	CA
2915	75-28 37TH AVE	75-28 37Th Ave	Queens	NY
5058	1212 KINGS HIGHWAY	1212 Kings Highway	Brooklyn	NY
2119	313A HARVARD STREET	313A Harvard St	Brookline	MA
3052	REGO PARK	96-16 Queens Blvd.	Rego Park	NY
2162	CITY CENTER	2675 Geary Blvd	San Francisco	CA
2850	1336 WISCONSIN AVE	1336 Wisconsin Ave	Washington	DC
5258	7017 18TH AVENUE	7017 18Th Avenue	Brooklyn	NY
6868	1003 BISHOP ST	1003 Bishop St	Honolulu	HI
9967	116-06 QUEENS BLVD	116-06 Queens Blvd	Forest Hills	NY
3958	1940 BEACON STREET	1940 Beacon Street	Brighton	MA
6659	247 3RD AVENUE	247 3Rd Avenue	New York	NY
575	14 W. 8TH STREET	14 W. 8Th Street	Holland	MI
9664	AMTRAK STATION	2955 Market St	Philadelphia	PA
3596	GALLERIA MALL	1210 S. University	Ann Arbor	MI
2841	17 WEST	1220 17Th Street	Miami Beach	FL
4453	ELLSWORTH AFB	2725 Lemay Blvd Bldg 4020	Ellsworth Afb	SD
4374	SAN DIEGO MCRD	3800 Chosin Ave	San Diego	CA
4364	FORT HAMILTON	123 General Lee Ave	Brooklyn	NY
4349	HANSCOM AFB	100 Eglin Street	Bedford	MA
4405	COLUMBUS AFB	Bldg #160	Columbus Afb	MS
4443	HOMESTEAD ARS	29242 Coral Sea Blvd	Homestead Afb	FL
3744	INTERNATIONAL MARKET PLAC	2330 Kalakaua Avenue	Honolulu	HI
33	WILLOW BROOK MALL	1524 Willow Brook Mall	Wayne	NJ
737	WOODFIELD MALL	5 Woodfield Mall	Schaumburg	IL
327	PARK PLACE	5870 East Broadway	Tucson	AZ
816	STONERIDGE MALL	1304 Stoneridge Mall Road	Pleasanton	CA
7125	PALISADES CENTER	3490 Palisades Center Dr	West Nyack	NY
3695	WESTFIELD OAKRIDGE	925 Blossom Hill	San Jose	CA
3547	BAYSHORE MALL	3300 Broadway	Eureka	CA
2015	KING OF PRUSSIA PLAZA	160 North Gulph Road	King Of Prussia	PA
5076	APACHE MALL	646 Apache Mall	Rochester	MN
439	EASTRIDGE MALL	2200 Eastridge Loops	San Jose	CA

Loc Number	Location Name	Location Address	Location City	Location State / Province
436	SUN VALLEY MALL	112A Sun Valley Mall	Concord	CA
90	NORTHPARK MALL	101 North Rangeline	Joplin	MO
444	MONTCLAIR PLAZA	5090 Montclair Plaza Lane	Montclair	CA
1255	STONESTOWN GALLERIA	3251 20Th Avenue	San Francisco	CA
232	WESTFIELD SOUTH SHORE	1701 Sunrise Highway	Bay Shore	NY
1436	FLORIDA MALL	8001 S Orange Blossom Tra	Orlando	FL
342	CROSS CREEK MALL	419 Cross Creek Mall	Fayetteville	NC
9836	PANORAMA CITY MALL	8401 Van Nuys Blvd	Panorama City	CA
60	SMITH HAVEN MALL	110 Smith Haven Mall	Lake Grove	NY
5213	PARK MEADOWS TOWN CENTER	8505 Park Meadows Center	Lone Tree	CO
505	WHITE OAKS MALL	2501 W. Wabash Ave.	Springfield	IL
5581	WESTFIELD FASHION SQUARE	14006 Riverside Drive	Sherman Oaks	CA
3659	MALL OF LOUISIANA	6401 Bluebonnet Blvd	Baton Rouge	LA
85	CAPE COD MALL	769 Iyanough Road	Hyannis	MA
862	DESERT SKY MALL	7611 West Thomas Road	Phoenix	AZ
2471	THE WESTCHESTER	125 Westchester Ave	White Plains	NY
843	CONNECTICUT POST	1201 Boston Post Road	Milford	CT
5203	SQUARE ONE MALL	1201 Broadway Drive	Saugus	MA
1452	ROGUE VALLEY MALL	1600 North Riverside	Medford	OR
492	SOUTH HILL MALL	3500 S. Meridian	Puyallup	WA
50	WESTLAND MALL	1675 West 49Th Street	Hialeah	FL
784	CROSSROADS MALL	6650 South Westnedge	Portage	MI
1032	TUCSON MALL	4500 North Oracle Road	Tucson	AZ
388	OCEAN COUNTY MALL	1201 Hooper Avenue	Toms River	NJ
35	PARK CITY CENTER	581 Park City Center	Lancaster	PA
468	WOODLAND HILLS MALL	7021 South Memorial	Tulsa	OK
1444	MARLEY STATION	7900 Governor Ritchie Hwy	Glen Burnie	MD
73	KINGS PLAZA SHOPPING CTR	5283 Kings Plaza	Brooklyn	NY
5591	VISALIA MALL	2157 South Mooney Blvd	Visalia	CA
1219	SCOTTSDALE FASHION SQ	7014 E Camelback Rd	Scottsdale	AZ
718	ACADIANA MALL	5725 Johnston	Lafayette	LA
1098	WINDWARD MALL	46056 Kam Highway	Kaneohe	HI
285	SOUTHLAKE MALL	2014 Southlake Mall	Merrillville	IN
1506	LANSING MALL	5234 West Saginaw Hwy	Lansing	MI
7792	STONEWOOD CENTER	173 Stonewood	Downey	CA
1602	APPLE BLOSSOM MALL	1850 Apple Blossom Drive	Winchester	VA
1062	ARDEN FAIR MALL	1689 Arden Way	Sacramento	CA
2654	HUDSON MALL	Rt 440	Jersey City	NJ
245	SOUTHPARK MALL	4600 16 Street	Moline	IL
380	NORTH RIVERSIDE PARK	7501 West Cermak Road	North Riverside	IL
1502	PENN SQUARE MALL	2078 Penn Square	Oklahoma City	OK
386	HANES MALL	3320 Silas Creek Parkway	Winston-Salem	NC
1251	WESTFIELD PALM DESERT	72840 Highway Iii	Palm Desert	CA
377	QUAKER BRIDGE MALL	150 Quaker Bridge Mall	Lawrenceville	NJ
326	SANTA ROSA MALL	300 Mary Esther Cutoff	Mary Esther	FL
1583	CHICO MALL	1950 E. 20Th Street	Chico	CA
412	INLAND CENTER	154 Inland Center Dr	San Bernardino	CA
9548	NORTHLAKE MALL	6801 Northlake Mall Dr	Charlotte	NC
406	CHERRYVALE MALL	7200 Harrison Ave	Rockford	IL
1036	WILLOWBROOK MALL	1658 Willowbrook Mall	Houston	TX
7693	FLAT IRON CROSSING MALL	1 Flat Iron Circle	Broomfield	CO
693	HICKORY POINT MALL	1395 Hickory Point Mall	Forsyth	IL
3879	FRANCIS SCOTT KEY	5500 Buckeystown Pike	Frederick	MD
314	COUNTRYSIDE MALL	27001 Us Highway 19 North	Clearwater	FL
5186	MONMOUTH S.C.	180 Route 35 South	Eatontown	NJ
1420	MCKINLEY MALL	3601 Mckinley Parkway	Buffalo	NY
178	LIVINGSTON MALL	112 Eisenhower Parkway	Livingston	NJ
163	SUNRISE MALL	6073 Sunrise Mall	Citrus Heights	CA
7685	POLARIS FASHION PLACE	1500 Polaris Parkway	Columbus	OH
923	EASTWOOD MALL	5555 Youngstown-Warren Rd	Niles	OH
8682	NORTHTOWN MALL	N 4750 Division Street	Spokane	WA
1627	ROSEDALE CENTER	10 Rosedale Center	Roseville	MN

Loc Number	Location Name	Location Address	Location City	Location State / Province
269	MILLCREEK MALL	Space #160	Erie	PA
392	OAK PARK MALL	11161 West 95Th Street	Overland Park	KS
3055	RIDGEDALE CENTER	12505 Wayzata Blvd.	Minnnetonka	MN
369	OAKDALE MALL	3111 E. Main Street	Johnson City	NY
1434	TOWN CENTER AT COBB	400 Earnest Barrett Pkwy	Kennesaw	GA
340	ORANGE PARK MALL	1910 Wells Rd	Orange Park	FL
773	OAKLAND MALL	422 W 14 Mile Rd	Troy	MI
1395	WIREGRASS COMMONS MALL	900 Common Ave	Dothan	AL
1039	GREAT NORTHERN MALL	232 Great Northern Mall	North Olmsted	OH
147	CITY CREEK CENTER	51 South Main St	Salt Lake City	UT
1440	EDEN PRAIRIE CENTER	8251 Flying Cloud Drive	Eden Prairie	MN
1169	YORKTOWN SHOPPING CENTER	203 Yorktown S/C	Lombard	IL
6294	MACARTHUR CENTER	300 Monticello Avenue	Norfolk	VA
9395	THE SHOPS AT WILLOW RD	6121 W Park Blvd	Plano	TX
55	SOUTHERN PARK MALL	7401 Market St	Youngstown	OH
3703	CAPITAL MALL	625 Black Lake Blvd Sw	Olympia	WA
5378	CASCADE MALL	414 Cascade Mall	Burlington	WA
571	SOUTHLAND MALL	20505 South Dixie Highway	Miami	FL
2752	SANTA MARIA TOWN CTR	222 Town Center East	Santa Maria	CA
9564	GALLERIA AT SOUTH BAY	1815 Hawthorne Blvd	Redondo Beach	CA
226	FASHION SQUARE MALL	4724 Fashion Square Mall	Saginaw	MI
7295	PACIFIC VIEW	3301 E. Main Street	Ventura	CA
1427	NORTHTOWNE MALL	1500 N Clinton St	Defiance	OH
204	NORTHTOWN SHOPPING CENTER	275 Northtown Dr	Blaine	MN
110	SOUTHRIDGE MALL	5300 S 76Th Street	Greendale	WI
2803	LAKELINE MALL	11200 Lakeline Mall Blvd	Cedar Park	TX
1546	SUPERSTITION SPRINGS	6555 East Southern Ave.	Mesa	AZ
874	LYNNHAVEN MALL	701 Lynnhaven Pkwy	Virginia Beach	VA
510	WESTLAND MALL	550 South Gear Ave	West Burlington	IA
37	KENNEDY MALL	555 John F Kennedy Road	Dubuque	IA
166	BELTWAY PLAZA	6080 Green Belt Road	Greenbelt	MD
310	CUMBERLAND MALL	Delsea Drive & Route 47	Vineland	NJ
190	CONCORD MALL	4737 Concord Pike	Wilmington	DE
8420	CENTER AT SALISBURY	2300 N. Salisbury Blvd.	Salisbury	MD
7898	WESTFIELD BROWARD	8000 W. Broward Blvd	Plantation	FL
500	THE COMMONS AT FEDERAL WA	1823 South Commons	Federal Way	WA
2641	HUTCHINSON MALL	1060 Highway 15 South	Hutchinson	MN
1449	PEMBROKE MALL	4554 Virginia Beach Blvd	Virginia Beach	VA
641	MEADOWS	4300 Meadows Lane	Las Vegas	NV
3390	SOLOMON POND MALL	601 Donald Lynn Blvd	Marlborough	MA
481	THE SHOPS AT ITHACA MALL	40 Catherwood Road	Ithaca	NY
3438	SOUTHSIDE MALL	Rd 2 Southside	Oneonta	NY
820	FAIR OAKS MALL	11850 U Fair Oaks Road	Fairfax	VA
2848	BUFFALO MALL	2400-8Th Ave Sw	Jamestown	ND
1421	COLUMBIA MALL	2300 Bernadette Dr.	Columbia	MO
7090	WAKEFIELD MALL	Tower Hill Road &	Wakefield	RI
159	WESTFIELD NORTH COUNTY	200 East Via Rancho Parkw	Escondido	CA
799	OLD HICKORY MALL	2021 North Highland Ave	Jackson	TN
503	MONTGOMERY MALL	712 Montgomery Mall	North Wales	PA
1265	JEFFERSON VALLEY MALL	650 Lee Boulevard	Yorktown Hgts	NY
636	CARY TOWNE CENTER	1105 Walnut Street	Cary	NC
1469	MID RIVER MALL	1080 Mid Rivers Mall Driv	Saint Peters	MO
1578	WESTFIELD MERIDEN	470 Lewis Avenue	Meriden	CT
38	MARION CENTRE S/C	1475 Marion Waldo Rd	Marion	OH
5883	BAY CITY TOWN CENTER	4101 Wilder Road	Bay City	MI
809	THE GALLERY AT SOUTH DEKA	24 South Dekalb Mall	Decatur	GA
1425	VILLAGE MALL	2917 Vermillion St	Danville	IL
836	QUAIL SPRINGS MALL	2501 West Memorial Road	Oklahoma City	OK
5498	MERIDAN MALL	1982 West Grand River	Okemos	MI
3105	WILTON MALL	3065 Rte 50 Space B-12	Saratoga Springs	NY
5138	THE LAKES MALL	5600 Harvey Road	Muskegon	MI
224	NORTHWOODS MALL	2200 War Memorial Drive	Peoria	IL

Loc Number	Location Name	Location Address	Location City	Location State / Province
1472	HAMILTON MALL	4403 Black Horse Pike	Mays Landing	NJ
277	VOLUSIA MALL	1700 W Internatl Sdwy Blv	Daytona Beach	FL
1352	TOWSON TOWN CENTER	825 Dulaney Valley Road	Towson	MD
5411	THE GALLERY AT THE HARBOR	200 East Pratt St	Baltimore	MD
1666	SALEM CENTER	480 Center Street Ne	Salem	OR
8882	FASHION PLACE MALL	6191 State St	Murray	UT
2662	VILLAGE SQUARE MALL	83 Village Square Mall	Effingham	IL
1592	ENFIELD SQUARE MALL	90 Elm Street	Enfield	CT
41	COURTLAND CENTER	4190 East Court St	Burton	MI
9443	WINONA MALL	1213 Gilmore Ave	Winona	MN
9788	MERLE HAY MALL	3800 Merle May Mall	Des Moines	IA
1076	CRYSTAL RIVER MALL	1801 Nw Hwy 19	Crystal River	FL
353	FOX VALLEY MALL	2356 Fox Valley Center	Aurora	IL
1448	GOLF MILL SHOPPING CENTER	247 Golf Mill Center	Niles	IL
2432	SANTA ROSA MALL	Pr 2	Bayamon	PR
414	FAIRLANE TOWN CENTER	18900 Michigan Avenue	Dearborn	MI
9956	EDGEWATER PLAZA	2600 Beach Blvd	Biloxi	MS
3904	THUNDERBIRD MALL	1421 B 12Th Ave S	Virginia	MN
1111	EAST HILLS MALL	3700 Frederick Ave	St. Joseph	MO
1471	THE MALL OF MONROE	2121 N Monroe St	Monroe	MI
291	INDEPENDENCE CENTER	18813 East 39Th St South	Independence	MO
9014	OAKWOOD SHOPPING CENTER	197 West Bank Expressway	Terrytown	LA
701	SEMINOLE TOWNE CENTER	200 Towne Center Circle	Sanford	FL
25	ALMEDA MALL	12200 Gulf Freeway	Houston	TX
501	RIDGMAR MALL	2178 Green Oaks Road	Fort Worth	TX
208	LINDALE MALL	4444 First Ave N E	Cedar Rapids	IA
3591	HOLIDAY VILLAGE MALL	1753 Highway 2 W	Havre	MT
5584	PARAMUS PARK MALL	2040 Paramus Park Mall	Paramus	NJ
5642	MARSHFIELD MALL	503 East Ives Street	Marshfield	WI
3169	OLD ORCHARD MALL	4999 Old Orchard Center	Skokie	IL
514	MALL ST. VINCENT	1133 St. Vincent #110	Shreveport	LA
5264	WESTFIELD SARASOTA SQUARE	8201 S Tamiami Trail	Sarasota	FL
695	PARADISE VALLEY MALL	4550 East Cactus Rd.	Phoenix	AZ
3082	STEEPLEGATE	270 Loudon Road	Concord	NH
5028	LEE PREMIUM OUTLETS	50 Water Street	Lee	MA
5139	TANGER OUTLET CENTER DAYT	1100 Cornerstone Blvd	Daytona Beach	FL
8903	TANGER OUTLETS @ THE ARCH	1387 The Arches Circle	Deer Park	NY
2776	OUTLETS OF DES MOINES	545 Bass Pro Drive Nw	Altoona	IA
3776	THE OUTLET SHOPPES AT LAR	1600 Water Street	Laredo	TX
5026	TANGER OUTLET CENTER JEFF	8000 Factory Shops Blvd	Jeffersonville	OH
3613	NEBRASKA CROSSING OUTLET	21355 Nebraska Crossing D	Gretna	NE
3745	LOUISIANA BOARDWALK OUTLE	490 Boardwalk Blvd	Bossier City	LA
3600	EMPIRE OUTLETS	35B Richmond Terrace	Staten Island	NY
8804	OUTLETS AT CORPUS CHRISTI	500 North lh 69	Robstown	TX
1124	LAGUNA 99 PLAZA	8451 Elk Grove Blvd	Elk Grove	CA
3220	VINTAGE OAKS	120 Vintage Way	Novato	CA
7995	HERTITAGE PARK PLAZA	448 North Main Street	East Longmeadow	MA
14	CENTURY CENTER	353 Memorial Blvd	West Springfield	MA
8672	VILLAGE SHOPS	95 Washington Street	Canton	MA
8527	UNIVERSITY CENTER	4237 Campus Drive	Irvine	CA
9959	ESPLANADE SHOPPING CENTER	365 West Esplanade Drive	Oxnard	CA
9637	BLUE STAR SHOPPING CENTER	1701 Rt 22 West	Watchung	NJ
5587	SULLY PLAZA	13936 Lee Jackson Hwy	Chantilly	VA
2355	SHOPS @ DUNES ON MONTEREY	130 General Stilwell Dr	Marina	CA
8558	ARLINGTON SHOPPING CENTER	804 Us Highway 46	Parsippany	NJ
7338	WAREHAM CROSSING	2421 Cranberry Hwy	Wareham	MA
8974	LANTANA SQUARE	206 Lantana Drive	Hokessin	DE
5916	GREAT LAKES MALL	7850 Mentor Avenue	Mentor	OH
47	THE SHOPS AT LA CANTERA	15900 La Cantera Pkwy	San Antonio	TX
6604	PARROT PLAZA	1401 W. North Avenue	Melrose Park	IL
8232	WESTFORD PLAZA	175 Littleton Rd	Westford	MA
2726	CATHEDRAL VILLAGE	69185 Ramon Road	Cathedral City	CA

Loc Number	Location Name	Location Address	Location City	Location State / Province
5125	ARLINGTON SQUARE	4725 Reed Road	Columbus	OH
971	PAVILIONS PLACE	16420 Beach Blvd	Westminster	CA
8314	MORGAN HILL SHOPPING CENT	1057 Cochrane Rd	Morgan Hill	CA
7432	HIGHLAND COMMONS	56 Highland Commons East	Hudson	MA
7884	CROSS POINT CENTRE	101 E. Alex Bell Rd	Centerville	OH
9737	COPPER TREE PLAZA	350 Ramapo Valley Rd	Oakland	NJ
1135	NORTHBOROUGH CROSSING	9113 Shops Way	Northborough	MA
8731	SILVERNAIL SHOPPING CENTE	2116 Silvernail Rd	Pewaukee	WI
8357	TRIANGLE SHOPPING CENTER	20 Triangle Center	Yorktown Heights	NY
585	WOODBURN PLAZA SHOPPING C	3040 Sprague Lane	Woodburn	OR
8566	ROCKFORD PLAZA	4190 Vinewood Lane	Plymouth	MN
9230	THE ORCHARD TOWN CENTER	14583 Orchard Parkway	Westminster	CO
5221	COMMERCE TOWN CENTER	3050 Union Lake Rd	Commerce	MI
7876	THE SHOPPES AT HAWK RIDGE	6115 Ronald Reagan Drive	Lake St. Louis	MO
8733	RIVERVIEW WEST MARKETPLAC	3770 W. Mcfadden Ave	Santa Ana	CA
2724	GIBBS CROSSING	350 Palmer Rd	Ware	MA
9963	SHARP'S PLAZA	175 Route 70 East	Medford	NJ
9107	COTTONWOOD SHOPPING CENTE	1100 S. Hwy 260 #17A	Cottonwood	AZ
9353	PORT PLAZA	45 Storey Ave	Newbury Port	MA
1379	CURRY HOLLOW CENTER	314 1/2 Curry Hollow Dr	Pleasant Hills	PA
3515	EDMOND CROSSING S.C.	72 S.E. 33Rd Street	Edmond	OK
9184	TRAVER VILLAGE	2627 Plymouth Road	Ann Arbor	MI
1048	CRYSTAL CITY SHOPS @1750	1670 Crystal Sq Arcade	Arlington	VA
3619	WAYLAND TOWN CENTER	77 Andrew Ave	Wayland	MA
559	MUNDELEIN CROSSINGS	3022 Route 60	Mundelein	IL
1558	SHOPPES @ PGH MILLS	2015 Pgh Mills Blvd	Tarentum	PA
5167	WALMART LAFAYETTE	1217 Diamond Circle	Lafayette	CO
1618	MIDDLESEX S.C.	1342 Eastern Blvd.	Baltimore	MD
1348	SUNRISE VILLAGE SHOPPING	4776 East Sunrise Drive	Tucson	AZ
5823	WEST MARKET SC	109 S Parket Street - 109	Olathe	KS
7371	SPRING CREEK JUNCTION	681 South Green Bay Road	Neenah	WI
8069	WINDSOR COMMONS	3143 Cape Horn Road	Red Lion	PA
6997	SOUTHGATE PLAZA	3501 S Tamiami Trail	Sarasota	FL
1691	PADUCAH TOWNE CENTER	3216 Irvin Cobb Drive	Paducah	KY
7493	RIVER HILL VILLAGE CENTER	6030 Daybreak Circle	Clarksville	MD
8941	FALLS GROVE VILLAGE CTR	14933 F Shady Grove Rd	Rocville	MD
3270	SOUNDVIEW MARKETPLACE	20 Soundview Marketplace	Port Washington	NY
8954	GREENTREE ROAD S/C	1969 Greentree Rd	Pittsburgh	PA
9258	MALL @ SIERRA VISTA	2200 El Marcado Loop	Sierra Vista	AZ
9256	WHITTWOOD TOWN CENTER	15702 Whittwood Lane	Whittier	CA
9178	TROPICANA BELTWAY CENTER	5130 S. Ft Apache Rd	Las Vegas	NV
6775	THE SHOPPES AT OLD BRIDGE	3849 Us Highway 9	Old Bridge	NJ
3894	NIAGARA CONSUMER SQUARE	7314 Niagara Falls Blvd	Niagara Falls	NY
9338	SHEEPSHEAD BAY	1710 Sheepshead Bay Rd	Brooklyn	NY

**EXHIBIT 3**

**U.S. Consulting Agreement**



## CONSULTING AGREEMENT

This Consulting Agreement (“Agreement”) is made as of June 10, 2020 (the “Effective Date”), by and among GNC Holdings, Inc. (“Merchant”) and a joint venture comprised of Tiger Capital Group, LLC (“Tiger”) and Great American Group, LLC (“GA”) (collectively, the “Consultant” and together with Merchant, the “Parties” and each a “Party”).

### RECITALS

WHEREAS, Merchant operates retail stores and desires that the Consultant act as Merchant’s exclusive consultant for the limited purposes of (a) assisting Merchant (i) in determining stores to close immediately (or not to reopen) (the “Closing Stores”) and stores at which to conduct a Sale as defined below (the “GOB Stores”) and (ii) with the logistics of transferring Merchandise (as defined below) from the Closing Stores to the GOB Stores; (b) selling all of the Merchandise (as defined below) from Merchant’s Closing Stores and GOB Stores identified on Exhibit A attached hereto (as may be modified prior to the Sale Commencement Date (as defined below) including by adding or removing stores, in each case pursuant to Section 1 below) (each such store identified on Exhibit A individually a “Store,” and collectively the “Stores”) by means of a “store closing”, “location closing”, “sale on everything”, “everything must go”, or similar themed sale as agreed between the Parties at the GOB Stores (as further described below, the “Sale”); and (c) selling or otherwise disposing of Merchant owned furniture, furnishings, trade fixtures, machinery, equipment, office supplies, supplies and other tangible personal property that are located in the Stores (collectively, “FF&E”) in the Stores, each upon the terms set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Consultant and Merchant hereby agree as follows:

#### **Section 1. Appointment of Consultant**

Effective as of the date hereof, subject to the entry of the Approval Order (as defined below) by the Bankruptcy Court (as defined below), Merchant hereby appoints the Consultant, and the Consultant hereby agrees to serve, as Merchant’s consultant for the purpose of conducting the Sale in accordance with the terms and conditions of this Agreement as more definitively set forth in Section 4 hereof. Subject to Section 12, Consultant shall be authorized to advertise the Sale as a “store closing”, “location closing”, “sale on everything”, “everything must go”, or similar-themed sale in accordance with the terms hereof.

After the date hereof, at the option of the Merchant and if necessary subject to the approval of the Bankruptcy Court, Merchant may add additional Closing Stores and GOB Stores for Consultant to serve as Merchant’s independent consultant in connection with the conduct of a Sale (the “Additional Stores”) with respect to such Additional Stores on the terms and conditions of this Agreement subject to appropriate adjustments as agreed for the Sale Commencement Date, the Sale Termination Date, the Expense Budget, the Consulting Fee and the FF&E Fee (each as defined below) for such Additional Stores (as may be applicable), which Additional Stores and such terms shall be set forth in a written addendum hereto. The Additional Stores and the initial Stores shall be collectively referred to as the “Stores” herein.

#### **Section 2. Merchandise**

For purposes hereof, “Merchandise” shall mean all goods, saleable in the ordinary course, located in the Stores on the Sale Commencement Date (as defined below) or delivered thereto after the Sale Commencement Date pursuant to the terms hereof. “Merchandise” does not mean and shall not include: (1) goods that belong to

sublessees, licensees, or concessionaires of Merchant or are leased and licensed from third parties by Merchant, or are held by Merchant on memo, on consignment or as bailee, in each case, to the extent identified by Merchant as excluded from Merchandise; (2) FF&E; (3) expired goods or goods that expire prior to the Sale Termination Date (as defined below); (4) damaged or defective merchandise that cannot be sold for the purpose for which it was intended; or (5) gift cards (third party and Merchant branded).

### **Section 3. Sale Term**

The Sale shall commence as mutually agreed; provided, however, (a) for GOB Stores that are currently operating, the Sale shall commence on or about June 25, 2020, and (b) for GOB Stores that are not currently operating, the Sale shall commence on or about the later of the date upon which Merchant reopens each such GOB Store and June 25, 2020 (the "Sale Commencement Date"). The Sale shall conclude no later than September 30, 2020 (the "Sale Termination Date"); provided, however, that Merchant may agree in writing in its sole discretion to extend or terminate the Sale at any GOB Store prior to the Sale Termination Date (it being understood that, if the timing set forth herein changes, Merchant and Consultant shall mutually agree on any adjustments to the Expense Budget (as defined below) and Consultant's compensation); provided further, however, that Merchant may agree in writing in its sole discretion to make any GOB Store a Closing Store prior to the Sale Termination Date. The period between the Sale Commencement Date and the Sale Termination Date shall be referred to as the "Sale Term." Upon the removal of Merchandise from each Store and at the conclusion of the Sale at each GOB Store, (a) Consultant shall surrender the premises for such Store to Merchant in broom-swept and clean condition with any unsold FF&E abandoned in place at such Store, and (b) Consultant shall reasonably assist Merchant to photographically document the condition of each such Store upon the conclusion of the Sale there.

### **Section 4. Project Management**

#### **(A) Consultant's Undertakings**

After the Effective Date hereof, Consultant shall (a) conduct a review and assessment of Merchant's current store closing plan and accompanying assumptions in light of the current market environment, (b) make recommendations in order to minimize expenses and maximize the return from the sale of Merchandise, (c) consult with Merchant as to which stores to close immediately (or to not reopen) and at which to conduct the Sale, and (d) consult with Merchant as to the logistics of transferring merchandise from the Closing Stores to the GOB Stores. During the Sale Term, Consultant shall, in collaboration with Merchant, (a) provide one or more qualified supervisors (the "Supervisors") engaged by Consultant and reasonably approved in advance by Merchant to oversee the Sale and management of the GOB Stores in an effort to maximize revenue and sell all of the Merchandise prior to the end of the Sale; (b) determine appropriate point-of-sale and external advertising, reasonably approved in advance by Merchant; (c) determine appropriate discounts of Merchandise, staffing levels, and appropriate bonus and incentive programs, if any, for the GOB Stores' employees, in each case reasonably approved in advance by Merchant; (d) oversee display of Merchandise for the GOB Stores; (e) evaluate sales of Merchandise by category, provide sales reporting and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information regarding Merchant in accordance with the provisions of the confidentiality agreement signed by the Parties and for Merchant Confidential Information (as defined below) in accordance with the next paragraph; (g) assist Merchant in connection with managing and controlling loss prevention and employee relations matters; (h) to the extent necessary, assist Merchant in obtaining all required permits and governmental consents required to conduct the Sale; (i) price, market, and sell the FF&E on behalf of Merchant; and (j) provide such other related services deemed necessary or appropriate by Merchant and Consultant.

Without limiting the generality of the foregoing, all information of a business nature relating to the pricing, sales, promotions, marketing, assets, liabilities, or other business affairs of Merchant, its customers, parent, subsidiaries, or other affiliated entities (for purposes of this paragraph, all such entities are included within each reference to "Merchant") is Merchant's confidential, trade secret information ("Merchant Confidential

Information”), which is and shall remain the exclusive intellectual property of Merchant. Except as may be required for Consultant to perform its obligations under this Agreement in respect of the Sale, Consultant shall not divulge, furnish, make available, or in any other manner disclose such information to any third party other than to the respective affiliates, officers, employees, representatives, and agents of each party comprising Consultant. Each party comprising Consultant shall take and shall cause its respective affiliates, officers, employees, representatives, and agents to take such action as shall be reasonably necessary or advisable to preserve and protect the confidentiality of Merchant Confidential Information. Each party comprising Consultant agrees to maintain strict confidentiality and agrees that it may use Merchant Confidential Information only as reasonably necessary in the performance of its obligations related to the Sale.

The Parties expressly acknowledge and agree that Merchant shall have no liability to the Supervisors for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Consultant’s hiring or engagement of the Supervisors, and the Supervisors shall not be considered employees of Merchant. Merchant shall only be responsible for reimbursing Consultant for the cost of such Supervisors as part of the Expense Budget (as defined below). Consultant shall vacate the GOB Stores on the Sale Termination Date, or such other date as agreed between the Merchant and the Consultant in accordance with the terms hereof.

(B) Merchant’s Undertakings

During the Sale Term, Merchant shall, as applicable, (a) remain the employer of the Stores’ employees; (b) remain responsible for all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores’ employees and other representatives of Merchant; (c) prepare and process all tax forms and other documentation; (d) collect all sales taxes and pay them to the appropriate taxing authorities for the Stores; (e) use reasonable efforts to cause Merchant’s employees to cooperate with Consultant and the Supervisors; (f) execute all agreements mutually determined by the Merchant and the Consultant to be necessary or desirable for the operation of the GOB Stores during the Sale; (g) arrange for the ordinary maintenance of all point-of-sale equipment required for the GOB Stores; and (h) ensure that Consultant has quiet use and enjoyment of the GOB Stores for the Sale Term in order to perform its obligations under this Agreement.

Merchant shall provide throughout the Sale Term central administrative services typically provided to Stores in the ordinary course and necessary for the Sale, including internal payroll processing, MIS services, cash and inventory reconciliation, data processing and reporting, email preparation and distribution, information technology updates, functionality, and maintenance, and accounting, all at no cost to Consultant.

The Parties expressly acknowledge and agree that Consultant shall have no liability to Merchant’s employees for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Merchant’s employment, hiring or retention of its employees, and such employees shall not be considered employees of Consultant.

The Parties acknowledge that this Agreement is being entered into in the midst of the outbreak of the COVID-19 pandemic and that local, state, and national laws and responses are continuously developing and evolving, often in unpredictable ways. Merchant hereby agrees that, while Consultant will fully cooperate with Merchant to adhere to any restrictions, laws, regulations, recommendations, or orders imposed by local, state or federal governmental entities, or similar regulatory or authoritative agencies, that may be imposed on any aspect of Merchant’s ability to operate the Stores in response to the COVID-19 pandemic, the responsibility and expense of complying with any such restrictions, laws, regulations, recommendations, or orders, including their enforcement and implementation, shall be the sole responsibility of Merchant. Examples of such restrictions, regulations or recommendations may include, without limitation: (a) providing protective gear (such as masks, sanitizers, and similar items) aimed at reducing the spread of the virus to Merchant’s employees, customers, vendors, etc.; (b) implementing physical restrictions with regard to Store operations, including monitoring the number of customers allowed into a Store at any given time; and (c) enforcing daily cleaning and sanitizing procedures at the Stores. Merchant and its employees shall be responsible to facilitate, enforce, and implement

any such restrictions or regulations, however, Consultant agrees not to violate any such restrictions, laws, regulations, recommendations or orders in the performance of its services hereunder.

## **Section 5. The Sale**

All sales of Merchandise and FF&E shall be made on behalf of, and solely in the name of, Merchant. Consultant does not have, nor shall it have, any right, title, or interest in the Merchandise or FF&E. All sales of Merchandise and FF&E shall be by cash, gift card, gift certificate, merchandise credit, debit card, or credit card and, at Merchant's discretion, by check or otherwise in accordance with Merchant's policies, and shall be "final" with no returns accepted or allowed unless otherwise directed by Merchant or mandated by law. If Merchant commences a case(s) under chapter 11 of the Bankruptcy Code (as defined below), the right to honor gift cards, gift certificates or merchandise credit, after the commencement of such case(s) shall be subject to further order of the Bankruptcy Court.

## **Section 6. Consultant Fee and Expenses in Connection with the Sale**

### **(A) Consultant's Fee**

Subject to the entry of the Approval Order, Consultant shall be entitled to a base fee for its services equal to \$1,000 per GOB Store and \$500 per Closing Store (the "Base Fee") payable as follows: (x) 50% upon entry of an interim Approval Order of the Bankruptcy Court authorizing the Sale pursuant to the terms and conditions of this Agreement and (y) 50% upon entry of the final Approval Order. In addition, Merchant may earn an additional incentive fee (the "Incentive Fee" and together with the Base Fee, the "Consulting Fee") based upon the following thresholds of Gross Proceeds (as defined below) received during the Sale divided by the Cost Value (as defined below) of the Merchandise sold during the Sale (the "Gross Recovery Percentage") calculated back to the first dollar received:

<u>Gross Recovery Percentage</u>	<u>Total Incentive Fee</u>
Between 120% to 134.99%	.50% of Gross Proceeds
Between 135% to 149.99%	.75% of Gross Proceeds
150.0% or above	1.25% of Gross Proceeds

For the avoidance of doubt, the above Incentive Fee, if achieved, is in addition to the Base Fee.

After it is determined that Consultant has earned an Incentive Fee, Merchant shall pay such Incentive Fee as earned as part of the weekly reconciliations and in any event no later than the Final Reconciliation (as defined below).

For purposes of this calculation, (i) "Gross Proceeds" shall mean the sum of the gross proceeds of all sales of Merchandise that is sold through the Sale (including, as a result of the redemption of any gift card, gift certificate or merchandise credit as well as wholesale sales to third parties and miscellaneous income) during the Sale Term, after the application of all discounts including, without limitation, any discount coupons issued by Merchant in the ordinary course of its business, and net only of sales taxes, and (ii) "Cost Value" shall mean the aggregate gross cost of Merchandise sold during the Sale per the Merchant's books and records. For the avoidance of doubt, the proceeds of the sale of Additional Consultant Goods (as defined below) pursuant to Section 7 hereof shall not constitute Gross Proceeds. The Parties shall mutually agree upon the Consulting Fee for any Additional Stores in writing.

For purposes of calculating Gross Proceeds, Consultant and Merchant shall jointly keep (i) a strict count of gross register receipts less applicable sales taxes and (ii) cash reports of sales within each Store. Register receipts shall show for each item sold the retail price (as reflected on Merchant's books and records) for such

item, and the markdown or other discount granted in connection with such sale. All such records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice.

(B) Expenses

Merchant shall be responsible for all reasonable and documented costs and expenses of the Sale, including all Store level operating expenses. To control expenses of the Sale, Merchant and Consultant have established a budget (the "Expense Budget") of certain delineated expenses in connection with the Sale, including supervision (including Supervisors' wages, fees, travel and any other compensation and any travel expenses of Consultant), advertising costs and signage. The Expense Budget for the Sale is attached hereto as **Exhibit B**. The Expense Budget may only be modified by mutual written agreement of Consultant and Merchant. Notwithstanding anything herein to the contrary, unless otherwise agreed to by Merchant, Merchant shall not be obligated to pay costs of supervision, advertising costs and signage that exceed the budgeted amount, on an aggregate basis. The Parties acknowledge that the Expense Budget will be updated as appropriate in connection with any modification of the lists of GOB Stores or the terms of the Sale and agree to cooperate in good faith with respect to such updates or to any Additional Stores.

(C) Reconciliation

Consultant shall maintain books and records as it relates to the services rendered under this Agreement. Subject to the terms of the Approval Order, all accounting matters (including, without limitation, any Consulting Fees and expenses per the Expense Budget that are reimbursable or payable to Consultant and, if applicable, the Additional Consultant Goods Fee (as defined below)) shall be reconciled on every Wednesday for the prior week and shall be paid within seven (7) days after each such weekly reconciliation.

Within twenty (20) days following the Sale Termination Date for each GOB Store, the Parties shall complete a final reconciliation and settlement based upon the total Gross Proceeds received and all amounts earned and due to Consultant and contemplated by this Agreement (including, without limitation, Expense Budget items) (the "Final Reconciliation"). Upon completion of the Final Reconciliation, if a payment is due from either Party, such Party shall pay the other Party any amounts calculated to be due as part of such Final Reconciliation after considering any amount previously paid to the Consultant (including without limitation Expense Budget items and any other payments under this Agreement). Merchant or its firm of auditors appointed by Merchant has the right, upon reasonable written notice to Consultant, to inspect at reasonable times and locations such documentation, records, and equipment that reasonably relate to the services provided for under this Agreement for purposes of ensuring performance of Consultant's obligations under this Agreement.

(D) Advance on Expenses

Subject to the terms of the Approval Order, as an advance against the expenses of the Sale, and to secure payment of the same and any other amounts due to Consultant, no later than five (5) days after the Effective Date, and in no event later than the last business day before the filing of a bankruptcy case, Merchant shall pay to Consultant a deposit in the amount of \$1,200,000, which is an estimate of the costs of signage, advertising and Supervisors for a two (2) week period, and is calculated based on the number of Stores included on **Exhibit A** as of the Effective Date (the "Advance"). The Parties agree that the Advance may only be used to pay for expenses pursuant to the Expense Budget. The Parties further agree to increase the sum of the Advance in the event that Additional Stores are added and as needed, provided, however, that Merchant must expressly approve such increases in writing. The Advance shall be applied against the reimbursement of expenses or payment of the Consulting Fee at the end of the Sale Term to the extent not otherwise paid, and to the extent not expended when the Sale concludes, and shall be returned to Merchant as part of the Final Reconciliation or such other time that Merchant and Consultant mutually agree.

**Section 7. Additional Consultant Goods**

Subject to Merchant's prior written approval, and further subject to the Approval Order authorizing the sale of Additional Consultant Goods, and upon the terms of such Approval Order, and further subject to Merchant's prior written approval of a plan with respect to the placement and sale of such Additional Consultant Goods, Consultant shall be allowed to include in the Sale supplemental goods procured by Consultant of like kind and no lesser quality to the Merchandise ("Additional Consultant Goods") located in the GOB Stores. Consultant shall be responsible for payment of the out-of-pocket costs directly associated with procuring any Additional Consultant Goods, which costs shall not constitute expenses reimbursable pursuant to the Expense Budget under this Agreement; provided, however, that such costs shall not include any occupancy expenses related to the Stores. Merchant shall have no liability whatsoever for any shrink relating to the Additional Consultant Goods. Consultant will ring the Additional Consultant Goods using either a "dummy" SKU or department number, or in such other manner as will enable the Parties to distinguish sales of the Additional Consultant Goods from sales of the Merchandise. Consultant shall pay Merchant five percent (5.0%) of the aggregate gross proceeds of the sale of Additional Consultant Goods during the Sale (net only of sales taxes related thereto) (the "Additional Consultant Goods Fee").

Consultant and Merchant intend that any transactions relating to the Additional Consultant Goods are, and shall be construed as, a true consignment from Consultant to Merchant in all respects and not a consignment for security purposes. Subject solely to Consultant's obligation to pay to Merchant the Additional Consultant Goods Fee, at all times and for all purposes the Additional Consultant Goods and the proceeds thereof shall be the exclusive property of Consultant, and no other person or entity shall have any claim against any of the Additional Consultant Goods or their proceeds. The Additional Consultant Goods shall at all times remain subject to the exclusive control of Consultant. Subject solely to Consultant's obligations to pay Merchant the Additional Consultant Goods Fee, the Additional Consultant Goods and the identifiable proceeds thereof shall not be property of Merchant (or Merchant's estate) and shall not constitute property of Merchant (or Merchant's estate) subject to any lender's lien.

The Consultant at Consultant's sole expense shall insure the Additional Consultant Goods and, if required, promptly file any proofs of loss with regard to same with its insurers. Consultant shall be responsible for payment of any deductible under any such insurance in the event of any casualty affecting the Additional Consultant Goods.

Consultant acknowledges, and the Approval Order shall provide, that the Additional Consultant Goods shall be consigned to Merchant as a true consignment under Article 9 of the Uniform Commercial Code (the "UCC") and, to the extent necessary, Consultant is hereby granted a first priority security interest in and lien upon the Additional Consultant Goods and the proceeds thereof less the Additional Consultant Goods Fee.

## **Section 8. Indemnification**

### **(A) Merchant's Indemnification**

Except as otherwise provided for in this Agreement, Merchant shall indemnify, defend, and hold each party comprising Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, principals, affiliates, and Supervisors (collectively, "Consultant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to: (a) the willful or grossly negligent acts or omissions of Merchant or the Merchant Indemnified Parties (as defined below); (b) the material breach of any provision of this Agreement by Merchant; (c) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding Consultant Indemnified Parties) against Consultant or a Consultant Indemnified Party, except claims arising from Consultant's negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Consultant's Indemnified Parties or Merchant's customers by Merchant or Merchant's Indemnified Parties (as defined below); (e) Merchant's failure to pay over to the appropriate taxing authority

any taxes required to be paid by Merchant during the Sale Term in accordance with applicable law; and (f) any claims of Merchant's employees for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Merchant's employment, hiring or retention of its employees.

**(B) Consultant's Indemnification**

Except as otherwise provided for in this Agreement, Consultant shall, on a joint and several basis, indemnify, defend and hold Merchant and its affiliates and their respective consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, principals, and affiliates (other than the Consultant or the Consultant Indemnified Parties) (collectively, "Merchant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (a) the willful or grossly negligent acts or omissions of Consultant or the Consultant Indemnified Parties; (b) the breach of any provision of, or the failure to perform any obligation under, this Agreement by Consultant; (c) any liability or other claims made by Consultant's Indemnified Parties or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to Consultant's conduct of the Sale, except claims arising from Merchant's negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Merchant Indemnified Parties or Merchant's customers by Consultant or any of the Consultant Indemnified Parties and (e) any claims made by any party engaged by Consultant as an employee, agent, representative or independent contractor arising out of such engagement.

**Section 9. Insurance**

**(A) Merchant's Insurance Obligations**

Merchant shall maintain, throughout the Sale Term, liability insurance policies (including products liability in the amounts currently provided, commercial general liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the Stores, and shall cause Consultant to be included as an additional insured with respect to all such policies. At Consultant's request, Merchant shall provide Consultant with a certificate or certificates evidencing the insurance coverage required hereunder and that Consultant is an additional insured thereunder. In addition, Merchant shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all applicable statutory requirements.

**(B) Consultant's Insurance Obligations**

As an expense of the Sale and as set forth on the Expense Budget, Consultant shall maintain, throughout the Sale Term, liability insurance policies (including products liability/completed operations, contractual liability, comprehensive commercial general liability, without limitation, including auto liability insurance) on an occurrence basis in an amount of at least one million dollars (\$1,000,000) per occurrence and an aggregate basis of at least five million dollars (\$5,000,000) for commercial general liability covering injuries to persons and property in or in connection with Consultant's provision of services at the Stores and \$5,000,000 per occurrence combined single limit for auto. Consultant shall name Merchant as an additional insured and loss payee under such policies, and upon execution of this Agreement provide Merchant with a certificate or certificates of insurance evidencing the insurance coverage required hereunder. In addition, Consultant shall maintain throughout the Sale Term workers compensation insurance compliant with all statutory requirements. Further, should Consultant employ or engage third parties to perform any of Consultant's undertakings with regard to this Agreement, Consultant will ensure that such third parties are covered by Consultant's insurance or maintain all of the same insurance as Consultant is required to maintain pursuant to this paragraph and name Merchant as an additional insured and loss payee under the policy for each such insurance.

**Section 10. Representations, Warranties, Covenants and Agreements**

(A) Merchant's Representations, Warranties, Covenants and Agreements.

Merchant warrants, represents, covenants and agrees that (a) Merchant is a company duly organized, validly existing and in good standing under the laws of its state of organization, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder (subject to any requisite Bankruptcy Court approval), and maintains its principal executive office at the address set forth herein, (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Merchant and this Agreement constitutes a valid and binding obligation of Merchant enforceable against Merchant in accordance with its terms and conditions, and the consent of no other entity or person is required for Merchant to fully perform all of its obligations herein, (c) all ticketing of Merchandise at the Stores has been and will be done in accordance with Merchant's customary ticketing practices, and (d) all normal course hard markdowns on the Merchandise have been and will be, taken consistent with customary Merchant's practices.

(B) Consultant's Representations, Warranties, Covenants and Agreements.

Each party comprising Consultant respectively warrants, represents, covenants and agrees that (a) it is a company duly organized, validly existing and in good standing under the laws of its state of organization, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and maintains its principal executive office at the addresses set forth herein, (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of such Consultant party and this Agreement constitutes a valid and binding obligation of such Consultant party, enforceable against such Consultant party in accordance with its terms and conditions, and the consent of no other entity or person is required for such Consultant party to fully perform all of its obligations herein, (c) subject to Section 4(A) above, it shall comply with and act in accordance with any and all applicable state and local laws, rules, regulations, and other legal obligations of all governmental authorities in conducting the Sale, (d) no non-emergency repairs or maintenance in the Stores will be conducted without Merchant's prior written consent, (e) it will not take any disciplinary action against any employee of Merchant, (f) Consultant will comply with lease terms, obligations and restrictions for each Store while performing the services hereunder, and (g) it shall conduct the Sale in accordance with the terms of this Agreement.

**Section 11. Furniture, Fixtures and Equipment**

Subject to evaluation by the parties on a case by case basis to determine what may be sold from each Store as provided below, Consultant shall sell the FF&E in the GOB Stores and, to the extent applicable, the Closing Stores. Subject to the terms of the Approval Order, Merchant shall reimburse Consultant for Consultant's reasonable and documented out of pocket costs and expenses incurred by Consultant in connection with the sale of FF&E, which costs and expenses shall be incurred pursuant to a written budget or budgets to be established from time to time by mutual written agreement of the Parties (the "FF&E Budget"). Consultant shall have the right to abandon at the Stores any unsold FF&E, in a neat and orderly fashion. Unless otherwise agreed to by Merchant, the sale of the FF&E in each Store shall conclude no later than the Sale Termination Date for each Store.

Subject to the terms of the Approval Order, for the Stores set forth on **Exhibit A**, Consultant shall be entitled to a commission equal to fifteen percent (15.0%) of the Gross FF&E Proceeds (as defined below) from the sale of the FF&E (the "FF&E Fee").

Notwithstanding the foregoing, Merchant may inform Consultant that it intends to remove certain fixtures from the Stores and such fixtures shall not be included in the FF&E. Prior to the commencement of the Sale, Merchant will provide a list of any such fixtures at each store location to Consultant and will remove such fixtures from the Stores as soon as practical before or during the Sale. Consultant will use commercially reasonable efforts to ensure that the designated fixtures remain in good condition throughout the Sale.



Consultant shall remit to Merchant all Gross FF&E Proceeds. For purposes of this Agreement, "Gross FF&E Proceeds" means gross receipts from the sale of FF&E, net only of applicable sales taxes. During each weekly reconciliation described above, Consultant's FF&E Fee (if any) shall be calculated, and Consultant's calculated FF&E Fee and all FF&E costs and expenses then incurred shall be paid within seven (7) days after each such weekly reconciliation.

**Section 12. Advertising, Promotions, Signwalkers and Signage**

Consultant shall obtain prior written approval from Merchant for any advertising, promotions, signwalkers, and signage, which shall not be unreasonably withheld, and except as provided otherwise in the Approval Order shall cooperate with Merchant to ensure reasonable compliance with state and local government regulations and Store lease agreements. Advertising and signage shall be at the expense of Merchant as provided in **Exhibit B** or as otherwise agreed between the parties.

**Section 13. Termination**

The following shall constitute "Termination Events" hereunder:

- (a) Merchant's or Consultant's failure to perform any of their respective material obligations hereunder, which failure remains uncured for seven (7) days after receipt of written notice thereof to the defaulting Party;
- (b) Any representation or warranty made by Merchant or Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term;
- (c) The Sale is terminated or materially interrupted or impaired for any reason other than an event of default by Consultant or Merchant;
- (d) Bankruptcy Court approval of this Agreement is required and the Bankruptcy Court does not provide interim approval of Merchant's entry into and performance under this Agreement on or before July 7, 2020; or
- (e) The Bankruptcy Court issues any Order requiring the termination of this Agreement.

If a Termination Event occurs, the non-defaulting Party (in the case of an event of default) or either Party (if the Sale is otherwise terminated or materially interrupted or impaired) may, in its discretion, elect to terminate this Agreement by providing seven (7) business days' written notice thereof to the other Party and, in the case of an event of default, in addition to terminating this Agreement, pursue any and all rights and remedies and damages resulting from such default. If this Agreement is terminated, Merchant shall be obligated to pay Consultant all undisputed amounts due under this Agreement through and including the termination date. Merchant will be permitted to terminate this Agreement for any reason upon thirty (30) days' written notice to Consultant and, in such case, subject to the terms of the Approval Order, Consultant shall be paid its fee for selling Merchandise and FF&E through the date of such termination.

**Section 14. Notices**

All notices, certificates, approvals, and payments provided for herein shall be sent by fax or by recognized overnight delivery service as follows: (a) To Merchant: GNC Holdings, Inc., Attention: Accounts Payable Dept, 300 Sixth Avenue, Pittsburgh, PA 15222; (b) to Consultant: Tiger Capital Group, 60 State Street, 11<sup>th</sup> Floor, Boston, MA 02109, Attn: Mark P. Naughton, with a copy to Great American Group, LLC, 21255 Burbank Blvd., Suite 400, Woodland Hills, CA 91367, Attn: Scott K. Carpenter and Marina Fineman; and (c) such other address as may be designated in writing by Merchant or Consultant.

**Section 15. Independent Consultant**

Consultant's relationship to Merchant is that of an independent contractor without the capacity to bind Merchant in any respect. No employer/employee, principal/agent, joint venture or other such relationship is created by this Agreement. Merchant shall have no control over the hours that Consultant or its employees or assistants or the Supervisors work or the means or manner in which the services that will be provided are performed and Consultant is not authorized to enter into any contracts or agreements on behalf of Merchant or to otherwise create any obligations of Merchant to third parties, unless authorized in writing to do so by Merchant.

**Section 16. Non-Assignment**

Neither this Agreement nor any of the rights hereunder may be transferred or assigned by either Party without the prior written consent of the other Party. No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any Party to this Agreement unless made in writing and signed by a duly authorized representative or agent of such Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns.

**Section 17. Severability**

If any term or provision of this Agreement, as applied to either Party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. If the surviving portions of the Agreement fail to retain the essential understanding of the Parties, the Agreement may be terminated by mutual consent of the Parties.

**Section 18. Governing Law, Venue, Jurisdiction and Jury Waiver**

This Agreement, and its validity, construction and effect, shall be governed by and enforced in accordance with the internal laws of the State of Delaware (without reference to the conflicts of laws provisions therein). Merchant and Consultant waive their respective rights to trial by jury of any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding and/or hearing brought by either Consultant against Merchant or Merchant against Consultant on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship between Merchant and Consultant, any claim of injury or damage or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

**Section 19. Security**

Consultant has implemented and shall operate at all times the technical and organizational security measures set forth on Exhibit C hereto.

**Section 20. Entire Agreement**

This Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party except as specifically set forth in this Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Agreement.

**Section 21. Execution**

This Agreement may be executed simultaneously in counterparts (including by means of electronic mail, facsimile or portable document format (pdf) signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent signed and delivered by means of electronic mail, a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

**Section 22. Bankruptcy Court Approval**

If Merchant commences a case under Chapter 11 of title 11, United States Code (the "Bankruptcy Code"), with a bankruptcy court (the "Bankruptcy Court"), or consents to relief in the event an involuntary petition for relief under the Bankruptcy Code is filed against Merchant, Merchant shall file a motion to approve or assume this Agreement under section 365 of the Bankruptcy Code, and utilize its commercially reasonable efforts to ensure that such motion is approved by an order (the "Approval Order") that provides for, among other things, as follows: (i) approval and/or assumption of this Agreement; (ii) the payment of all fees and reimbursement of expenses hereunder to Consultant, free and clear of all liens, claims and encumbrances, on a weekly basis without further order of the Bankruptcy Court and otherwise in accordance with this Agreement; (iii) approval of the transaction contemplated hereby; (iv) authorizing the Sale without the necessity of complying with state and local rules, laws, ordinances and regulations, including, without limitation, permitting and licensing requirements, that could otherwise govern the Sale; (v) authorizing the Sale notwithstanding restrictions in leases, reciprocal easement agreements or other contracts that purport to restrict the Sale or the necessity of obtaining any third party consents; (vi) authorizing the advertising of the Sale, including with the use of signwalkers, upon the terms set forth herein; (vii) authorizing the sale of Additional Consultant Goods and granting Consultant a first priority senior security interest and lien upon the Additional Consultant Goods and proceeds thereof as provided herein; and (viii) authorizing Merchant to take such further actions as are necessary or appropriate to carry out the terms and conditions of this Agreement. The Parties acknowledge that Bankruptcy Court approval is required for Merchant to enter into and perform under this Agreement. In the event of a bankruptcy filing, any legal action, suit or proceeding arising in connection with this Agreement shall be submitted to the exclusive jurisdiction of the Bankruptcy Court having jurisdiction over Merchant, and each Party hereby waives any defenses or objections based on lack of jurisdiction, improper venue, and/or forum non conveniens. From and after entry of the Approval Order, Consultant shall conduct the Sale in accordance with the terms of the Approval Order in all material respects.

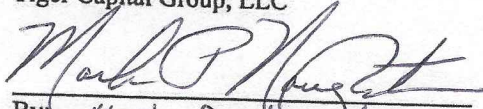
**Section 23. Authorized Consultant Party**

Tiger and GA have formed a joint venture, and, as such, share in the rights and liabilities of Consultant as set forth in this Agreement. Tiger is hereby designated as the lead and authorized party to deal directly with Merchant on behalf of Consultant and has the authority to contractually bind Consultant under this Agreement without having to obtain any express written concurrent approval(s) from GA. Tiger and GA will be jointly and severally liable for all acts, omissions, and obligations of Consultant hereunder.

[SIGNATURES TO FOLLOW]

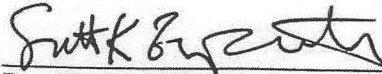
IN WITNESS WHEREOF, the Consultant and the Merchant hereby execute this Agreement by their duly authorized representatives as a sealed instrument as of the day and year first written above.

Tiger Capital Group, LLC



By: Mark P. Naughton  
Title: Senior General Counsel

Great American Group, LLC



By: Scott K. Carpenter  
Its: President, GA Retail Solutions

GNC Holdings, Inc.

By: Tricia Tolivar  
Title: EVP, Chief Financial Officer

IN WITNESS WHEREOF, the Consultant and the Merchant hereby execute this Agreement by their duly authorized representatives as a sealed instrument as of the day and year first written above.

Tiger Capital Group, LLC

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By:  
Title:

Great American Group, LLC

---

By: Scott K. Carpenter  
Its: President, GA Retail Solutions

GNC Holdings, Inc.



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By: Tricia Tolivar  
Title: EVP, Chief Financial Officer

**Exhibit A  
Store List**

Loc Number	Location Name	Location Address	Location City	Location State
7467	330 5TH AVE	330 5Th Ave	New York	NY
1208	31 65 STEINWAY ST	31 65 Steinway St	Astoria	NY
3800	125 PARK AVENUE	125 Park Ave	New York	NY
9118	684 THIRD AVENUE	684 Third Avenue	New York	NY
1569	220 O'FARRELL ST	220 O'Farrell St	San Francisco	CA
2564	1034-1036 THIRD AVE	1034-1036 Third Ave	New York	NY
2479	HOLLYWOOD & HIGHLAND	6801 Hollywood Blvd	Los Angeles	CA
7621	159 COLUMBUS AVE	159 Columbus Ave	New York	NY
7123	BRATTLE SQUARE	One Brattle Square	Cambridge	MA
8841	349 NEWBURY STREET	349 Newbury St	Boston	MA
1324	70 S 69TH ST	70 S 69Th St	Upper Darby	PA
2384	812 DAVIS ST	812 Davis St	Evanston	IL
6247	QUEENS CENTER	90-15 Queens Boulevard	Elmhurst	NY
8523	FASHION SHOW MALL	3200 Las Vegas Blvd	Las Vegas	NV
5047	ROOSEVELT FIELD MALL	630 Old Country Road	Garden City	NY
1443	PHEASANT LANE MALL	310 Daniel Webster Hghway	Nashua	NH
560	WESTFIELD BRANDON	356 Brandon Town Ctr Mall	Brandon	FL
360	DEPTFORD MALL	1750 Deptford Center Rd	Deptford	NJ
3079	STAMFORD TOWN CENTER	100 Greyrock Place	Stamford	CT
1220	WESTWOOD MALL	1754 West Michigan Ave	Jackson	MI
817	WESTFIELD ANNAPOLIS	1032 Annapolis Mall	Annapolis	MD
846	WHITE MARSH MALL	8200 Perry Hall Blvd.	Baltimore	MD
6273	PROVIDENCE PLACE MALL	54 Providence Place	Providence	RI
358	WESTLAND MALL	35000 W. Warren Road	Westland	MI
2956	BAYSHORE TOWNE CENTER	440 W Northshore Drive	Glendale	WI
5130	GURNEE MILLS	6170 W Grand Avenue	Gurnee	IL
3531	GLOUCESTER PREMIUM OUTLET	1125 S. Blackhorse Pike	Blackwood	NJ
1584	POTOMAC MILLS	2700 Potomac Mills Circle	Woodbridge	VA
366	CINCINNATI PREMIUM OUTLET	400 Premium Outlets Drive	Monroe	OH
88	TWIN CITIES PREMIUM OUTLE	3965 Eagan Outlets Pkwy	Eagan	MN
130	TANGER OUTLETS	400 South Wilson Road	Sunbury	OH
590	TANGER OUTLET - HWY 501	4635 Factory Stores Blvd	Myrtle Beach	SC
5333	TANGER OUTLETS SOUTHAVEN	5205 Airways Blvd	Southaven	MS
5920	PASEO COLORADO	300 E. Colorado Blvd	Pasadena	CA
2376	RIVERMARK VILLAGE	3935 Rivermark Plaza	Santa Clara	CA
7038	UNIVERSITY TC	140 University Tc	Sarasota	FL
5053	PHILIPS PLAZA	675 Sunrise Highway	Lynbrook	NY
8180	MARKETPLACE CENTER	1361 Covell Blvd	Davis	CA
9283	CROSS KEYS COMMONS	3501 Rt 42	Turnersville	NJ
349	SHOPS AT NANUET	5107 Fashion Dr	Nanuet	NY
3474	CRANBERRY PLAZA	2991-J Cranberry Highway	East Wareham	MA
2644	EAST HANOVER SC	240 State Route 10	East Hanover	NJ
7121	SHOPS AT FALLEN TIMBERS	6832 Russell Road	Maumee	OH
5273	HERSHEY SQUARE S. C.	1138 Mae Street	Hummelstown	PA
7230	NORTH HILLS CENTRE	1144 Lonnie Abbott Blvd	Ada	OK
5574	HAMPTON VILLAGE CENTER	2771 South Rochester Rd	Rochester Hills	MI
6101	PARKSIDE SC	7800 John Davis Drive	Frankfort	KY
7781	875 SIXTH AVE	875 Avenue Of Americas	New York	NY
2927	1569 FLATBUSH AVENUE	1569 Flatbush Ave	Brooklyn	NY
4358	EIELSON AFB	Building 405 Broadway	Eielson	AK
9860	TYSENS PARK S/C	2722 Hylan Blvd	Staten Island	NY
5296	BRADLEE CENTER	3690 North King Street	Alexandria	VA

255	THE YARDS BOILERMAKER SHO	300 Tingey St Se	Washington	DC
5431	EL CERRITO PLAZA	230 El Cerrito Plaza	El Cerrito	CA
8759	CULVER CENTER	3810 Midway Avenue	Culver City	CA
1267	EAST HILLS VILLAGE	2671 Oswell Street	Bakersfield	CA
3389	SIMSBURY COMMONS	530 Bushy Hill Road	Simsbury	CT
9584	THE SHOWCASE AT INDIO	42425 C Jackson Street	Indio	CA
5150	PLAZA CAYEY	Pr 1 Km 55.2	Cayey	PR
6165	MONTVILLE COMMONS	2020 Norwich-New London T	Montville	CT
5219	SAN FELIPE PLAZA	1735 South Voss	Houston	TX
9028	VALLEY CENTRAL SC	44418 Valley Central Way	Lancaster	CA
8234	COLLEGE SQUARE	210 College Square	Newark	DE
311	WALMART PLAZA	656 New Haven Ave	Derby	CT
5085	WESTCLIFF PLAZA	1036 Irvine Ave	Newport Beach	CA
7354	KMART SHOPPING CENTER	3036 Route 35 South	Hazlet	NJ
2272	FOUNTAINS OF MIRAMAR	2933 Sw 160Th Ave	Miramar	FL
7421	JANTZEN BEACH HAYDEN ISLA	12152 N Pavilion Ave	Portland	OR
5463	BURBANK CROSSING	7929 S Harlem Avenue	Burbank	IL
5720	CORNERSTONE @ LAKE HEART	10524 Moss Park Rd	Orlando	FL
8866	CHERRY HILL SHOPPING CENT	462 Hempstead Turnpike	West Hempstead	NY
2416	EDGEWOOD TOWN CENTER	438-D E Edgewood Blvd	Lansing	MI
104	ORCHARD SC	208 S 72Nd Ave	Yakima	WA
5547	KENTLANDS SQUARE	251 Kentlands Boulevard	Gaithersburg	MD
9001	JACKSONVILLE PLAZA	2050 John Harden Drive	Jacksonville	AR
2025	OLD TOWN SQUARE	1237 North Clybourn Ave	Chicago	IL
5257	FIESTA TRAILS PLAZA	5238 Dezavala Road	San Antonio	TX
9673	ELMHURST CROSSING SHOPPIN	177 South Route 83	Elmhurst	IL
3504	BRENTWOOD PLAZA	8485 Winton Road	Cincinnati	OH
5190	HILLSBORO SHOPPING CENTER	649 Route 206 Door 8	Hillsborough	NJ
7000	BAYSHORE GARDENS	6028 14Th Street West	Bradenton	FL
2271	ROCHESTER CROSSING	160-162 Washington Street	Rochester	NH
7655	ORO VALLEY MARKETPLACE	2060 E Tangerine Road	Oro Valley	AZ
9801	SOUTHBRIDGE CROSSING	8082 Oak Carriage Court N	Shakopee	MN
2078	MASSILLON MARKET	38 Massillon Marketplace	Massillon	OH
2092	MERCHANTS PARK SHOPPING C	953 N Shepherd Dr	Houston	TX
5157	PLAZA SQUARE	667 Hamburg Turnpike	Wayne	NJ
2091	THE MARKET AT OAKLAND	3006 S Morgan'S Pt Rd	Mt Pleasant	SC
977	VIERA MARKETCENTER	6729 Colonnade Ave	Viera	FL
5289	COMMONS AT ISSAQUAH	755 West Gilman Blvd.	Issaquah	WA
1292	PINEHURST SQUARE	1001 W Interstate Ave	Bismarck	ND
9513	TRENTON CROSSING	7600 N. 10Th St	Mcallen	TX
8557	PIERPOINT CENTRE	716 Venture Drive	Morgantown	WV
7207	GOLDEN GATE SHOPPING CTR	1513 Golden Gate Rd	Mayfield Heights	OH
833	SUSSEX PLAZA	22881 Sussex Highway	Seaford	DE
617	HEARTLAND VILLAGE SHOPPES	8411 Windfall Lane	Camby	IN
5585	BATTLEGROUNDS PLAZA	3724-H Battleground Ave	Greensboro	NC
7810	SHOPPES @ PARADISE KEY	4433 Commons Drive East	Destin	FL
1268	AMSTERDAM COMMONS	330 Amsterdam Commons	Amsterdam	NY
7959	BLUE RIDGE CROSSING	4173 Sterling Ave	Kansas City	MO
8507	SUNSHINE SQUARE	546 East Woolbright Rd	Boynton Beach	FL
5160	WEST VOLUSIA REGIONAL S/C	2707 South Woodland	Deland	FL
1864	SHELBYVILLE SC	114 Lee Blvd	Shelbyville	IN
7323	HAVENDALE SQUARE	382 Havendale Square	Auburndale	FL
138	SHOPPES AT PRAIRIE RIDGE	9901 77Th Street	Pleasant Prairie	WI
24	BROOKDALE CORNER	5605 Xerxes Ave	Brooklyn Center	MN



9540	FRANCIS POINTE	106 Francis Lane	Beaver Dam	WI
1812	TRAMONTO MARKETPLACE S/C	3134 W. Carefree Hgwy	Phoenix	AZ
7388	MIDDLEBURG CROSSINGS	2640 Blanding Blvd	Middleburg	FL
5461	RIVER RUN SHOPPING CENTER	9929 Miramar Parkway	Miramar	FL
294	GRAVOIS BLUFFS	#35 Gravois Bluffs Plaza	Fenton	MO
3923	HICKORY FLAT VILLAGE	6175 Hickory Flat Highway	Canton	GA
7158	FRANKLIN CENTRE	915 B Hwy 321	Lenoir	TN
2023	OAK HOLLOW SQUARE	1589 Skeet Club Rd	High Point	NC
2861	CULVER RIDGE PLAZA	2255 East Ridge Rd	Rochester	NY
3618	EPHRATA MARKETPLACE	852 East Main Street	Ephrata	PA
2249	TUDOR SHOPS	975 Ne Rice Road	Lee'S Summit	MO
6812	OSWEGO PLAZA	140 State Rt 104	Oswego	NY
9124	BEAR VALLEY SHOPPING CENT	3100 South Sheridan Blvd	Denver	CO
8684	TRI STATE MALL	10 E Route 23 N	Montague	NJ
3989	MOANALUA SHOPPING CTR	930 Valkenburgh St	Honolulu	HI
1733	SOUTHERN CROSSING	10922 South Memorial Dr	Tulsa	OK
1722	VALLEY STATION	1268 South Us189	Heber	UT
9786	PINE TREE PLAZA	550 36Th Ave South West	Altoona	IA
6059	POPLAR CREEK PLAZA	305 Leonardwood Dr	Frankfort	KY
3678	THE PROMENADE	16255 N Scottsdale Rd	Scottsdale	AZ
8909	METRO JUNCTION	4894 Highway 18 West	Jackson	MS
7407	MCDONOUGH MARKETPLACE	117 Willow Lane	Mcdonough	GA
5608	TOWER PLAZA	1386 S Centerville Rd	Sturgis	MI
8637	BROOKDALE SQUARE	22351 Pontiac Trail	South Lyon	MI
1364	WHITNALL SQUARE	4698 S Whitnall Avenue	Milwaukee	WI
8771	MARKS SQUARE	4600 Mobile Highway #11	Pensacola	FL
8770	MIDTOWN SQUARE SHOPPING C	1573 Gause Boulevard	Slidell	LA
1999	UNIVERSITY COMMONS	1930 1St Capitol Drive	St Charles	MO
702	GAINES MARKETPLACE	1827 Marketplace Dr Se	Caledonia	MI
2827	MARKETPLACE S.C.	I-79 & Route 33	Weston	WV
1300	FOREST PLAZA WEST BLD 1	3207-B Forest Brook Rd	Lynchburg	VA
6138	TWIN OAKS CENTER	2001 5Th Street	Silvis	IL
1441	1882 3RD AVENUE	1882 3Rd Avenue	New York	NY
9656	3453 JEROME AVE	3453 Jerome Ave	Bronx	NY
1393	1609 WESTCHESTER AVE	1609 Westchester Ave	Bronx	NY
3841	5530 WALNUT STREET	5530 Walnut Street	Pittsburgh	PA
4340	CAMP PENDLETON (MINI)	15100 Camp Pendleton	Camp Pendleton	CA
4360	FORT BRAGG (82ND)	82Nd Abn Troop Store	Fort Bragg	NC
4335	SAN DIEGO NB (DOCKSIDE)	Naval Station	San Diego	CA
4430	LEMOORE NAS	Building #795	Lemore Nas	CA
4484	FORT BLISS (COMM CENTER)	Bldg 20752 Gulf Victory W	El Paso	TX
4354	MOUNTAIN HOME AFB	625 Gunfighter Ave	Mountain Home Afb	ID
4322	BARKSDALE AFB	455 Curtis Road	Barksdale Afb	LA
4323	FAIRCHILD AFB	Building 2465	Fairchild Afb	WA
4356	VANDENBERG AFB	Building 10400	Vandenberg Afb	CA
4363	FORT LEE (PXTRA)	Building 9025	Fort Lee	VA
4414	PATUXENT RIVER NAS	22099 Cuddihy Road	Patuxent River	MD
4456	LOS ANGELES AFB	483 N. Aviation Blvd	El Segundo	CA
4339	EDWARDS AFB	Abx Exchange	Edwards Afb	CA
4404	SEYMOUR JOHNSON AFB	1350 Edwards Street	Goldsboro	NC
4398	BELLE CHASE NAS JRB	400 Russell Ave	Belle Chasse	LA
4478	FORT BLISS (MINI)	13471 Sergeant Major Blvd	El Paso	TX
4418	HUNTER ARMY AIRFIELD	130 Haley Ave	Savannah	GA
4462	BEAUFORT MCAS	Building 1283 Giegor Ave	Beaufort	SC

4352	F.E. WARREN AFB	617 Missile Drive	Cheyenne	WY
4304	DOVER AFB	266 Galaxy Way	Dover Afb	DE
4370	GULFPORT NCBC	Bldg. 470	Gulfport	MS
4435	PORTSMOUTH NAVAL HOSPITAL	Store 39/30 Bldg 3	Portsmouth	VA
4498	DYESS AFB	260 Commissary Road	Abilene	TX
4371	TYNDALL AFB	220 Mall Ln Ste 2	Tyndall Afb	FL
4497	PARRIS ISLAND MCRD	Building 406	Parris Island	SC
4361	EGLIN AFB (MINI)	4310 77Th Special Forces	Eglin Afb	FL
2328	CHULA VISTA CENTER	555 Broadway	Chula Vista	CA
2540	PEAR TREE SHOPPING CENTER	532 East Perkins Street	Ukiah	CA
1131	LOS ALTOS CENTER	5555 Stearns St	Long Beach	CA
5820	CLAYTON STATION	5435H Clayton Road	Clayton	CA
7155	66-69 FRESH POND RD	66-69 Fresh Pond Rd	Ridgewood	NY
7657	TIMBERHILLS S.C.	1067 Mono Way	Sonora	CA
6782	SHOPPES @ FOXCHASE	4651 Duke St	Alexandria	VA
1856	NAPA JUNCTION	6040 Main Street	American Canyon	CA
7690	MILL POND VILLAGE	380-Cs Egg Harbor Road	Sewell	NJ
7120	SOUTHPORT TOWN CENTER	2050 Town Center Plaza	West Sacramento	CA
3303	TRI CITY PLAZA	160 Tri City Road	Somersworth	NH
2707	THE PROMENADE AT BOLINGBR	639 E Boughton Rd	Bolingbrook	IL
5511	BEARDS HILL PLAZA	971 Beards Hill Road	Aberdeen	MD
6216	MEADOWVIEW SQUARE	2500 State Rte 59 Ste # 8	Kent	OH
1387	PLAZA PRADOS DEL SUR LOCA	Intersection Of State Rds	Santa Isabel	PR
51	THE SHOPPES AT CINNAMINSO	127 Route 130 South	Cinnaminson	NJ
652	CROSSING AT LISBON	193 River Road	Lisbon	CT
7895	LONDON GROVE VILLAGE	905 Gap Newport Pike	Avondale	PA
3031	PINE CREEK S.C.	716-A Freeman Lane	Grass Valley	CA
3945	FOOD FOR THOUGHT	45 Northern Boulevard	Greenvale	NY
1245	PENNISULA CROSSING	26670 Centerview Drive	Millsboro	DE
2893	TANTALLON CENTER	10729 Indian Highway	Fort Washington	MD
2797	MISSION PLAZA	1412 N. H Street Suite C	Lompoc	CA
3433	NORTH PROVIDENCE MARKET	11 Smithfield Road	North Providence	RI
3719	TWINSBURG TOWN CENTER	8934 Darrow Road	Twinsburg	OH
5051	NISQUALLY PLAZA	1010 Yelm Ave E	Yelm	WA
9360	ALDEN BRIDGE SHOPPING CEN	8000 Research Forest Driv	The Woodlands	TX
8984	PLAZA DEL OESTE	Ave Casto Perez #313	San German	PR
2327	BERLIN CIRCLE PLAZA	116 Walker Ave	West Berlin	NJ
3028	SHILOH CENTER	6400 Hembree Lane	Windsor	CA
1479	GREENPORT COMMONS	424 Fairview Ave	Hudson	NY
2254	NORTH HAVEN PAVILION	200 Universal Drive North	North Haven	CT
7802	ROMEOWILLE TOWNE CENTER	427 North Weber Road	Romeoville	IL
8360	SUFFOLK SHOPPING CENTER	4046 Nesconset Hghwy #1B	East Setauket	NY
7624	GIBBSTOWN S.C.	401 Harmony Road	Gibbstown	NJ
2474	MEADOW BROOK CROSSING	124 State Road 101A	Amherst	NH
6173	LEXINGTON STATION	3833 Lexington Avenue	Arden Hills	MN
6512	VILLAGE COMMONS AT WESLEY	5922 Weddington Monroe Rd	Wesley Chapel	NC
5387	DUNLAWTON SQUARE	3859 South Nova Road	Port Orange	FL
8531	NEWPORT NORTH SC	1280 Bison Avenue	Newport Beach	CA
5351	NEW HOPE CITY CENTER	4237 Winnetka Ave	New Hope	MN
2765	REYNOLDA MANOR	2828 Reynolda Rd Nw	Winston Salem	NC
6292	GEORGESVILLE SQUARE	1617 Georgesville Square	Columbus	OH
8710	SANTA FE SHOPPING CENTER	13505 South Mur-Len	Olathe	KS
5727	WINTER SPRINGS TC	1188 Cliff Rose Dr	Winter Springs	FL
7322	BATTLE GROUND MARKET CTR	2210W Main Streetsuite113	Battle Ground	WA

9859	SHERWOOD MARKET CENTER	16008 Sw Tualatin-Sherwoo	Sherwood	OR
6237	THE VILLAGE IN BLAINE	4335 Pheasant Ridge Dr	Blaine	MN
1368	MONROE PLAZA	19817 State Route 2	Monroe	WA
7445	DANIEL'S CROSSING S/C	6900 Daniels Parkway	Fort Myers	FL
5482	CORALWOOD MALL	2301 Del Prado Blvd H-6	Cape Coral	FL
5573	COLLEGE PARK SHOPPING CTR	3455 West 86Th Street	Indianapolis	IN
6524	NORTH MOUNTAIN VILLAGE	3431 W Thunderbird Rd	Phoenix	AZ
5855	YAKIMA 40TH AVE S.C	1300 N. 40Th Ave.	Yakima	WA
5567	SHOPS AT MALTA	15 Kendall Way	Malta	NY
9341	SAWGRASS PROMENADE	1335 South Millitary Trai	Deerfield Beach	FL
6316	WATERBURY PLAZA	152 Chase Ave	Waterbury	CT
2647	WARETOWN TOWN CENTER	501 Route 9 Suite 300	Waretown	NJ
5307	PENN HILLS CENTER	28 Federal Drive	Penn Hills	PA
2670	SAM HOUSTON TC	12709 Interstate Hwy 45 N	Willis	TX
2094	PARADISE SHOPPES OF SUMME	1585 Central Ave	Summerville	SC
322	BROOKDALE SHOPPING CENTER	9651-100 Brookdale Drive	Charlotte	NC
7428	SETH CHILD COMMONS	830 Commons Place	Manhattan	KS
184	PALOMAR PLAZA	961 Palomar Airport Rd	Carlsbad	CA
1865	ANTIOCH CROSSING S/C	417 E II Rte 173	Antioch	IL
5460	KMART PLAZA EAST	4445 Buffalo Road	Erie	PA
3583	GIG HARBOR NORTH	11430 51St Ave Nw	Gig Harbor	WA
8831	SIGNAL MT VILLAGE SC	541 Signal Mountain Rd -	Chattanooga	TN
2336	OTTER CREEK S.C.	248 S. Randall Road	Elgin	IL
1376	SHOPRITE SHOPPING CENTER	360 Connecticut Ave	Norwalk	CT
6064	SUWANNEE PLAZA	6824 Suwannee Plaza Ln	Live Oak	FL
8364	WHEATLAND MARKET PLACE	3108 S. Route 59	Naperville	IL
1575	TORRINGTON COMMONS	225 High Street	Torrington	CT
7619	SPRINGS VILLAGE S.C.	3953 S. State Hwy 97	Sand Springs	OK
8401	KNOX VILLAGE SQUARE	1504-B Coshacton Ave	Mt. Vernon	OH
7348	DESERT MOUNTAIN PLAZA	4650 Woodrow Bean	El Paso	TX
5171	NORTHWEST PROMENADE	6737 Manatee Ave W	Bradenton	FL
7282	PARKWAY PLAZA	285 Cumberland Pkwy	Mechanicsburg	PA
3779	WAHIAWA TOWN CENTER	935 California Avenue	Wahiawa	HI
6882	OZARK TOWN CENTER 1	1721 S 20Th St	Ozark	MO
2406	SURPRISE LAKE SQUARE	900 East Meridian #22	Milton	WA
5885	POKEGAMA ROAD	2046 S Pokegama Ave	Grand Rapids	MN
9190	WAYNE AVENUE PLAZA	949 Wayne Avenue	Chambersburg	PA
2166	NEWPORT COAST PLAZA	21151 Newport Coast Dr	Newport Beach	CA
7636	COBB PARKWAY SC	2774 N Cobb Parkway	Kennesaw	GA
1873	OVERLAND PLAZA	9126 Page Avenue	Overland	MO
3926	NORWALK KORNERS S.C.	201 Milan Avenue	Norwalk	OH
5537	NORTHWOOD PLAZA	1966 Northwood Plaza	Franklin	IN
5430	TRAIL PLAZA	1056 S.W. 67Th Ave	Miami	FL
1045	SHOREGATE S.C.	30010 Lakeshore Avenue	Willowick	OH
2236	BROOKGATE SHOPPING CENTER	5773 Smith Road	Brook Park	OH
7672	FOUNTAIN OAKS SC	4920 Roswell Rd	Atlanta	GA
9097	BLOOMFIELD AVENUE SHOPPES	6089 Haggerty Road	West Bloomfield	MI
8051	EDGEWOOD TOWN CENTER	1725 South Braddock Ave	Pittsburgh	PA
8611	WEST SHORE PLAZA	1831 Sherman Blvd	Muskegon	MI
1690	PRESIDENTIAL PARKWAY PLAZ	168 Keul Rd	Dixon	IL
626	PHOENIX CENTER II	3016 Phoenix Center Drive	Washington	MO
8846	THE WALNUT GROVE	4010 University Ave	Madison	WI
6587	PLAZA SHOPPING CENTER	1027 South Muskogee	Talequah	OK
27	LUMBERTON PLAZA	1636 Rt 38 & Earyestown	Lumberton	NJ

8193	COLONY SQUARE	726 East Main Street	Lebanon	OH
1571	JORDAN LANE	1416 Berlin Turnpike	Wethersfield	CT
2104	NAMEOKI VILLAGE	3455 Nameoki Road	Granite City	IL
7406	POST COMMONS	4100 North Wickham Rd	Melbourne	FL
6363	MERRY MEETING PLACE	147 Bath Road	Brunswick	ME
6845	APPLETREE MALL	Orchard View Drive &	Londonderry	NH
8905	SHOPS AT EAGLE PROMENADE	3116 E State St	Eagle	ID
75	MANHATTAN PLACE	1801 Manhattan Blvd	Harvey	LA
3953	GEIST CROSSING	9805 Fall Creek Road	Indianapolis	IN
65	ONE YANKTON PLACE	3013 Broadway Ave Suite 4	Yankton	SD
5578	MIRASOL WALK	6231 Pga Blvd	Palm Beach Gardens	FL
6683	SUGAR CREEK CENTER	36 Sugar Creek Center	Bella Vista	AR
5921	SOUTHLAND CROSSINGS	1220 Doral Rd	Youngstown	OH
6696	TOWN & COUNTRY S.C.	494 C.W. Plaza Drive	Columbia City	IN
1883	MOUNTAIN VIEW VILLAGE	4608 W Partridgehill Lane	Riverton	UT
5734	PUBLIX @ FISHHAWK RANCH	5662 Fishhawk Crossing Bl	Lithia	FL
6536	INDIAN TRAIL SQUARE	5739 Preston Hwy	Louisville	KY
835	BROOKS EDGE PLAZA	81A South Main Street	Marlboro	NJ
1145	CIRCLEVILLE PLAZA	1442 Circleville Plaza Dr	Circleville	OH
6661	CASTLE ROCK SQUARE	1163 East Main Street	Price	UT
5919	LAKEWOOD RANCH TC	8338 Market Street	Bradenton	FL
3692	GLENNWOOD COMMONS	820 Sunbury Rd	Delaware	OH
8695	LAKESHORE PLAZA	4137 Mountain Road	Pasadena	MD
6354	COCOA COMMONS	2301 State Hgwy #524	Cocoa	FL
5246	NORTH STATION S.C.	1486 Garner'S Station Blv	Raleigh	NC
1266	SENTRY PLAZA	10244 W. National Ave	West Allis	WI
5421	FESTIVAL @ OLD BRIDGE	12359 Dillingham Square	Lake Ridge	VA
2722	FLEMING PLACE	4023 Sw 10Th Street	Topeka	KS
5603	KROGER CENTER	2028 S. Highway 53	Lagrange	KY
528	MAPLE PARK PLAZA	283 North Weber Road	Boilingbrook	IL
6761	ELIZABETHTOWN S.C.	1575 South Market Street	Elizabethtown	PA
6037	WHISPERING WOODS PLAZA	20773 Gibralter	Brownstone	MI
2026	WESTRIDGE SQUARE	1059 West Patrick St	Frederick	MD
637	RANDALL'S CRYSTAL FALLS T	3501 N Lakeline Blvd	Leander	TX
7794	SHOPS OF MARCO	167 S. Barfield Dr	Marco Island	FL
8612	SOUTH VILLAGE S/C	1850-C 172Nd Ave	Grand Haven	MI
5374	SOUTHLAND SC	6855 Southland Dr	Middleburg Heights	OH
3580	MINER PLAZA	2625 N. Mesa	El Paso	TX
2744	KEYSTONE PLAZA	3574 Highway 31 South	Pelham	AL
7461	SHAW'S PLAZA	770 Roosevelt Trail Road	Windham	ME
5797	WALTERBORO PLAZA	321 Bells Highway	Walterboro	SC
1630	CLIFF LAKE S.C.	1960 Cliff Lake Road	Eagan	MN
3933	HOPEWELL CROSSING SC	800 Denow Road	Hopewell Twp	NJ
5447	TRADEWINDS SHOPPING CTR	101457 Us 1	Key Largo	FL
6783	MERCHANTS WALK S.C.	215 Merchant'S Walk S.C.	Summersville	WV
2037	IMLAY PLAZA	1801 S. Cedar St	Imlay	MI
355	PINE RIDGE SQUARE	1417 West Main St	Gaylord	MI
490	DOTHAN PAVILION	4521 Montgomery Highway	Dothan	AL
8560	ROEBUCK MARKETPLACE	9172 Parkway East # 15	Birmingham	AL
2096	FOX LAKE RETAIL CENTER	1390 Us Route 12	Fox Lake	IL
7460	BELLAIR PLAZA	2661 North Atlantic Ave	Daytona Beach	FL
847	HILLCREST SHOPPING CENTER	233 Hillcrest Shopping Ct	Lower Burrell	PA
2863	WATSON CROSSING SHOPPING	33939 La Highway 16	Denham Springs	LA
2757	MCCARTY CROSSING	1026 Main Street	Jackson	OH

6773	TARGET CENTER	955 Rockland Rd	Lake Bluff	IL
7325	BOGEY HILLS PLAZA	2039 Zumbahl Road	Saint Charles	MO
40	SHOPS AT VICTORIA	4109 Houston Highway	Victoria	TX
8807	GATEWAY COMMONS	3000 Pepperell Pkwy	Opelika	AL
6240	HARWOOD CENTRAL VILLAGE	2101 Harwood Road	Bedford	TX
8934	OLYMPIAD CENTER	23052 Alicia Parkway	Mission Viejo	CA
8501	SHENANDOAH SQUARE	13704 State Road 84	Davie	FL
1456	PARKWAY COMMONS	3046 Columbia Ave	Franklin	TN
2901	DEER CREEK CENTER	3218 Laclede Station Rd	Maplewood	MO
1320	NEWBERRY POINTE	144 Newberry Parkway	Etters	PA
2763	EMBASSY LAKES SHOPPING CE	2631 N. Hiatus Road	Cooper City	FL
3091	VILLAGE SHOP CENTER	1421 Losey Blvd.	La Crosse	WI
9063	WILLOW OAKS CROSSING	5011 Weddington Road	Concord	NC
8828	KENHORST PLAZA	1895 New Holland Rd	Kenhorst	PA
7465	HERITAGE MARKETPLACE	1800 Unser Blvd. Nw	Albuquerque	NM
9610	NEWTON CROSSROADS	5340 Ga Hwy 20	Covington	GA
293	ALOMA SC	2275 Aloma Ave	Winter Park	FL
5933	MABELVALE SHOPPING CENTER	10101 Mabelvale Plaza Dr	Little Rock	AR
1289	HASTINGS MARKETPLACE	1793 Market Blvd	Hastings	MN
3836	RAPIDS PLAZA	4551 8Th Street South	Wisconsin Rapids	WI
6318	MOCKSVILLE TOWN COMMONS	223 Cooper Creek Dr	Mocksville	NC
8879	PINECREST PLAZA	324 Pinecrest Plaza	Morehead	KY
5652	POTRANCO OAKS VILLAGE	9230 Potranco Road	San Antonio	TX
8942	GREAT SOUTH BAY SHP CTR	709 W Montauk Highway	West Babylon	NY
6125	LA MARQUE CROSSING	6608 Gulf Freeway	La Marque	TX
3640	SEMINOLE CENTER	3631 Orlando Drive	Sanford	FL
8936	SHOPPES AT TRINITY LAKES	12472 Sr 54	Odessa	FL
3512	PLAZA PALMA REAL	Carr Pr-3, Km 77.8, Int	Humacao	PR
7162	SAN ANGELO PLAZA	614 W 29Th St #114	San Angelo	TX
3429	EAST VIKING PLAZA	421 Viking Plaza Dr #500	Cedar Falls	IA
8957	1890 RANCH SHOPPING CTR	1335 E. Whitestone Blvd	Cedar Park	TX
8964	CORTLANDT TOWNE CENTER	3141 East Main Street	Mohegan Lake	NY
1736	LOWE'S OUTLOT	2007 Us Highway 27	Somerset	KY
1371	NAVY BLVD	503 N Navy Blvd	Pensacola	FL
6657	STAFFORD SQUARE S/C	297 Route 72 W	Manahawkin	NJ
8858	NORTH POINT VILLAGE	1456 North Point Village	Reston	VA
318	PORT CHARLOTTE MARKETPLAC	19400 Cochran Blvd	Port Charlotte	FL
8878	DURANT SHOPPING CENTER	519 University Place	Durant	OK
8568	PLAZA @ LANDMARK	6244-F Little River TrnPk	Alexandria	VA
3925	NORTHEAST PARK SHOPPING C	210 37Th Avenue N	St. Petersburg	FL
8961	MIRA MESA MALL	8250 Mira Mesa Blvd	San Diego	CA
9378	5TH AVENUE SHOPS	1954 Ne 5Th Avenue	Boca Raton	FL
9495	WILLIAMSBURG DOWNS	5338 Central Florida Pkwy	Orlando	FL
8405	218 FIRST AVE	218 1St Ave	New York	NY
2943	470 THIRD AVENUE/32ND STR	470 Third Avenue	New York	NY
2907	124 8TH AVENUE	124 8Th Avenue	New York	NY
2930	299 BROADWAY	1St Floor	New York	NY
3301	897 8TH AVE	897 8Th Ave	New York	NY
2884	302 CANAL ST	302 Canal St	New York	NY
2098	163 WEST 72ND STREET	163 West 72Nd Street	New York	NY
7466	305 6TH AVE	305 6Th Ave	New York	NY
1824	107 SUMMER STREET	107 Summer St 1St Fl	Boston	MA
9468	2049 86TH ST	2049 86Th St	Brooklyn	NY
547	145 EAST 116TH STREET	145 East 116Th Street	New York	NY

7243	STEINWAY STREET	30-62 Steinway Street	Astoria	NY
7473	ALAMEDA LANDING	2610 5Th St	Alameda	CA
2915	75-28 37TH AVE	75-28 37Th Ave	Queens	NY
5058	1212 KINGS HIGHWAY	1212 Kings Highway	Brooklyn	NY
2119	313A HARVARD STREET	313A Harvard St	Brookline	MA
3052	REGO PARK	96-16 Queens Blvd.	Rego Park	NY
2162	CITY CENTER	2675 Geary Blvd	San Francisco	CA
2850	1336 WISCONSIN AVE	1336 Wisconsin Ave	Washington	DC
5258	7017 18TH AVENUE	7017 18Th Avenue	Brooklyn	NY
6868	1003 BISHOP ST	1003 Bishop St	Honolulu	HI
9967	116-06 QUEENS BLVD	116-06 Queens Blvd	Forest Hills	NY
3958	1940 BEACON STREET	1940 Beacon Street	Brighton	MA
6659	247 3RD AVENUE	247 3Rd Avenue	New York	NY
575	14 W. 8TH STREET	14 W. 8Th Street	Holland	MI
9664	AMTRAK STATION	2955 Market St	Philadelphia	PA
3596	GALLERIA MALL	1210 S. University	Ann Arbor	MI
2841	17 WEST	1220 17Th Street	Miami Beach	FL
4453	ELLSWORTH AFB	2725 Lemay Blvd Bldg 4020	Ellsworth Afb	SD
4374	SAN DIEGO MCRD	3800 Chosin Ave	San Diego	CA
4364	FORT HAMILTON	123 General Lee Ave	Brooklyn	NY
4349	HANSCOM AFB	100 Eglin Street	Bedford	MA
4405	COLUMBUS AFB	Bldg #160	Columbus Afb	MS
4443	HOMESTEAD ARS	29242 Coral Sea Blvd	Homestead Afb	FL
3744	INTERNATIONAL MARKET PLAC	2330 Kalakaua Avenue	Honolulu	HI
33	WILLOW BROOK MALL	1524 Willow Brook Mall	Wayne	NJ
737	WOODFIELD MALL	5 Woodfield Mall	Schaumburg	IL
327	PARK PLACE	5870 East Broadway	Tucson	AZ
816	STONERIDGE MALL	1304 Stoneridge Mall Road	Pleasanton	CA
7125	PALISADES CENTER	3490 Palisades Center Dr	West Nyack	NY
3695	WESTFIELD OAKRIDGE	925 Blossom Hill	San Jose	CA
3547	BAYSHORE MALL	3300 Broadway	Eureka	CA
2015	KING OF PRUSSIA PLAZA	160 North Gulph Road	King Of Prussia	PA
5076	APACHE MALL	646 Apache Mall	Rochester	MN
439	EASTRIDGE MALL	2200 Eastridge Loops	San Jose	CA
436	SUN VALLEY MALL	112A Sun Valley Mall	Concord	CA
90	NORTHPARK MALL	101 North Rangeline	Joplin	MO
444	MONTCLAIR PLAZA	5090 Montclair Plaza Lane	Montclair	CA
1255	STONESTOWN GALLERIA	3251 20Th Avenue	San Francisco	CA
232	WESTFIELD SOUTH SHORE	1701 Sunrise Highway	Bay Shore	NY
1436	FLORIDA MALL	8001 S Orange Blosson Tra	Orlando	FL
342	CROSS CREEK MALL	419 Cross Creek Mall	Fayetteville	NC
9836	PANORAMA CITY MALL	8401 Van Nuys Blvd	Panorama City	CA
60	SMITH HAVEN MALL	110 Smith Haven Mall	Lake Grove	NY
5213	PARK MEADOWS TOWN CENTER	8505 Park Meadows Center	Lone Tree	CO
505	WHITE OAKS MALL	2501 W. Wabash Ave.	Springfield	IL
5581	WESTFIELD FASHION SQUARE	14006 Riverside Drive	Sherman Oaks	CA
3659	MALL OF LOUISIANA	6401 Bluebonnet Blvd	Baton Rouge	LA
85	CAPE COD MALL	769 Iyanough Road	Hyannis	MA
862	DESERT SKY MALL	7611 West Thomas Road	Phoenix	AZ
2471	THE WESTCHESTER	125 Westchester Ave	White Plains	NY
843	CONNECTICUT POST	1201 Boston Post Road	Milford	CT
5203	SQUARE ONE MALL	1201 Broadway Drive	Saugus	MA
1452	ROGUE VALLEY MALL	1600 North Riverside	Medford	OR
492	SOUTH HILL MALL	3500 S. Meridian	Puyallup	WA

50	WESTLAND MALL	1675 West 49Th Street	Hialeah	FL
784	CROSSROADS MALL	6650 South Westnedge	Portage	MI
1032	TUCSON MALL	4500 North Oracle Road	Tucson	AZ
388	OCEAN COUNTY MALL	1201 Hooper Avenue	Toms River	NJ
35	PARK CITY CENTER	581 Park City Center	Lancaster	PA
468	WOODLAND HILLS MALL	7021 South Memorial	Tulsa	OK
1444	MARLEY STATION	7900 Governor Ritchie Hwy	Glen Burnie	MD
73	KINGS PLAZA SHOPPING CTR	5283 Kings Plaza	Brooklyn	NY
5591	VISALIA MALL	2157 South Mooney Blvd	Visalia	CA
1219	SCOTTSDALE FASHION SQ	7014 E Camelback Rd	Scottsdale	AZ
718	ACADIANA MALL	5725 Johnston	Lafayette	LA
1098	WINDWARD MALL	46056 Kam Highway	Kaneohe	HI
285	SOUTHLAKE MALL	2014 Southlake Mall	Merrillville	IN
1506	LANSING MALL	5234 West Saginaw Hwy	Lansing	MI
7792	STONEWOOD CENTER	173 Stonewood	Downey	CA
1602	APPLE BLOSSOM MALL	1850 Apple Blossom Drive	Winchester	VA
1062	ARDEN FAIR MALL	1689 Arden Way	Sacramento	CA
2654	HUDSON MALL	Rt 440	Jersey City	NJ
245	SOUTHPARK MALL	4600 16 Street	Moline	IL
380	NORTH RIVERSIDE PARK	7501 West Cermak Road	North Riverside	IL
1502	PENN SQUARE MALL	2078 Penn Square	Oklahoma City	OK
386	HANES MALL	3320 Silas Creek Parkway	Winston-Salem	NC
1251	WESTFIELD PALM DESERT	72840 Highway Iii	Palm Desert	CA
377	QUAKER BRIDGE MALL	150 Quaker Bridge Mall	Lawrenceville	NJ
326	SANTA ROSA MALL	300 Mary Esther Cutoff	Mary Esther	FL
1583	CHICO MALL	1950 E. 20Th Street	Chico	CA
412	INLAND CENTER	154 Inland Center Dr	San Bernardino	CA
9548	NORTHLAKE MALL	6801 Northlake Mall Dr	Charlotte	NC
406	CHERRYVALE MALL	7200 Harrison Ave	Rockford	IL
1036	WILLOWBROOK MALL	1658 Willowbrook Mall	Houston	TX
7693	FLAT IRON CROSSING MALL	1 Flat Iron Circle	Broomfield	CO
693	HICKORY POINT MALL	1395 Hickory Point Mall	Forsyth	IL
3879	FRANCIS SCOTT KEY	5500 Buckeystown Pike	Frederick	MD
314	COUNTRYSIDE MALL	27001 Us Highway 19 North	Clearwater	FL
5186	MONMOUTH S.C.	180 Route 35 South	Eatontown	NJ
1420	MCKINLEY MALL	3601 Mckinley Parkway	Buffalo	NY
178	LIVINGSTON MALL	112 Eisenhower Parkway	Livingston	NJ
163	SUNRISE MALL	6073 Sunrise Mall	Citrus Heights	CA
7685	POLARIS FASHION PLACE	1500 Polaris Parkway	Columbus	OH
923	EASTWOOD MALL	5555 Youngstown-Warren Rd	Niles	OH
8682	NORTHTOWN MALL	N 4750 Division Street	Spokane	WA
1627	ROSEDALE CENTER	10 Rosedale Center	Roseville	MN
269	MILLCREEK MALL	Space #160	Erie	PA
392	OAK PARK MALL	11161 West 95Th Street	Overland Park	KS
3055	RIDGEDALE CENTER	12505 Wayzata Blvd.	Minnetonka	MN
369	OAKDALE MALL	3111 E. Main Street	Johnson City	NY
1434	TOWN CENTER AT COBB	400 Earnest Barrett Pkwy	Kennesaw	GA
340	ORANGE PARK MALL	1910 Wells Rd	Orange Park	FL
773	OAKLAND MALL	422 W 14 Mile Rd	Troy	MI
1395	WIREGRASS COMMONS MALL	900 Common Ave	Dothan	AL
1039	GREAT NORTHERN MALL	232 Great Northern Mall	North Olmsted	OH
147	CITY CREEK CENTER	51 South Main St	Salt Lake City	UT
1440	EDEN PRAIRIE CENTER	8251 Flying Cloud Drive	Eden Prairie	MN
1169	YORKTOWN SHOPPING CENTER	203 Yorktown S/C	Lombard	IL

6294	MACARTHUR CENTER	300 Monticello Avenue	Norfolk	VA
9395	THE SHOPS AT WILLOW RD	6121 W Park Blvd	Plano	TX
55	SOUTHERN PARK MALL	7401 Market St	Youngstown	OH
3703	CAPITAL MALL	625 Black Lake Blvd Sw	Olympia	WA
5378	CASCADE MALL	414 Cascade Mall	Burlington	WA
571	SOUTHLAND MALL	20505 South Dixie Highway	Miami	FL
2752	SANTA MARIA TOWN CTR	222 Town Center East	Santa Maria	CA
9564	GALLERIA AT SOUTH BAY	1815 Hawthorne Blvd	Redondo Beach	CA
226	FASHION SQUARE MALL	4724 Fashion Square Mall	Saginaw	MI
7295	PACIFIC VIEW	3301 E. Main Street	Ventura	CA
1427	NORTHTOWNE MALL	1500 N Clinton St	Defiance	OH
204	NORTHTOWN SHOPPING CENTER	275 Northtown Dr	Blaine	MN
110	SOUTHRIDGE MALL	5300 S 76Th Street	Greendale	WI
2803	LAKELINE MALL	11200 Lakeline Mall Blvd	Cedar Park	TX
1546	SUPERSTITION SPRINGS	6555 East Southern Ave.	Mesa	AZ
874	LYNNHAVEN MALL	701 Lynnhaven Pkwy	Virginia Beach	VA
510	WESTLAND MALL	550 South Gear Ave	West Burlington	IA
37	KENNEDY MALL	555 John F Kennedy Road	Dubuque	IA
166	BELTWAY PLAZA	6080 Green Belt Road	Greenbelt	MD
310	CUMBERLAND MALL	Delsea Drive & Route 47	Vineland	NJ
190	CONCORD MALL	4737 Concord Pike	Wilmington	DE
8420	CENTER AT SALISBURY	2300 N. Salisbury Blvd.	Salisbury	MD
7898	WESTFIELD BROWARD	8000 W. Broward Blvd	Plantation	FL
500	THE COMMONS AT FEDERAL WA	1823 South Commons	Federal Way	WA
2641	HUTCHINSON MALL	1060 Highway 15 South	Hutchinson	MN
1449	PEMBROKE MALL	4554 Virginia Beach Blvd	Virginia Beach	VA
641	MEADOWS	4300 Meadows Lane	Las Vegas	NV
3390	SOLOMON POND MALL	601 Donald Lynn Blvd	Marlborough	MA
481	THE SHOPS AT ITHACA MALL	40 Catherwood Road	Ithaca	NY
3438	SOUTHSIDE MALL	Rd 2 Southside	Oneonta	NY
820	FAIR OAKS MALL	11850 U Fair Oaks Road	Fairfax	VA
2848	BUFFALO MALL	2400-8Th Ave Sw	Jamestown	ND
1421	COLUMBIA MALL	2300 Bernadette Dr.	Columbia	MO
7090	WAKEFIELD MALL	Tower Hill Road &	Wakefield	RI
159	WESTFIELD NORTH COUNTY	200 East Via Rancho Parkw	Escondido	CA
799	OLD HICKORY MALL	2021 North Highland Ave	Jackson	TN
503	MONTGOMERY MALL	712 Montgomery Mall	North Wales	PA
1265	JEFFERSON VALLEY MALL	650 Lee Boulevard	Yorktown Hgts	NY
636	CARY TOWNE CENTER	1105 Walnut Street	Cary	NC
1469	MID RIVER MALL	1080 Mid Rivers Mall Driv	Saint Peters	MO
1578	WESTFIELD MERIDEN	470 Lewis Avenue	Meriden	CT
38	MARION CENTRE S/C	1475 Marion Waldo Rd	Marion	OH
5883	BAY CITY TOWN CENTER	4101 Wilder Road	Bay City	MI
809	THE GALLERY AT SOUTH DEKA	24 South Dekalb Mall	Decatur	GA
1425	VILLAGE MALL	2917 Vermillion St	Danville	IL
836	QUAIL SPRINGS MALL	2501 West Memorial Road	Oklahoma City	OK
5498	MERIDAN MALL	1982 West Grand River	Okemos	MI
3105	WILTON MALL	3065 Rte 50 Space B-12	Saratoga Springs	NY
5138	THE LAKES MALL	5600 Harvey Road	Muskegon	MI
224	NORTHWOODS MALL	2200 War Memorial Drive	Peoria	IL
1472	HAMILTON MALL	4403 Black Horse Pike	Mays Landing	NJ
277	VOLUSIA MALL	1700 W Internatl Sdwy Blv	Daytona Beach	FL
1352	TOWSON TOWN CENTER	825 Dulaney Valley Road	Towson	MD
5411	THE GALLERY AT THE HARBOR	200 East Pratt St	Baltimore	MD



1666	SALEM CENTER	480 Center Street Ne	Salem	OR
8882	FASHION PLACE MALL	6191 State St	Murray	UT
2662	VILLAGE SQUARE MALL	83 Village Square Mall	Effingham	IL
1592	ENFIELD SQUARE MALL	90 Elm Street	Enfield	CT
41	COURTLAND CENTER	4190 East Court St	Burton	MI
9443	WINONA MALL	1213 Gilmore Ave	Winona	MN
9788	MERLE HAY MALL	3800 Merle May Mall	Des Moines	IA
1076	CRYSTAL RIVER MALL	1801 Nw Hwy 19	Crystal River	FL
353	FOX VALLEY MALL	2356 Fox Valley Center	Aurora	IL
1448	GOLF MILL SHOPPING CENTER	247 Golf Mill Center	Niles	IL
2432	SANTA ROSA MALL	Pr 2	Bayamon	PR
414	FAIRLANE TOWN CENTER	18900 Michigan Avenue	Dearborn	MI
9956	EDGEWATER PLAZA	2600 Beach Blvd	Biloxi	MS
3904	THUNDERBIRD MALL	1421 B 12Th Ave S	Virginia	MN
1111	EAST HILLS MALL	3700 Frederick Ave	St. Joseph	MO
1471	THE MALL OF MONROE	2121 N Monroe St	Monroe	MI
291	INDEPENDENCE CENTER	18813 East 39Th St South	Independence	MO
9014	OAKWOOD SHOPPING CENTER	197 West Bank Expressway	Terrytown	LA
701	SEMINOLE TOWNE CENTER	200 Towne Center Circle	Sanford	FL
25	ALMEDA MALL	12200 Gulf Freeway	Houston	TX
501	RIDGMAR MALL	2178 Green Oaks Road	Fort Worth	TX
208	LINDALE MALL	4444 First Ave N E	Cedar Rapids	IA
3591	HOLIDAY VILLAGE MALL	1753 Highway 2 W	Havre	MT
5584	PARAMUS PARK MALL	2040 Paramus Park Mall	Paramus	NJ
5642	MARSHFIELD MALL	503 East Ives Street	Marshfield	WI
3169	OLD ORCHARD MALL	4999 Old Orchard Center	Skokie	IL
514	MALL ST. VINCENT	1133 St. Vincent #110	Shreveport	LA
5264	WESTFIELD SARASOTA SQUARE	8201 S Tamiami Trail	Sarasota	FL
695	PARADISE VALLEY MALL	4550 East Cactus Rd.	Phoenix	AZ
3082	STEEPLEGATE	270 Louden Road	Concord	NH
5028	LEE PREMIUM OUTLETS	50 Water Street	Lee	MA
5139	TANGER OUTLET CENTER DAYT	1100 Cornerstone Blvd	Daytona Beach	FL
8903	TANGER OUTLETS @ THE ARCH	1387 The Arches Circle	Deer Park	NY
2776	OUTLETS OF DES MOINES	545 Bass Pro Drive Nw	Altoona	IA
3776	THE OUTLET SHOPPES AT LAR	1600 Water Street	Laredo	TX
5026	TANGER OUTLET CENTER JEFF	8000 Factory Shops Blvd	Jeffersonville	OH
3613	NEBRASKA CROSSING OUTLET	21355 Nebraska Crossing D	Gretna	NE
3745	LOUISIANA BOARDWALK OUTLE	490 Boardwalk Blvd	Bossier City	LA
3600	EMPIRE OUTLETS	35B Richmond Terrace	Staten Island	NY
8804	OUTLETS AT CORPUS CHRISTI	500 North Ih 69	Robstown	TX
1124	LAGUNA 99 PLAZA	8451 Elk Grove Blvd	Elk Grove	CA
3220	VINTAGE OAKS	120 Vintage Way	Novato	CA
7995	HERTITAGE PARK PLAZA	448 North Main Street	East Longmeadow	MA
14	CENTURY CENTER	353 Memorial Blvd	West Springfield	MA
8672	VILLAGE SHOPS	95 Washington Street	Canton	MA
8527	UNIVERSITY CENTER	4237 Campus Drive	Irvine	CA
9959	ESPLANADE SHOPPING CENTER	365 West Esplanade Drive	Oxnard	CA
9637	BLUE STAR SHOPPING CENTER	1701 Rt 22 West	Watchung	NJ
5587	SULLY PLAZA	13936 Lee Jackson Hwy	Chantilly	VA
2355	SHOPS @ DUNES ON MONTEREY	130 General Stilwell Dr	Marina	CA
8558	ARLINGTON SHOPPING CENTER	804 Us Highway 46	Parsippany	NJ
7338	WAREHAM CROSSING	2421 Cranberry Hwy	Wareham	MA
8974	LANTANA SQUARE	206 Lantana Drive	Hokessin	DE
5916	GREAT LAKES MALL	7850 Mentor Avenue	Mentor	OH

47	THE SHOPS AT LA CANTERA	15900 La Cantera Pkwy	San Antonio	TX
6604	PARROT PLAZA	1401 W. North Avenue	Melrose Park	IL
8232	WESTFORD PLAZA	175 Littleton Rd	Westford	MA
2726	CATHEDRAL VILLAGE	69185 Ramon Road	Cathedral City	CA
5125	ARLINGTON SQUARE	4725 Reed Road	Columbus	OH
971	PAVILIONS PLACE	16420 Beach Blvd	Westminster	CA
8314	MORGAN HILL SHOPPING CENT	1057 Cochrane Rd	Morgan Hill	CA
7432	HIGHLAND COMMONS	56 Highland Commons East	Hudson	MA
7884	CROSS POINT CENTRE	101 E. Alex Bell Rd	Centerville	OH
9737	COPPER TREE PLAZA	350 Ramapo Valley Rd	Oakland	NJ
1135	NORTHBOROUGH CROSSING	9113 Shops Way	Northborough	MA
8731	SILVERNAIL SHOPPING CENTE	2116 Silvernail Rd	Pewaukee	WI
8357	TRIANGLE SHOPPING CENTER	20 Triangle Center	Yorktown Heights	NY
585	WOODBURN PLAZA SHOPPING C	3040 Sprague Lane	Woodburn	OR
8566	ROCKFORD PLAZA	4190 Vinewood Lane	Plymouth	MN
9230	THE ORCHARD TOWN CENTER	14583 Orchard Parkway	Westminster	CO
5221	COMMERCE TOWN CENTER	3050 Union Lake Rd	Commerce	MI
7876	THE SHOPPES AT HAWK RIDGE	6115 Ronald Reagan Drive	Lake St. Louis	MO
8733	RIVERVIEW WEST MARKETPLAC	3770 W. Mcfadden Ave	Santa Ana	CA
2724	GIBBS CROSSING	350 Palmer Rd	Ware	MA
9963	SHARP'S PLAZA	175 Route 70 East	Medford	NJ
9107	COTTONWOOD SHOPPING CENTE	1100 S. Hwy 260 #17A	Cottonwood	AZ
9353	PORT PLAZA	45 Storey Ave	Newbury Port	MA
1379	CURRY HOLLOW CENTER	314 1/2 Curry Hollow Dr	Pleasant Hills	PA
3515	EDMOND CROSSING S.C.	72 S.E. 33Rd Street	Edmond	OK
9184	TRAVER VILLAGE	2627 Plymouth Road	Ann Arbor	MI
1048	CRYSTAL CITY SHOPS @1750	1670 Crystal Sq Arcade	Arlington	VA
3619	WAYLAND TOWN CENTER	77 Andrew Ave	Wayland	MA
559	MUNDELEIN CROSSINGS	3022 Route 60	Mundelein	IL
1558	SHOPPES @ PGH MILLS	2015 Pgh Mills Blvd	Tarentum	PA
5167	WALMART LAFAYETTE	1217 Diamond Circle	Lafayette	CO
1618	MIDDLESEX S.C.	1342 Eastern Blvd.	Baltimore	MD
1348	SUNRISE VILLAGE SHOPPING	4776 East Sunrise Drive	Tucson	AZ
5823	WEST MARKET SC	109 S Parket Street - 109	Olathe	KS
7371	SPRING CREEK JUNCTION	681 South Green Bay Road	Neenah	WI
8069	WINDSOR COMMONS	3143 Cape Horn Road	Red Lion	PA
6997	SOUTHGATE PLAZA	3501 S Tamiami Trail	Sarasota	FL
1691	PADUCAH TOWNE CENTER	3216 Irvin Cobb Drive	Paducah	KY
7493	RIVER HILL VILLAGE CENTER	6030 Daybreak Circle	Clarksville	MD
8941	FALLS GROVE VILLAGE CTR	14933 F Shady Grove Rd	Rocville	MD
3270	SOUNDVIEW MARKETPLACE	20 Soundview Marketplace	Port Washington	NY
8954	GREENTREE ROAD S/C	1969 Greentree Rd	Pittsburgh	PA
9258	MALL @ SIERRA VISTA	2200 El Mercado Loop	Sierra Vista	AZ
9256	WHITTWOOD TOWN CENTER	15702 Whittwood Lane	Whittier	CA
9178	TROPICANA BELTWAY CENTER	5130 S. Ft Apache Rd	Las Vegas	NV
6775	THE SHOPPES AT OLD BRIDGE	3849 Us Highway 9	Old Bridge	NJ
3894	NIAGARA CONSUMER SQUARE	7314 Niagara Falls Blvd	Niagara Falls	NY
9338	SHEEPSHEAD BAY	1710 Sheepshead Bay Rd	Brooklyn	NY
	Total: 640			

**Exhibit B**  
**Expense Budget**

<b>GNC - US Consultant's Expenses</b>
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<b>Advertisement</b>	<b>Total</b>
Signs, Banners & Shipping	\$564,810
Signwalker Program	1,002,969
<b>Subtotal: Advertisement</b>	<b>1,567,779</b>
<b>Supervision</b>	<b>1,611,201</b>
<b>Miscellaneous</b>	<b>40,000</b>
<b>Total (1) (2) (3)</b>	<b>\$3,218,980</b>

Note:

(1) Assumes an average of 11.6-week Sale.

(2) If Stores open on a staggered basis, Budget will be mutually modified to reflect potential increase in expenses.

(3) Advertisement budget includes an additional charge for relabeling due to the delay in shipping.

**Exhibit C**  
**Security Requirements**

## **GNC Contract Security Exhibit**

Consultant has implemented and shall operate at all times the following technical and organizational security measures to safeguard and monitor the confidentiality, integrity, and availability of GNC data; the systems that store, process or transmit GNC data; and the services provided to GNC.

1. A written information security policy and program based on an industry-recognized security framework such as NIST 800.53 or ISO 27001/27002. Consultant shall provide a copy of the written information security program they have implemented.
2. An ongoing security awareness program to educate and test personnel about confidentiality and information security at the time of hire and periodically thereafter. Training includes both general-purpose security awareness and job-specific security responsibilities and procedures.
3. Policies, controls, and procedures to control, limit and monitor physical access to facilities where GNC data is processed, systems that provide services to GNC are located, and personnel that provide services to GNC are employed.
4. Policies, controls, and procedures to safeguard and monitor the networks and systems that process GNC data or provide services to GNC. Consultant utilizes current versions of operating systems, applications, software, and hardware that are covered by manufacturer support.
5. Policies, controls, and procedures to prevent the loss or corruption of GNC data and to ensure the confidentiality and integrity of all integrations, system interconnections, and transmissions between Consultant and GNC.
6. Policies, controls, and procedures to manage the creation, use, periodic re-certification, revocation, and deletion of access credentials and to authenticate, authorize, and audit access to data, networks, systems, services, and other information assets.
7. Policies, controls, and procedures to document, review, approve, test, and implement changes to software, hardware, data, applications, and services.
8. Policies, controls, and procedures to create automated logs and audit trails of system operations, user activities, and security events; to review logs, reports, or alerts of security events for all system components to identify anomalies or suspicious activity in a timely manner; and to investigate and addresses security events identified through its monitoring practices.
9. Policies, controls, and procedures for asset management, record retention, and record destruction to identify, classify, and manage information assets, software, and systems. Consultant shall immediately and securely remove from its systems and media, and at GNC's option return or destroy, all data at the end of its agreement with GNC, upon GNC's request, or when the data is no longer required to provide services to GNC. Consultant shall provide suitable documentation and certification of the removal processes and results.
10. Policies, controls, and procedures for a secure System Development Life Cycle (SDLC) that involves security in product development and implementation, trains personnel in secure development and coding concepts and practices, and verifies that products meet security requirements prior to delivery. The secure SDLC incorporates leading practices for authentication, authorization, and access control; data validation, transmission, and storage; cryptography; session management; and error handling.
11. Policies, controls, and procedures to assess, report, manage, and address internal and third-party risk. Consultant operates a continuous vulnerability management program that includes periodic

scanning and penetration tests of systems, services, and networks; application security tests; and the timely installation of all relevant vendor security patches. Consultant subscribes to relevant manufacturer and industry security advisory services. Consultant develops and executes timely risk treatment and remediation action plans.

12. Policies, controls, and procedures for computer security incident response. Consultant designates and trains an incident response team and performs periodic incident response exercises. In the event of an incident that affects the security of the Consultant or the Consultant's third party service providers, Consultant shall notify GNC within 24 hours. Consultant shall cooperate with GNC and GNC's authorized representatives in the design and execution of any public notice and communication regarding the security incident and its impacts. Consultant shall cooperate with GNC to address the incident and implement corrective action plans.
13. Consultant acknowledges and agrees that all data received from GNC is owned by GNC. Consultant shall use data solely for the purpose of providing services to, and solely for the benefit of, GNC. Consultant shall not disclose GNC data to third parties or affiliates without the express written consent of GNC. Consultant shall store regulated personally identifiable data and personal data received from and owned by GNC within the US and will not transmit, transfer, or replicate the data to any location outside of the United States.
14. Consultant shall only disclose or transfer GNC data to authorized third parties for the purpose of rendering services to GNC. Consultant shall maintain an inventory of third parties to which Consultant discloses or transfers GNC's data. Consultant will provide this inventory to GNC upon request. Consultant shall require of its third parties, and accept responsibility to ensure that its third parties shall have in place equivalent safeguards for the protection of GNC data and services as specified in Consultant's agreement with GNC.
15. If Consultant processes, transmits, accesses, or stores payment card data in rendering services to GNC, then Consultant (and related applicable third parties) shall meet the requirements for a PCI Service Provider and shall demonstrate ongoing PCI Data Security Standard and/or Payment Application Data Security Standard compliance as a Service Provider annually by furnishing to GNC its then-current authorized Attestation of Compliance developed by a certified, independent PCI Qualified Security Assessor.
16. If Consultant processes personal data of European Union data subjects as a data processor rendering services to GNC, then Consultant (and related applicable third parties) shall implement appropriate technical and organizational measures in such a manner that processing will meet the requirements of GDPR and ensure the protection of the rights of the data subject, execute a data protection agreement with GNC, assist GNC to fulfill GDPR data subject rights requests. Consultant shall make available to GNC all information necessary to demonstrate compliance with GDPR obligations.
17. Consultant shall comply with all applicable federal, state, and local statutes and regulations governing Consultant's use, transmission, storage, and destruction of data.
18. Consultant has disclosed any breach of security or unauthorized access or unauthorized use of its systems or services that occurred in the past 36 months. Consultant has described the response and remedies implemented to address the cause of any breach.
19. Consultant has provided current attestation of privacy and security trust principles such as an SSAE 16 SOC 2 report (or equivalent) from an independent registered public accountant (or equivalent)

covering all locations and functions that store, process, transmit, or access GNC data and/or systems.

20. Upon reasonable notice, Consultant shall permit GNC, or a third-party provider acting on GNC's behalf, to conduct security vulnerability testing of the systems and/or software developed on behalf of GNC and/or used to render services to GNC. Consultant shall develop and implement timely corrective action plans to remediate defects and vulnerabilities noted during the testing.
21. Consultant shall reasonably cooperate with any investigation carried out by or on behalf of GNC relating to the security, integrity, confidentiality, availability, or accuracy of GNC data, including promptly providing information or material in its possession or control in support of such investigation, and making all necessary personnel available to respond to any questions or issues that may arise.
22. Consultant has executed GNC's non-disclosure agreement (or equivalent).

END OF DOCUMENT

Revised 8/7/2018



**EXHIBIT 4**

**Canada Consulting Agreement**

## CONSULTING AGREEMENT

This Consulting Agreement (“Agreement”) is made as of June 18, 2020 (the “Effective Date”), by and among General Nutrition Centres Company (“Merchant”) and a joint venture comprised of Tiger Asset Solutions Canada, ULC (“Tiger”) and GA Retail Canada ULC (“GA”) (collectively, the “Consultant”) and together with Merchant, the “Parties” and each a “Party”).

### RECITALS

WHEREAS, Merchant operates retail stores throughout Canada and desires that the Consultant act as Merchant’s exclusive consultant for the limited purposes of (a) assisting Merchant (i) in determining stores to close immediately (or not to reopen) (the “Closing Stores”) and stores at which to conduct a Sale as defined below (the “GOB Stores”) and (ii) with the logistics of transferring Merchandise (as defined below) from the Closing Stores to the GOB Stores; (b) selling all of the Merchandise (as defined below) from Merchant’s Closing Stores and GOB Stores identified on Exhibit A attached hereto (as may be modified prior to the Sale Commencement Date (as defined below) including by adding or removing stores, in each case pursuant to Section 1 below) (each such store identified on Exhibit A individually a “Store,” and collectively the “Stores”) by means of a “store closing”, “location closing”, “sale on everything”, “everything must go”, or similar themed sale as agreed between the Parties at the GOB Stores (as further described below, the “Sale”); and (c) selling or otherwise disposing of Merchant owned furniture, furnishings, trade fixtures, machinery, equipment, office supplies, supplies and other tangible personal property that are located in the Stores (collectively, “FF&E”) in the Stores, each upon the terms set forth herein.

WHEREAS, Merchant and certain related entities intend to commence a bankruptcy case (the “Bankruptcy Case”) in the United States of America under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and ancillary proceedings (the “CCAA Proceedings”) in Canada under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) before the Ontario Superior Court of Justice (Commercial List) (the “Court”).

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Consultant and Merchant hereby agree as follows:

#### **Section 1. Appointment of Consultant**

Effective as of the date hereof, subject to the entry of the Approval Order (as defined below) by the Court, Merchant hereby appoints the Consultant, and the Consultant hereby agrees to serve, as Merchant’s consultant for the purpose of conducting the Sale in accordance with the terms and conditions of this Agreement as more definitively set forth in Section 4 hereof. Subject to Section 11, Consultant shall be authorized to advertise the Sale as a “store closing”, “location closing”, “sale on everything”, “everything must go”, or similar-themed sale in accordance with the terms hereof, provided that no signs shall advertise the Sale as a “bankruptcy”, a “going out of business” or a “liquidation” sale with it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used.

After the date hereof, at the option of the Merchant and if necessary subject to requisite approval Orders entered in the Bankruptcy Case or granted in the CCAA Proceedings and/or the Information Officer appointed by the Court (the “Information Officer”), Merchant may add additional Closing Stores and GOB Stores for Consultant to serve as Merchant’s independent consultant in connection with the conduct of a Sale (the “Additional Stores”) with respect to such Additional Stores on the terms and conditions of this Agreement subject to appropriate adjustments as agreed for the Sale Commencement Date, the Sale Termination Date, the Expense

Budget, the Consulting Fee and the FF&E Fee (each as defined below) for such Additional Stores (as may be applicable), which Additional Stores and such terms shall be set forth in a written addendum hereto. The Additional Stores and the initial Stores shall be collectively referred to as the “Stores” herein.

**Section 2. Merchandise**

For purposes hereof, “Merchandise” shall mean all goods, saleable in the ordinary course, located in the Stores on the Sale Commencement Date (as defined below) or delivered thereto after the Sale Commencement Date pursuant to the terms hereof. “Merchandise” does not mean and shall not include: (1) goods that belong to sublessees, licensees, or concessionaires of Merchant or are leased and licensed from third parties by Merchant, or are held by Merchant on memo, on consignment or as bailee, in each case, to the extent identified by Merchant as excluded from Merchandise; (2) landlord owned furnishings, trade fixtures, equipment and improvements to real property that are located in the Stores (3) FF&E; (4) expired goods or goods that expire prior to the Sale Termination Date (as defined below); (5) damaged or defective merchandise that cannot be sold for the purpose for which it was intended; or (6) gift cards (third party and Merchant branded).

**Section 3. Sale Term**

Subject to obtaining the Approval Order (as defined herein) from the Court, the Sale shall commence as mutually agreed; provided, however, (a) for GOB Stores that are currently operating, the Sale shall commence on or about June 25, 2020, and (b) for GOB Stores that are not currently operating, the Sale shall commence on or about the date that is the later of the date upon which Merchant reopens each such GOB Store and June 25, 2020 (the “Sale Commencement Date”). The Sale shall conclude no later than September 30, 2020 (the “Sale Termination Date”); provided, however, that Merchant may agree in writing in its sole discretion to extend or terminate the Sale at any GOB Store prior to the Sale Termination Date (it being understood that, if the timing set forth herein changes, Merchant and Consultant shall mutually agree on any adjustments to the Expense Budget (as defined below) and Consultant’s compensation); provided further, however, that Merchant may agree in writing in its sole discretion to make any GOB Store a Closing Store prior to the Sale Termination Date. The period between the Sale Commencement Date and the Sale Termination Date shall be referred to as the “Sale Term.” Upon the removal of Merchandise from each Store and at the conclusion of the Sale at each GOB Store, (a) Consultant shall surrender the premises for such Store to Merchant in broom-swept and clean condition with any unsold FF&E abandoned in place at such Store, and (b) Consultant shall reasonably assist Merchant to photographically document the condition of each such Store upon the conclusion of the Sale there.

**Section 4. Project Management**

(A) Consultant’s Undertakings

Consultant shall (a) conduct a review and assessment of Merchant’s current store closing plan and accompanying assumptions in light of the current market environment, (b) make recommendations in order to minimize expenses and maximize the return from the sale of Merchandise, (c) consult with Merchant as to which stores to close immediately (or to not reopen) and at which to conduct the Sale, and (d) consult with Merchant as to the logistics of transferring merchandise from the Closing Stores to the GOB Stores. During the Sale Term, Consultant shall, in collaboration with Merchant, (a) provide one or more qualified supervisors (the “Supervisors”) engaged by Consultant and reasonably approved in advance by Merchant to oversee the Sale and management of the GOB Stores in an effort to maximize revenue and sell all of the Merchandise prior to the end of the Sale; (b) determine appropriate point-of-sale and external advertising, reasonably approved in advance by Merchant and in accordance with the Canadian Sale Guidelines attached as **Exhibit D**; (c) determine appropriate discounts of Merchandise, staffing levels, and appropriate bonus and incentive programs, if any, for the GOB Stores’ employees, in each case reasonably approved in advance by Merchant; (d) oversee display of Merchandise for the GOB Stores; (e) evaluate sales of Merchandise by category, provide

sales reporting and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information regarding Merchant in accordance with the provisions of the confidentiality agreement signed by the Parties and for Merchant Confidential Information (as defined below) in accordance with the next paragraph; (g) assist Merchant in connection with managing and controlling loss prevention and employee relations matters; (h) to the extent necessary, assist Merchant in obtaining all required permits and governmental consents required to conduct the Sale; (i) price, market, and sell the FF&E on behalf of Merchant; (j) provide such other related services deemed necessary or appropriate by Merchant and Consultant; (k) provide such information and reporting as may be requested by the Information Officer; and (l) comply with all applicable Orders entered in the Bankruptcy Case or granted in the CCAA Proceedings.

Without limiting the generality of the foregoing, all information of a business nature relating to the pricing, sales, promotions, marketing, assets, liabilities, or other business affairs of Merchant, its customers, parent, subsidiaries, or other affiliated entities (for purposes of this paragraph, all such entities are included within each reference to “Merchant”) is Merchant’s confidential, trade secret information (“Merchant Confidential Information”), which is and shall remain the exclusive intellectual property of Merchant. Except as may be required for Consultant to perform its obligations under this Agreement in respect of the Sale, Consultant shall not divulge, furnish, make available, or in any other manner disclose such information to any third party other than to the Information Officer and the respective affiliates, officers, employees, representatives, attorneys and agents of each party comprising Consultant. Each party comprising Consultant shall take and shall cause its respective affiliates, officers, employees, representatives, attorneys and agents to take such action as shall be reasonably necessary or advisable to preserve and protect the confidentiality of Merchant Confidential Information. Each party comprising Consultant agrees to maintain strict confidentiality and agrees that it may use Merchant Confidential Information only as reasonably necessary in the performance of its obligations related to the Sale.

The Parties expressly acknowledge and agree that Merchant shall have no liability to the Supervisors for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Consultant’s hiring or engagement of the Supervisors, and the Supervisors shall not be considered employees of Merchant. Merchant shall only be responsible for reimbursing Consultant for the cost of such Supervisors as part of the Expense Budget (as defined below). Consultant shall vacate the GOB Stores on the Sale Termination Date, or such other date as agreed between the Merchant and the Consultant in accordance with the terms hereof.

(B) Merchant’s Undertakings

During the Sale Term, Merchant shall, as applicable, (a) remain the employer of the Stores’ employees; (b) remain responsible for all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores’ employees and other representatives of Merchant; (c) prepare and process all tax forms and other documentation; (d) collect all sales taxes and pay them to the appropriate taxing authorities for the Stores; (e) use reasonable efforts to cause Merchant’s employees to cooperate with Consultant and the Supervisors; (f) execute all agreements mutually determined by the Merchant and the Consultant to be necessary or desirable for the operation of the GOB Stores during the Sale; (g) arrange for the ordinary maintenance of all point-of-sale equipment required for the GOB Stores; and (h) ensure that Consultant has quiet use and enjoyment of the GOB Stores for the Sale Term in order to perform its obligations under this Agreement.

Merchant shall provide throughout the Sale Term central administrative services typically provided to Stores in the ordinary course and necessary for the Sale, including internal payroll processing, MIS services, cash and inventory reconciliation, data processing and reporting, email preparation and distribution, information technology updates, functionality, and maintenance, and accounting, all at no cost to Consultant.

The Parties expressly acknowledge and agree that Consultant shall have no liability to Merchant’s employees for wages, benefits (including any pension related benefits and obligations), severance pay, termination pay, accrued vacation entitlement, vacation pay, pay in lieu of notice of termination or any other liability arising

from Merchant's employment, hiring, retention, furlough, layoff, or termination of its employees, and such employees shall not be considered employees of Consultant.

The Parties acknowledge that this Agreement is being entered into in the midst of the outbreak of the COVID-19 pandemic and that local, provincial, and national laws and responses are continuously developing and evolving, often in unpredictable ways. Merchant hereby agrees that, while Consultant will fully cooperate with Merchant to adhere to any restrictions, laws, regulations, recommendations, or orders imposed by governmental entities, or similar regulatory or authoritative agencies, that may be imposed on any aspect of Merchant's ability to operate the Stores in response to the COVID-19 pandemic, the responsibility and expense of complying with any such restrictions, laws, regulations, recommendations, or orders, including their enforcement and implementation, shall be the sole responsibility of Merchant. Examples of such restrictions, regulations or recommendations may include, without limitation: (a) providing protective gear (such as masks, sanitizers, and similar items) aimed at reducing the spread of the virus to Merchant's employees, customers, vendors, etc.; (b) implementing physical restrictions with regard to Store operations, including monitoring the number of customers allowed into a Store at any given time; and (c) enforcing daily cleaning and sanitizing procedures at the Stores. Merchant and its employees shall be responsible to facilitate, enforce, and implement any such restrictions or regulations, however, Consultant agrees not to violate any such restrictions, laws, regulations, recommendations or orders in the performance of its services hereunder.

## **Section 5. The Sale**

All sales of Merchandise and FF&E shall be made on behalf of, and solely in the name of, Merchant. Consultant does not have, nor shall it have, any right, title, or interest in the Merchandise or FF&E. Subject to the terms of the Approval Order, all sales of Merchandise and FF&E shall be by cash, gift card, gift certificate, merchandise credit, debit card, or credit card and, at Merchant's discretion, by check or otherwise in accordance with Merchant's policies, and shall be "final" with no returns accepted or allowed unless otherwise directed by Merchant or mandated by law. The right to honor gift cards, gift certificates or merchandise credit, after the commencement of the Bankruptcy Case and the CCAA Proceedings shall be subject to further Orders entered in the Bankruptcy Case and granted in the CCAA Proceedings.

## **Section 6. Consultant Fee and Expenses in Connection with the Sale**

### **(A) Consultant's Fee**

Consultant shall be entitled to a base fee for its services equal to USD\$1,000 per GOB Store and USD\$500 per Closing Store (the "Base Fee") payable as follows: (x) 50% upon entry of the Interim Order (as defined below), and (y) 50% upon entry of the Final Order (as defined below). In addition, Merchant may earn an additional incentive fee (the "Incentive Fee" and together with the Base Fee, the "Consulting Fee") based upon the following thresholds of Gross Proceeds (as defined below) received during the Sale divided by the Cost Value (as defined below) of the Merchandise sold during the Sale (the "Gross Recovery Percentage") calculated back to the first dollar received:

Gross Recovery Percentage	Total Incentive Fee
Between 120% to 134.99%	.50% of Gross Proceeds
Between 135% to 149.99%	.75% of Gross Proceeds
150.0% or above	1.25% of Gross Proceeds

For the avoidance of doubt, the above Incentive Fee, if achieved, is in addition to the Base Fee.

After it is determined that Consultant has earned an Incentive Fee, Merchant shall pay such Incentive Fee as earned as part of the weekly reconciliations and in any event no later than the Final Reconciliation (as defined below).

For purposes of this calculation, (i) “Gross Proceeds” shall mean the sum of the gross proceeds of all sales of Merchandise that is sold through the Sale (including, as a result of the redemption of any gift card, gift certificate or merchandise credit as well as wholesale sales to third parties and miscellaneous income) during the Sale Term, after the application of all discounts including, without limitation, any discount coupons issued by Merchant in the ordinary course of its business, and net only of sales taxes, and (ii) “Cost Value” shall mean the aggregate gross cost of Merchandise sold during the Sale per the Merchant’s books and records. The Parties shall mutually agree upon the Consulting Fee for any Additional Stores in writing.

For purposes of calculating Gross Proceeds, Consultant and Merchant shall jointly keep (i) a strict count of gross register receipts less applicable sales taxes and (ii) cash reports of sales within each Store. Register receipts shall show for each item sold the retail price (as reflected on Merchant’s books and records) for such item, and the markdown or other discount granted in connection with such sale. All such records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice.

(B) Expenses

Merchant shall be responsible for all reasonable and documented costs and expenses of the Sale, including all Store level operating expenses. To control expenses of the Sale, Merchant and Consultant have established a budget (the “Expense Budget”) of certain delineated expenses in connection with the Sale, including supervision (including Supervisors’ wages, fees, travel and any other compensation and any travel expenses of Consultant), advertising costs and signage. The Expense Budget for the Sale is attached hereto as **Exhibit B**. The Expense Budget may only be modified by mutual written agreement of Consultant and Merchant, and with the approval of the Information Officer from and after the date of the Approval Order. Notwithstanding anything herein to the contrary, unless otherwise agreed to by Merchant, Merchant shall not be obligated to pay costs of supervision, advertising costs and signage that exceed the budgeted amount, on an aggregate basis. The Parties acknowledge that the Expense Budget will be updated as appropriate in connection with any modification of the lists of GOB Stores or the terms of the Sale and agree to cooperate in good faith with respect to such updates or to any Additional Stores.

(C) Reconciliation

Consultant shall maintain books and records as it relates to the services rendered under this Agreement. Subject to the terms of the Approval Order, all accounting matters (including, without limitation, any Consulting Fees and expenses per the Expense Budget that are reimbursable or payable to Consultant) shall be reconciled on every Wednesday for the prior week and shall be paid within seven (7) days after each such weekly reconciliation.

Within twenty (20) days following the Sale Termination Date for each GOB Store, the Parties shall complete a final reconciliation and settlement based upon the total Gross Proceeds received and all amounts earned and due to Consultant and contemplated by this Agreement (including, without limitation, Expense Budget items) (the “Final Reconciliation”). Upon completion of the Final Reconciliation, if a payment is due from either Party, such Party shall pay the other Party any amounts calculated to be due as part of such Final Reconciliation after considering any amount previously paid to the Consultant (including without limitation Expense Budget items and any other payments under this Agreement). Merchant or its firm of auditors appointed by Merchant has the right, upon reasonable written notice to Consultant, to inspect at reasonable times and locations such documentation, records, and equipment that reasonably relate to the services provided for under this Agreement for purposes of ensuring performance of Consultant’s obligations under this Agreement.

(D) Advance on Expenses

Subject to the terms of the Approval Order, as an advance against the expenses of the Sale, and to secure payment of the same and any other amounts due to Consultant, no later than five (5) days after the Effective

Date, and in no event later than the last business day before the earliest of filing by Merchant of a Bankruptcy Case or CCAA Proceedings, Merchant shall pay to Consultant a deposit in the amount of USD\$200,000, which is an estimate of the costs of signage, advertising and Supervisors for a two (2) week period, and is calculated based on the number of Stores included on **Exhibit A** as of the Effective Date (the "Advance"). The Parties agree that the Advance may only be used to pay for expenses pursuant to the Expense Budget and to secure reimbursement of the Expenses and payment of the Consulting Fee and other amounts due hereunder. The Parties further agree to increase the sum of the Advance in the event that Additional Stores are added and as needed, provided, however, that Merchant must expressly approve such increases in writing. The Advance shall be applied against the reimbursement of expenses or payment of the Consulting Fee at the end of the Sale Term to the extent not otherwise paid, and to the extent not expended when the Sale concludes, and any unapplied balance shall be returned to Merchant as part of the Final Reconciliation or such other time that Merchant and Consultant mutually agree.

(E) Taxes on Payments

Merchant acknowledges that the amounts payable to Consultant hereunder may be subject to sales or other taxes and agrees to pay to Consultant all such taxes in accordance with applicable laws in addition to the amounts payable hereunder.

**Section 7. Indemnification**

(A) Merchant's Indemnification

Except as otherwise provided for in this Agreement, Merchant shall indemnify, defend, and hold each party comprising Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, principals, affiliates, and Supervisors (collectively, "Consultant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to: (a) the willful or grossly negligent acts or omissions of Merchant or the Merchant Indemnified Parties (as defined below); (b) the material breach of any provision of this Agreement by Merchant; (c) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding Consultant Indemnified Parties) against Consultant or a Consultant Indemnified Party, except claims arising from Consultant's negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Consultant's Indemnified Parties or Merchant's customers by Merchant or Merchant's Indemnified Parties (as defined below); (e) Merchant's failure to collect, remit and pay over to the appropriate taxing authority all sales and other taxes required to be collected, remitted or paid by Merchant during the Sale Term in accordance with applicable law; and (f) any claims of Merchant's employees for wages, benefits (including pension related benefits and obligations), severance pay, termination pay, accrued vacation, vacation pay, pay in lieu of notice of termination or any other liability arising from Merchant's employment, hiring, retention, furlough, layoff or termination of its employees.

(B) Consultant's Indemnification

Except as otherwise provided for in this Agreement, Consultant shall, on a joint and several basis, indemnify, defend and hold Merchant and its affiliates and their respective consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, principals, and affiliates (other than the Consultant or the Consultant Indemnified Parties) (collectively, "Merchant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (a) the willful or grossly negligent acts or omissions of Consultant or the Consultant Indemnified Parties; (b) the breach of any provision of, or the failure to perform any obligation under, this Agreement by Consultant; (c) any liability or other claims made by Consultant's Indemnified Parties or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to

Consultant's conduct of the Sale, except claims arising from Merchant's negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Merchant Indemnified Parties or Merchant's customers by Consultant or any of the Consultant Indemnified Parties and (e) any claims made by any party engaged by Consultant as an employee, agent, representative or independent contractor arising out of such engagement.

**Section 8. Insurance**

(A) Merchant's Insurance Obligations

Merchant shall maintain, throughout the Sale Term, liability insurance policies (including products liability in the amounts currently provided, commercial general liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the Stores, and shall cause Consultant to be included as an additional insured with respect to all such policies. At Consultant's request, Merchant shall provide Consultant with a certificate or certificates evidencing the insurance coverage required hereunder and that Consultant is an additional insured thereunder. In addition, Merchant shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all applicable statutory requirements.

(B) Consultant's Insurance Obligations

As an expense of the Sale and as set forth on the Expense Budget, Consultant shall maintain, throughout the Sale Term, liability insurance policies (including products liability/completed operations, contractual liability, comprehensive commercial general liability, without limitation, including auto liability insurance) on an occurrence basis in an amount of at least one million dollars (\$1,000,000) per occurrence and an aggregate basis of at least five million dollars (\$5,000,000) for commercial general liability covering injuries to persons and property in or in connection with Consultant's provision of services at the Stores and \$5,000,000 per occurrence combined single limit for auto. Consultant shall name Merchant as an additional insured and loss payee under such policies, and upon execution of this Agreement provide Merchant with a certificate or certificates of insurance evidencing the insurance coverage required hereunder. In addition, Consultant shall maintain throughout the Sale Term workers compensation insurance compliant with all statutory requirements. Further, should Consultant employ or engage third parties to perform any of Consultant's undertakings with regard to this Agreement, Consultant will ensure that such third parties are covered by Consultant's insurance or maintain all of the same insurance as Consultant is required to maintain pursuant to this paragraph and name Merchant as an additional insured and loss payee under the policy for each such insurance.

**Section 9. Representations, Warranties, Covenants and Agreements**

(A) Merchant's Representations, Warranties, Covenants and Agreements.

Merchant warrants, represents, covenants and agrees that (a) Merchant is a company duly organized, validly existing and in good standing, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder (subject to any requisite approval in the Bankruptcy Case or in the CCAA Proceedings), and maintains its principal executive office at the address set forth herein, (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Merchant and this Agreement constitutes a valid and binding obligation of Merchant enforceable against Merchant in accordance with its terms and conditions, and the consent of no other entity or person is required for Merchant to fully perform all of its obligations herein, (c) all ticketing of Merchandise at the Stores has been and will be done in accordance with Merchant's customary ticketing practices, and (d) all normal course hard markdowns on the Merchandise have been and will be, taken consistent with customary Merchant's practices.

(B) Consultant's Representations, Warranties, Covenants and Agreements.



Each party comprising Consultant respectively warrants, represents, covenants and agrees that (a) it is a company duly organized, validly existing and in good standing, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and maintains its principal executive office at the addresses set forth herein, (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of such Consultant party and this Agreement constitutes a valid and binding obligation of such Consultant party, enforceable against such Consultant party in accordance with its terms and conditions, and the consent of no other entity or person is required for such Consultant party to fully perform all of its obligations herein, (c) subject to Section 4(A) above, it shall comply with and act in accordance with any and all applicable local laws, rules, regulations, and other legal obligations of all governmental authorities in conducting the Sale, (d) no non-emergency repairs or maintenance in the Stores will be conducted without Merchant's prior written consent, (e) it will not take any disciplinary action against any employee of Merchant, (f) subject to the terms of the Approval Order, Consultant will comply with lease terms, obligations and restrictions for each Store while performing the services hereunder, and (g) it shall conduct the Sale in accordance with the terms of this Agreement and the Approval Order.

#### **Section 10. Furniture, Fixtures and Equipment**

Subject to evaluation by the parties on a case by case basis to determine what may be sold from each Store as provided below, Consultant shall sell the FF&E in the GOB Stores and, to the extent applicable, the Closing Stores. Merchant shall reimburse Consultant for Consultant's reasonable and documented out of pocket costs and expenses incurred by Consultant in connection with the sale of FF&E, which costs and expenses shall be incurred pursuant to a written budget or budgets to be established from time to time by mutual written agreement of the Parties (the "FF&E Budget"). Consultant shall have the right to abandon at the Stores any unsold FF&E, in a neat and orderly fashion. Unless otherwise agreed to by Merchant, the sale of the FF&E in each Store shall conclude no later than the Sale Termination Date for each Store.

Consultant shall be entitled to a commission equal to fifteen percent (15.0%) of the Gross FF&E Proceeds (as defined below) from the sale of the FF&E (the "FF&E Fee") for the Stores set forth on **Exhibit A**.

Notwithstanding the foregoing, Merchant may inform Consultant that it intends to remove certain fixtures from the Stores and such fixtures shall not be included in the FF&E. Prior to the commencement of the Sale, Merchant will provide a list of any such fixtures at each store location to Consultant and will remove such fixtures from the Stores as soon as practical before or during the Sale. Consultant will use commercially reasonable efforts to ensure that the designated fixtures remain in good condition throughout the Sale.

Consultant shall remit to Merchant all Gross FF&E Proceeds. For purposes of this Agreement, "Gross FF&E Proceeds" means gross receipts from the sale of FF&E, net only of applicable sales taxes. During each weekly reconciliation described above, Consultant's FF&E Fee (if any) shall be calculated, and Consultant's calculated FF&E Fee and all FF&E costs and expenses then incurred shall be paid within seven (7) days after each such weekly reconciliation.

#### **Section 11. Advertising, Promotions, Signwalkers and Signage**

Consultant shall obtain prior written approval from Merchant for any advertising, promotions, signwalkers, and signage, which shall not be unreasonably withheld, and except as provided otherwise in the Approval Order shall cooperate with Merchant to ensure reasonable compliance with provincial and local government regulations and Store lease agreements. All advertising shall comply with the Sale Guidelines attached as Exhibit "D". Advertising and signage shall be at the expense of Merchant as provided in **Exhibit B** or as otherwise agreed between the parties.

#### **Section 12. Termination**

The following shall constitute "Termination Events" hereunder:

- (a) Merchant's or Consultant's failure to perform any of their respective material obligations hereunder, which failure remains uncured for seven (7) days after receipt of written notice thereof to the defaulting Party;
- (b) Any representation or warranty made by Merchant or Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term;
- (c) The Sale is terminated or materially interrupted or impaired for any reason other than an event of default by Consultant or Merchant;
- (d) The Approval Order is not issued on or before July 7, 2020, or the Approval Order is overturned on appeal, materially varied or set aside;
- (e) Any trustee, receiver, secured party or other third party acquires title, possession or control of all or substantially all of the Merchandise; or
- (f) An Order is entered in the Bankruptcy Case or granted in the CCAA Proceedings requiring the termination of this Agreement.

If a Termination Event occurs, the non-defaulting Party (in the case of an event of default) or either Party (if the Sale is otherwise terminated or materially interrupted or impaired) may, in its discretion, elect to terminate this Agreement by providing seven (7) business days' written notice thereof to the other Party and, in the case of an event of default, in addition to terminating this Agreement, pursue any and all rights and remedies and damages resulting from such default. If this Agreement is terminated, Merchant shall be obligated to pay Consultant all undisputed amounts due under this Agreement through and including the termination date. Merchant will be permitted to terminate this Agreement for any reason upon thirty (30) days' written notice to Consultant and, in such case, subject to the terms of the Approval Order, Consultant shall be paid its fee for selling Merchandise and FF&E through the date of such termination.

**Section 13. Notices**

All notices, certificates, approvals, and payments provided for herein shall be sent by fax or by recognized overnight delivery service as follows: (a) To Merchant: General Nutrition Centres Company, Box 997, 800-1959 Upper Water Street, Halifax, Nova Scotia, B3J 2X2 with a copy to General Nutrition Centers, Inc., Attention: Accounts Payable Dept, 300 Sixth Avenue, Pittsburgh, PA 15222; (b) to Consultant: Tiger Capital Group, 60 State Street, 11<sup>th</sup> Floor, Boston, MA 02109, Attn: Mark P. Naughton, with a copy to Great American Group, LLC, 21255 Burbank Blvd., Suite 400, Woodland Hills, CA 91367, Attn: Scott K. Carpenter and Marina Fineman; and (c) such other address as may be designated in writing by Merchant or Consultant. A copy of all notices provided hereunder shall be sent by fax or recognized overnight delivery service to the Information Officer: FTI Consulting Canada, 79, TD South Tower Toronto Dominion Centre Toronto ON CA M5K 1G8, Wellington St W suite 2010, Toronto, ON M5K 1B1 (Attention: Nigel Meakin).

**Section 14. Independent Consultant**

Consultant's relationship to Merchant is that of an independent contractor without the capacity to bind Merchant in any respect. No employer/employee, principal/agent, joint venture or other such relationship is created by this Agreement. Merchant shall have no control over the hours that Consultant or its employees or assistants or the Supervisors work or the means or manner in which the services that will be provided are performed and Consultant is not authorized to enter into any contracts or agreements on behalf of Merchant or to otherwise create any obligations of Merchant to third parties, unless authorized in writing to do so by Merchant.

**Section 15. Non-Assignment**

Neither this Agreement nor any of the rights hereunder may be transferred or assigned by either Party without the prior written consent of the other Party. From and after the date of the Approval Order, any assignment shall also require the consent of the Information Officer. No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any Party to this Agreement unless made in writing and signed by a duly authorized representative or agent of such Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns.

**Section 16. Severability**

If any term or provision of this Agreement, as applied to either Party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. If the surviving portions of the Agreement fail to retain the essential understanding of the Parties, the Agreement may be terminated by mutual consent of the Parties.

**Section 17. Governing Law, Venue, Jurisdiction and Jury Waiver**

This Agreement, and its validity, construction and effect, shall be governed by and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (without reference to the conflicts of laws provisions therein). Merchant and Consultant waive their respective rights to trial by jury of any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding and/or hearing brought by either Consultant against Merchant or Merchant against Consultant on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship between Merchant and Consultant, any claim of injury or damage or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

**Section 18. Security**

Consultant has implemented and shall operate at all times the technical and organizational security measures set forth on Exhibit C hereto.

**Section 19. Entire Agreement**

This Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party except as specifically set forth in this Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Agreement.

**Section 20. Execution**

This Agreement may be executed simultaneously in counterparts (including by means of electronic mail, facsimile or portable document format (pdf) signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent signed and delivered by means of electronic mail, a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

**Section 21. Court Approval**

Concurrent with, or as soon as possible following, the commencement of the CCAA Proceedings, Merchant shall file a motion with the Court to approve this Agreement and utilize its commercially reasonable efforts to ensure that such motion is approved by an order substantially in the form attached hereto as **Exhibit E** (the “Approval Order”, and any interim and final orders obtained in the Bankruptcy Case in connection with the consulting services described herein and similar services, the “Interim Order” and the “Final Order”, respectively) that provides for, among other things, as follows: (i) approval of this Agreement; (ii) approves the payment of all fees and reimbursement of expenses hereunder to Consultant, free and clear of all liens, claims and encumbrances, on a weekly basis and otherwise in accordance with this Agreement; (iii) approval of the transaction contemplated hereby; (iv) authorizing the Sale and providing that any Sale conducted hereunder shall be free of all claims, liens and encumbrances that existed prior to or after such Court Order including any Charges created by any Order of the Court; in accordance with the Canadian Sale Guidelines attached as **Exhibit D**; (v) declaring that this Agreement shall not be rejected or disclaimed by Merchant, and that the obligations of Merchant hereunder shall not be compromised in any plan, and (vi) authorizing Merchant to take such further actions as are necessary or appropriate to carry out the terms and conditions of this Agreement. The Parties acknowledge that Court approval is required for Merchant to enter into and perform under this Agreement. In the event of such a filing, any legal action, suit or proceeding arising in connection with this Agreement shall be submitted to the exclusive jurisdiction of the Court having jurisdiction over Merchant, and each Party hereby waives any defenses or objections based on lack of jurisdiction, improper venue, and/or forum non conveniens. From and after entry of the Approval Order, Consultant shall conduct the Sale in accordance with the terms of the applicable Orders granted in the Bankruptcy Case and in the CCAA Proceedings in all material respects.

**Section 22. Currency**

All references herein to money amounts are in Canadian currency, unless otherwise noted herein.

**Section 23. Authorized Consultant Party**

Tiger and GA have formed a joint venture, and, as such, share in the rights and liabilities of Consultant as set forth in this Agreement. Tiger is hereby designated as the lead and authorized party to deal directly with Merchant on behalf of Consultant and has the authority to contractually bind Consultant under this Agreement without having to obtain any express written concurrent approval(s) from GA. Tiger and GA will be jointly and severally liable for all acts, omissions, and obligations of Consultant hereunder.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Consultant and the Merchant hereby execute this Agreement by their duly authorized representatives as a sealed instrument as of the day and year first written above.

Tiger Asset Solutions Canada, ULC



By: Mark P. Naughton

Title: Authorized Agent

GA Retail Canada ULC



By: SCOTT K. CARPENTER

Title: President, Managing Director

General Nutrition Centres Company

By:

Title:

IN WITNESS WHEREOF, the Consultant and the Merchant hereby execute this Agreement by their duly authorized representatives as a sealed instrument as of the day and year first written above.

Tiger Asset Solutions Canada, ULC

\_\_\_\_\_  
By:

Title:

GA Retail Canada ULC

\_\_\_\_\_  
By:

Title:

General Nutrition Centres Company

*Julia Solomon*  
\_\_\_\_\_

By:

Title:

**Exhibit A  
Store List**

<b>Loc Number</b>	<b>Location Name</b>	<b>Location Address</b>	<b>Location City</b>	<b>Location Province</b>
4297	Hillside Shopping Centre	1644 Hillside Avenue	Victoria	BC
4232	Robson Streetfront	1126 Robson Street	Vancouver	BC
4193	Guildford Town Center	10355 152 St	Surrey	BC
4243	Kelowna Mall	2271 Harvey Ave	Kelowna	BC
4038	Smart Centres Central @ G	1825-4720 Mcclelland Road	Richmond	BC
4016	Scotia Plaza	40 King St West Box 108	Toronto	ON
4043	Sunridge Mall	2525-36Th Street Ne	Calgary	AB
4065	Market Mall	3625 Shaganappi Trail	Calgary	AB
4239	Deerfoot Mall	#107 951 64 Av Ne	Calgary	AB
4188	Harvest Pointe Sc	5233 Ellerslie Rd Sw	Edmonton	AB
4048	Halifax Shopping Center	7001 Mumford Road	Halifax	NS
4124	Carrefour Angrignon	7077 Newman Boulevard	Lasalle	PQ
4022	St. Laurent S.C.	1200 St Laurent Blvd	Ottawa	ON
4028	Cornwall Square	1 Water Street East	Cornwall	ON
4059	Northgate Square	489 Albert Street North	Regina	SK
4184	Oshawa Centre	419 King Street West	Oshawa	ON
4050	Markville Town Centre	5000 Hwy 7 East	Markham	ON
4127	Stone Road Mall	435 Stone Road West	Guelph	ON
4117	Vaughan Mills	1 Bass Pro Mills Dr	Vaughan	ON
4201	Shoppes On Queen West	601 Queen Street West	Toronto	ON
4090	Argyle Mall	332 Clarke Road	London	ON
4174	Walker Place	4140 Walker Rd	Windsor	ON
4072	Driftwood Mall	2751 Cliffe Ave	Courtenay	BC
4235	Coquitlam Centre	2929 Barnet Highway	Coquitlam	BC
4278	Village Green Centre	4900 27Th Street	Vernon	BC
4504	Woodgrove Centre	6631 Island Highway N	Nanaimo	BC
4061	Londonderry Mall	137Th Ave & 66Th St	Edmonton	AB
4170	Erin Ridge Power Centre	935 St.Albert Trail	St Albert	AB
4180	Manning Town Centre	15733 37 Street	Edmonton	AB
4183	The Quarry	20 Quarry Street East	Cochrane	AB
4191	York Station	275 Broadway St E	Yorkton	SK
4286	Southlands Crossing	1991 Strachan Rd	Medicine Hat	AB
4503	Deerfoot Meadows	840-8180 11Th Street Se	Calgary	AB
4177	Avalon Mall	48 Kenmount Rd	St. Johns	NL
4131	Yarmouth Mall	76 Starrs Road	Yarmouth	NS
4052	Place D'Orleans	110 Place D'Orleans Dr	Ottawa	ON
4008	Southhill Shopping Centre	9325 Yonge Street	Richmond Hill	ON
4086	Bridgeport Plaza	13/14-94 Bridgeport Rd Ea	Waterloo	ON
4162	Gladstone Queen West Reta	4 Gladstone Ave	Toronto	ON
4171	Smartcentres Vaughan	3604 Major Mackenzie Dr	Vaughan	ON
4181	Shops At Don Mills	1090 Don Mills Rd	Toronto	ON
4186	North Park Sc	1405 Lawrence Ave W	Toronto	ON
4196	Shoppers World Danforth	3003 Danforth Ave	Toronto	ON
4204	Smartcentres St. Catharin	420 Vansickle Road	St. Catharines	ON
4248	Crossroads	2625B Weston Road	North York	ON



4256	Rio Centre Oakville	478 Dundas Street West	Oakville	ON
4506	Smart Centres Bradford	547 Holland St West	Bradford	ON
4150	Sudbury S Shopping Center	2408 Long Lake Rd	Sudbury	ON
4198	Collingwood Centre	99 Balsam Street	Collingwood	ON
4206	Smartcentres St. Thomas	1063 Talbot Street	St. Thomas	ON
4032	Lougheed Mall	9855 Austin Ave	Burnaby	BC
4084	Haney Place Mall	149-11900 Haney Pl	Maple Ridge	BC
4234	Tamarack Centre	1500 Cranbrook St N.#115	Cranbrook	BC
4280	Capilano Mall	935 Marine Dr	N. Vancouver	BC
4199	Tsawwassen Mills	5000 Canoe Pass Way	Tsawwassen	BC
4267	Bankers Hall	315 8Th Avenue Sw Ste 345	Calgary	AB
4039	St. Vital Center	130-1225 St Mary'S Rd	Winnipeg	MB
4054	Kildonan Place	1555 Regent Ave West	Winnipeg	MB
4066	Cornwall Mall	2102-11Th Ave	Regina	SK
4283	Southcentre Mall	100 Anderson Rd. S.E.	Calgary	AB
4207	Outlet Collection Winnipe	555 Sterling Lyon Parkway	Winnipeg	MB
4208	Premium Outlet Collection	#1 Outlet Collection Way	Edmonton Airport	AB
4067	Mayflower Mall	800 Grand Lake Road	Sydney	NS
4229	Regent Mall	1381 Regent Street	Fredericton	NB
4200	Colby Village	920 Cole Harbour Road	Dartmouth	NS
4159	Quartier Dix 30	8900 Blvd Leduc	Brossard	PQ
4192	Smartcentres Mascouche	117 Montee Masson	Mascouche	PQ
4179	Les Promenades Gatineau	1000 Blvd Maloney Quest	Gatineau	PQ
4185	Kemptville Colonnade Reta	304 Colonnade Dr	Kemptville	ON
4000	The Promenade Mall	1 Promenade Circle	Thorn Hill	ON
4017	Upper Canada Mall	17600 Yonge St	Newmarket	ON
4026	Burlington Mall	777 Guelph Line	Burlington	ON
4037	Eglinton Square S.C.	1431-1437 Victoria Park A	Toronto	ON
4075	Cloverdale Mall	250 The East Mall	Toronto	ON
4144	Georgetown Market Place	280 Guelph Street	Georgetown	ON
4189	Centerpoint Mall	6464 Younge St	Toronto	ON
4203	Yonge Sheppard Centre	4841 Yonge Street	Toronto	ON
4157	Riocan Marketplace	2181 Steele Ave West	Toronto	ON
4194	410 At Steeles	35 Resolution Dr	Brampton	ON
4287	Rio-Can Milton	1155 Maple Avenue	Milton	ON
4091	Heritage Place	1350 16Th Street East	Owen Sound	ON
4225	Lambton Mall	1380 London Road Unit33	Sarnia	ON
4263	White Oaks Mall	1105 Wellington Rd	London	ON
4270	Northgate Square	1500 Fisher St	North Bay	ON
4510	Station Mall	293 Bay Street	Sault Ste Marie	ON
4020	Intercity S/C	1000 Fort William Rd	Thunder Bay	ON
	Total: 86 Stores			

**Exhibit B**  
**Expense Budget**

<b>GNC - Canada Consultant's Expenses (\$ in USD)</b>
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**Advertisement**

Signs, Banners & Shipping	\$102,800
Signwalker Program	543,900

<b>Subtotal: Advertisement</b>	<b>\$646,700</b>
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<b>Supervision</b>	419,287
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<b>Miscellaneous</b>	30,000
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<b>Total Consultant Exp. (1) (2)</b>	<b>\$1,095,987</b>
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Notes:

(1) Assumes an average of 14.0-week Sale starting Thu, 06/25.

(2) Budget reflects 82 GOB Stores and 4 Transfer locations.

Should the numbers and/or classifications of the Stores fluctuate from these amounts, Merchant and Consultant shall mutually agree to amend the Budget and Consultant Fees.

**Exhibit C**  
**Security Requirements**

## GNC Contract Security Exhibit

Consultant has implemented and shall operate at all times the following technical and organizational security measures to safeguard and monitor the confidentiality, integrity, and availability of GNC data; the systems that store, process or transmit GNC data; and the services provided to GNC.

1. A written information security policy and program based on an industry-recognized security framework such as NIST 800.53 or ISO 27001/27002. Consultant shall provide a copy of the written information security program they have implemented.
2. An ongoing security awareness program to educate and test personnel about confidentiality and information security at the time of hire and periodically thereafter. Training includes both general-purpose security awareness and job-specific security responsibilities and procedures.
3. Policies, controls, and procedures to control, limit and monitor physical access to facilities where GNC data is processed, systems that provide services to GNC are located, and personnel that provide services to GNC are employed.
4. Policies, controls, and procedures to safeguard and monitor the networks and systems that process GNC data or provide services to GNC. Consultant utilizes current versions of operating systems, applications, software, and hardware that are covered by manufacturer support.
5. Policies, controls, and procedures to prevent the loss or corruption of GNC data and to ensure the confidentiality and integrity of all integrations, system interconnections, and transmissions between Consultant and GNC.
6. Policies, controls, and procedures to manage the creation, use, periodic re-certification, revocation, and deletion of access credentials and to authenticate, authorize, and audit access to data, networks, systems, services, and other information assets.
7. Policies, controls, and procedures to document, review, approve, test, and implement changes to software, hardware, data, applications, and services.
8. Policies, controls, and procedures to create automated logs and audit trails of system operations, user activities, and security events; to review logs, reports, or alerts of security events for all system components to identify anomalies or suspicious activity in a timely manner; and to investigate and addresses security events identified through its monitoring practices.
9. Policies, controls, and procedures for asset management, record retention, and record destruction to identify, classify, and manage information assets, software, and systems. Consultant shall immediately and securely remove from its systems and media, and at GNC's option return or destroy, all data at the end of its agreement with GNC, upon GNC's request, or when the data is no longer required to provide services to GNC. Consultant shall provide suitable documentation and certification of the removal processes and results.
10. Policies, controls, and procedures for a secure System Development Life Cycle (SDLC) that involves security in product development and implementation, trains personnel in secure development and coding concepts and practices, and verifies that products meet security requirements prior to delivery. The secure SDLC incorporates leading practices for authentication, authorization, and access control; data validation, transmission, and storage; cryptography; session management; and error handling.

11. Policies, controls, and procedures to assess, report, manage, and address internal and third-party risk. Consultant operates a continuous vulnerability management program that includes periodic scanning and penetration tests of systems, services, and networks; application security tests; and the timely installation of all relevant vendor security patches. Consultant subscribes to relevant manufacturer and industry security advisory services. Consultant develops and executes timely risk treatment and remediation action plans.
12. Policies, controls, and procedures for computer security incident response. Consultant designates and trains an incident response team and performs periodic incident response exercises. In the event of an incident that affects the security of the Consultant or the Consultant's third party service providers, Consultant shall notify GNC within 24 hours. Consultant shall cooperate with GNC and GNC's authorized representatives in the design and execution of any public notice and communication regarding the security incident and its impacts. Consultant shall cooperate with GNC to address the incident and implement corrective action plans.
13. Consultant acknowledges and agrees that all data received from GNC is owned by GNC. Consultant shall use data solely for the purpose of providing services to, and solely for the benefit of, GNC. Consultant shall not disclose GNC data to third parties or affiliates without the express written consent of GNC. Consultant shall store regulated personally identifiable data and personal data received from and owned by GNC within the US and will not transmit, transfer, or replicate the data to any location outside of the United States.
14. Consultant shall only disclose or transfer GNC data to authorized third parties for the purpose of rendering services to GNC. Consultant shall maintain an inventory of third parties to which Consultant discloses or transfers GNC's data. Consultant will provide this inventory to GNC upon request. Consultant shall require of its third parties, and accept responsibility to ensure that its third parties shall have in place equivalent safeguards for the protection of GNC data and services as specified in Consultant's agreement with GNC.
15. If Consultant processes, transmits, accesses, or stores payment card data in rendering services to GNC, then Consultant (and related applicable third parties) shall meet the requirements for a PCI Service Provider and shall demonstrate ongoing PCI Data Security Standard and/or Payment Application Data Security Standard compliance as a Service Provider annually by furnishing to GNC its then-current authorized Attestation of Compliance developed by a certified, independent PCI Qualified Security Assessor.
16. If Consultant processes personal data of European Union data subjects as a data processor rendering services to GNC, then Consultant (and related applicable third parties) shall implement appropriate technical and organizational measures in such a manner that processing will meet the requirements of GDPR and ensure the protection of the rights of the data subject, execute a data protection agreement with GNC, assist GNC to fulfill GDPR data subject rights requests. Consultant shall make available to GNC all information necessary to demonstrate compliance with GDPR obligations.
17. Consultant shall comply with all applicable federal, state, and local statutes and regulations governing Consultant's use, transmission, storage, and destruction of data.
18. Consultant has disclosed any breach of security or unauthorized access or unauthorized use of its systems or services that occurred in the past 36 months. Consultant has described the response and remedies implemented to address the cause of any breach.

19. Consultant has provided current attestation of privacy and security trust principles such as an SSAE 16 SOC 2 report (or equivalent) from an independent registered public accountant (or equivalent) covering all locations and functions that store, process, transmit, or access GNC data and/or systems.
20. Upon reasonable notice, Consultant shall permit GNC, or a third-party provider acting on GNC's behalf, to conduct security vulnerability testing of the systems and/or software developed on behalf of GNC and/or used to render services to GNC. Consultant shall develop and implement timely corrective action plans to remediate defects and vulnerabilities noted during the testing.
21. Consultant shall reasonably cooperate with any investigation carried out by or on behalf of GNC relating to the security, integrity, confidentiality, availability, or accuracy of GNC data, including promptly providing information or material in its possession or control in support of such investigation, and making all necessary personnel available to respond to any questions or issues that may arise.
22. Consultant has executed GNC's non-disclosure agreement (or equivalent).

END OF DOCUMENT

Revised 8/7/2018

**Exhibit D**  
**Canadian Sale Guidelines**



## CANADIAN SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of General Nutrition Centres Company (the “**Merchant**”). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (collectively with their respective U.S. affiliates, the “**Consultant**”) and the Merchant dated as of June 18, 2020 (the “**Consulting Agreement**”).

1. Except as otherwise expressly set out herein, and subject to: (i) the orders granted or issued in the Merchant’s bankruptcy case (the “**Bankruptcy Case**”) in the United States of America under Chapter 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) and the Merchant’s ancillary proceedings (the “**CCAA Proceedings**”) in Canada under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) before the Ontario Superior Court of Justice (Commercial List) (individually, an “**Order**”, and, collectively, the “**Orders**”); or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a “**Landlord**” and, collectively, the “**Landlords**”) and approved by each of the Consultant and Information Officer in writing, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected Landlords are privy for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remains open during its normal hours of operation provided for in its respective Lease until the respective Sale Termination Date for such Store. The Sale at the Stores shall end by no later than the Sale Termination Date. Rent payable under the respective Leases shall be paid in accordance with the terms of the Orders, as applicable.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as an “everything on sale”, an “everything must go”, a “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “going out of business” or a “liquidation” sale it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon written request from a Landlord, the Landlord’s counsel, the Merchant or the Information Officer, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail to such Landlord(s) or to their counsel of record and the Information Officer. Where the provisions of the Lease conflict with these Canadian Sale Guidelines, these Canadian Sale Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including “you pay” or “topper” signs). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in

writing that the banners are not to be used, no banners shall be used absent further Order of the Court. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with “store closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord’s concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are “final”.
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord, and no advertising trucks shall be used on a Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are materially in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.
10. Subject to the terms of paragraph 9 above, the Consultant may sell Offered FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise the sale of Offered FF&E consistent with these guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the applicable Landlord, acting reasonably. Additionally, the purchasers of any Offered FF&E sold during the Sale shall only be permitted to remove the Offered FF&E either through the back shipping areas designated by the applicable Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the Offered FF&E can fit in a shopping bag, with applicable Landlord’s supervision

as required by the applicable Landlord. The Consultant shall repair any damage to the Stores resulting from the removal of any Offered FF&E by Consultant or by third party purchasers of Offered FF&E from Consultant.

11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove Offered FF&E from the Stores. The Merchant will arrange a walk through with each Landlord that requests a walk through with the Consultant to identify the Offered FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or pursuant to the dispute resolution section of the Canadian Store Closing Procedures. If the Merchant has rejected the Lease governing such Store in accordance with the Bankruptcy Code, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for under the Bankruptcy Code), and the rejection of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a rejection notice is delivered to a Landlord pursuant to the Bankruptcy Code while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of such rejection, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the rejection, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the applicable Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or Offered FF&E at any of the Stores.
15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Consultant shall be Daniel Richer who may be reached by phone at [416-865-4445](tel:416-865-4445) or email at [dricher@fasken.com](mailto:dricher@fasken.com). Contact persons for the Merchant and the Information Officer are set out in the Canadian Store Closing Procedures. If the parties are unable to resolve the dispute between themselves, the notice and dispute sections of the Canadian Store Closing Procedures shall be followed by the parties. For the duration of any such dispute, the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, for greater certainty, that if a banner has been hung in accordance with these Canadian Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.
16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

17. These Canadian Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Canadian Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court).

**Exhibit E**  
**Approval Order**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) WEEKDAY, THE #  
 )  
JUSTICE ) DAY OF JUNE, 2020  
 )

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC PARENT  
LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC., GENERAL  
NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY,  
LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL  
HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC HEADQUARTERS LLC, GUSTINE  
SIXTH AVENUE ASSOCIATED, LTD., GNC CANADA HOLDINGS, INC., GNC  
GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and GNC  
PUERTO RICO, LLC

APPLICATION OF GNC HOLDINGS, INC.,  
UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C 36, AS AMENDED

**CONSULTING AGREEMENT APPROVAL ORDER**

THIS MOTION, made by GNC Holdings, Inc. (“GNC”, in its capacity as the foreign representative of the Debtors (as defined below, and GNC, in such capacity, the “**Foreign Representative**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an Order among other things, approving the consulting agreement entered into between, on the one hand, General Nutrition Centres Company (“**GNC Canada**”) and on the other hand, a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (collectively, the “**Consultant**”) dated as of ■, 2020 (the

“**Consulting Agreement**”), and other related relief was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the affidavit of ■ sworn June ■, 2020, and the Exhibits thereto, and the pre-filing report of FTI Consulting Canada Inc. in its capacity as proposed Information Officer dated June ■, 2020 (the “**Pre-Filing Report**”), and on hearing the submissions of counsel for the Foreign Representative and the other entities listed on Schedule “A” hereto (collectively, the “**Debtors**”), FTI Consulting Canada Inc. in its capacity as court-appointed Information Officer (the “**Information Officer**”), the Ad Hoc Group of Crossover Lenders, the Consultant, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of ■ sworn ■ on ■, 2020.

### **Service**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein, shall have the meaning ascribed thereto in the Affidavit of ■ dated ■.

### **Recognition of Chapter 11 Store Closings Order**

3. THIS COURT ORDERS that the Chapter 11 Store Closings Order (as defined in the ■, and a copy of which is attached as Schedule “■” to this Order) of the United States Bankruptcy Court for the District of Delaware made in the bankruptcy cases commenced by the Debtors under Chapter 11 of the United States Bankruptcy Code (the “**Bankruptcy Case**”) is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA, and, while this Order provides additional guidance in terms of dealing with Property (as defined below) in Canada, in the event of any conflict between the terms of the Chapter 11 Store Closings Order and this Order, the Chapter 11 Store Closings Order shall govern.

### **Approval of the Consulting Agreement**

4. THIS COURT ORDERS that the Consulting Agreement, including, without limitation, the Canadian Sale Guidelines attached thereto as **Schedule “A”** (the “**Canadian Sale Guidelines**”), and the transactions contemplated under the Consulting Agreement, are hereby approved with such minor amendments to the Consulting Agreement (but not the Canadian Sale Guidelines) as the Debtors, with the consent of the Information Officer, the Ad Hoc Group of Crossover Lenders, and the Consultant may deem necessary and agree to in writing. The Debtors, and each of them are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Consulting Agreement, including, without limitation, the Canadian Sale Guidelines, and the transactions contemplated therein.

### **The Sale**

5. THIS COURT ORDERS that the Debtors, or any of them, with the assistance of the Consultant, are authorized and directed to conduct the Sale in accordance with the Chapter 11 Store Closings Order, this Order, the Canadian Store Closing Procedures, the Canadian Sale Guidelines and the Consulting Agreement and to advertise and promote the Sale within the Stores in Canada, all in accordance with the foregoing. If there is a conflict between the Chapter 11 Store Closings Order, the Canadian Store Closing Procedures, the Canadian Sale Guidelines and the Consulting Agreement, the order of priority of documents to resolve each conflict is as follows: (1) the Chapter 11 Store Closings Order; (2) this Order; (3) the Canadian Store Closing Procedures; (4) the Canadian Sale Guidelines; and (5) the Consulting Agreement.

6. THIS COURT ORDERS that the Debtors, with the assistance of the Consultant, are authorized to market and sell the Merchandise and, subject to the Canadian Sale Guidelines, the Offered FF&E, free and clear of all liens, claims, encumbrances, security interests, hypothecs, prior claims, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or arise or come into existence following the date of this Order (in each case, whether



contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “**Claims**”), including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by the the Supplemental Order dated ■, 2020, each made in the within proceedings, and any other charges hereinafter granted by this Court in the within proceedings; and (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”), which Claims will attach instead to the proceeds received from the Merchandise and the Offered FF&E, other than amounts due and payable to the Consultant pursuant to the Consulting Agreement, in the same order and priority as the Claims existed as at the date hereof.

7. THIS COURT ORDERS that, subject to the terms of the Chapter 11 Store Closings Order, this Order, the Canadian Store Closing Procedures and the Canadian Sale Guidelines, the Consultant shall have the right to use the Stores in Canada and all related store services, furniture, trade fixtures and equipment, including the FF&E, located at the Stores in Canada, and other assets of the Debtors as designated under the Consulting Agreement for the purpose of conducting the Sale, and for such purposes, the Consultant shall be entitled to the benefit of the stay of proceedings provided for in the Initial Recognition Order, as applicable and as such stay may be extended from time to time.

8. THIS COURT ORDERS that until the Sale Termination Date which, for greater certainty, shall be the earlier of September 30, 2020, and the effective date of a lease rejection in the Bankruptcy Case, the Consultant shall have access to the Stores in Canada in accordance with the applicable leases and the Canadian Store Closing Procedures and the Canadian Sale Guidelines on the basis that the Consultant is assisting the Debtors and the Debtors have granted the right of access to the applicable Store to the Consultant. To the extent that the terms of the applicable leases are in conflict with any term of the the Chapter 11 Store Closings Order, this Order, the Canadian Store Closing Procedures or the Canadian Sale Guidelines, the terms of the Chapter 11 Store Closings Order, this Order, the Canadian Store Closing Procedures and the Sale Guidelines shall govern.

9. THIS COURT ORDERS that nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of the leases for the Stores in Canada. Nothing contained in this Order, the Canadian Store Closing Procedures or the Canadian Sale Guidelines shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease.

10. THIS COURT ORDERS that nothing herein is, or shall be deemed to be, a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

11. THIS COURT ORDERS that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any intellectual property licensor, the trademarks of the Debtors, or any of them, trade names and logos, customer/marketing lists, website and social media accounts as well as all licenses and rights granted to the Debtors, or any of them, to use the trade names, and logos of third parties, relating to and used in connection with the operation of the Stores in Canada solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Chapter 11 Store Closings Order , this Order, the Canadian Store Closing Procedures, the Canadian Sale Guidelines and the Consulting Agreement.

### **Consultant Liability**

12. THIS COURT ORDERS that the Consultant shall act solely as an independent consultant to the Debtors and that it shall not be liable for any claims against the Debtors, or any of them, other than as expressly provided for in the Chapter 11 Store Closings Order, Consulting Agreement, the Canadian Sale Guidelines and the Canadian Store Closing Procedures, and more specifically:

- (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores in Canada or the assets located therein or associated therewith or of the employees of the Debtors, or any of them, located at the Stores in Canada or any other property of the Debtors, or any of them;
- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any

legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and

- (c) the Debtors shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events and closings occurring at the Stores in Canada during and after the term of the Consulting Agreement, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

#### **Consultant as Unaffected Creditor**

13. THIS COURT ORDERS that, subject only to paragraph 7 of this Order, the Consultant shall not be affected by the stay of proceedings in respect of the Debtors, or any of them, and shall be entitled to exercise its remedies under the Consulting Agreement in respect of claims of the Consultant pursuant to the Consulting Agreement (collectively, the “**Consultant’s Claims**”).

14. THIS COURT ORDERS that notwithstanding the terms of any order issued by this Court in the within proceedings, the Debtors, or any of them, shall not be entitled to repudiate, disclaim or resiliate the Consulting Agreement or any of the agreements, contracts or arrangements in relation thereto entered into with the Consultant.

15. THIS COURT ORDERS that the Debtors, or any of them, are hereby authorized and directed to remit, in accordance with the Consulting Agreement, or any other agreement contract or arrangement in relation thereto, all amounts that become due to the Consultant thereunder.

16. THIS COURT ORDERS that subject to any order made in the Bankruptcy Case, no Claims shall attach to any amounts payable by the Debtors, or any of them, to the Consultant pursuant to the Consulting Agreement, including any amounts that must be reimbursed by the Debtors, or any of them, to the Consultant, and the Debtors, or any of them, shall pay any such

amounts to the Consultant free and clear of all Claims, notwithstanding any enforcement or other process, all in accordance with the Consulting Agreement.

17. THIS COURT ORDERS that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the “**BIA**”), in respect of the Debtors, or any of them, or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Debtors, or any of them; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (each, an “**Agreement**”) that binds the Debtors, or any of them, the Consulting Agreement, including, without limitation, the Canadian Sale Guidelines attached thereto as **Schedule “A”** (the “**Canadian Sale Guidelines**”), and the transactions contemplated thereby, including, without limitation, the payment of amounts due to the Consultant, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors, or any of them, and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of the Debtors, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

18. THIS COURT ORDERS that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Debtors, or any of them, or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Debtors, or any of them; (d) the provisions of any federal or provincial statute; or (e) any Agreement that binds the Debtors, or any of them, any obligation to clean up or repair any of the leased premises contained in this Order, the Canadian Store Closing Procedures or the Canadian Sale Guidelines, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors, or any of them, and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of the Debtors, or any of them, nor shall they, or any of them, constitute or be deemed to be a

preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

**General**

19. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

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## **Schedule “A”**

### **List of Debtors**

GNC Holdings, Inc.

General Nutrition Centres Company

GNC Parent LLC

GNC Corporation

General Nutrition Centers, Inc.

General Nutrition Corporation

General Nutrition Investment Company

Lucky Oldco Corporation

GNC Funding Inc.

GNC International Holdings Inc.

GNC China Holdco, LLC

GNC Headquarters LLC

Gustine Sixth Avenue Associated, Ltd.

GNC Canada Holdings, Inc.

GNC Government Services, LLC

GNC Puerto Rico Holdings, Inc.

GNC Puerto Rico, LLC

**Schedule “B”**

**Canadian Sale Guidelines**

## CANADIAN SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of General Nutrition Centres Company (the “**Merchant**”). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (collectively with their respective U.S. affiliates, the “**Consultant**”) and the Merchant dated as of June 18, 2020 (the “**Consulting Agreement**”).

1. Except as otherwise expressly set out herein, and subject to: (i) the orders granted or issued in the Merchant’s bankruptcy case (the “**Bankruptcy Case**”) in the United States of America under Chapter 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) and the Merchant’s ancillary proceedings (the “**CCAA Proceedings**”) in Canada under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) before the Ontario Superior Court of Justice (Commercial List) (individually, an “**Order**”, and, collectively, the “**Orders**”); or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a “**Landlord**” and, collectively, the “**Landlords**”) and approved by each of the Consultant and Information Officer in writing, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected Landlords are privy for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remains open during its normal hours of operation provided for in its respective Lease until the respective Sale Termination Date for such Store. The Sale at the Stores shall end by no later than the Sale Termination Date. Rent payable under the respective Leases shall be paid in accordance with the terms of the Orders, as applicable.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as an “everything on sale”, an “everything must go”, a “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “going out of business” or a “liquidation” sale it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon written request from a Landlord, the Landlord’s counsel, the Merchant or the Information Officer, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail to such Landlord(s) or to their counsel of record and the Information Officer. Where the provisions of the Lease conflict with these Canadian Sale Guidelines, these Canadian Sale Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise



contained in the sign package, including “you pay” or “topper” signs). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with “store closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord’s concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are “final”.
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord, and no advertising trucks shall be used on a Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are materially in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.
10. Subject to the terms of paragraph 9 above, the Consultant may sell Offered FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise

the sale of Offered FF&E consistent with these guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the applicable Landlord, acting reasonably. Additionally, the purchasers of any Offered FF&E sold during the Sale shall only be permitted to remove the Offered FF&E either through the back shipping areas designated by the applicable Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the Offered FF&E can fit in a shopping bag, with applicable Landlord's supervision as required by the applicable Landlord. The Consultant shall repair any damage to the Stores resulting from the removal of any Offered FF&E by Consultant or by third party purchasers of Offered FF&E from Consultant.

11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove Offered FF&E from the Stores. The Merchant will arrange a walk through with each Landlord that requests a walk through with the Consultant to identify the Offered FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or pursuant to the dispute resolution section of the Canadian Store Closing Procedures. If the Merchant has rejected the Lease governing such Store in accordance with the Bankruptcy Code, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for under the Bankruptcy Code), and the rejection of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a rejection notice is delivered to a Landlord pursuant to the Bankruptcy Code while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of such rejection, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the rejection, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the applicable Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or Offered FF&E at any of the Stores.
15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Consultant shall be Daniel Richer who may be reached by phone at 416-865-4445 or email at [dreicher@fasken.com](mailto:dreicher@fasken.com). Contact persons for the Merchant and the Information Officer are set out in the Canadian Store Closing Procedures. If the parties are unable to resolve the dispute between themselves, the notice and dispute sections of the Canadian Store

Closing Procedures shall be followed by the parties. For the duration of any such dispute, the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, for greater certainty, that if a banner has been hung in accordance with these Canadian Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.

16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Canadian Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Canadian Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court).

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC. et al.

APPLICATION OF GNC HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**CONSULTING AGREEMENT APPROVAL  
ORDER**

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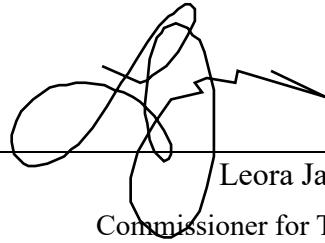
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Lawyers for the Applicant



TAB 00

THIS IS **EXHIBIT “OO”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, consisting of several overlapping loops and a final horizontal stroke extending to the right. The signature is positioned above a horizontal line.

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Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
	)	Case No. 20-11662 (___)
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**MOTION OF DEBTORS FOR ORDERS  
AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES**

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The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Interim Order*”) and **Exhibit B** (the “*Proposed Final Order*,” and together with the Proposed Interim Order, the “*Proposed Orders*”), respectively: authorizing, but not directing, them to remit and pay any prepetition sales and use taxes, income taxes, franchise taxes, other business or regulatory taxes or fees, real and personal property taxes, rent taxes, and any other taxes and fees for which the Debtors’ directors and officers may be liable or which may not constitute property of the Debtors’ estates and other types of taxes, fees, assessments or similar charges and any penalty, interest or similar charges in

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

respect of such taxes and fees (collectively, the “*Taxes and Fees*”) owing to international, federal, state and local governmental or quasi-governmental entities (the “*Taxing Authorities*”).<sup>2</sup>

2. Unless further authorization is obtained from this Court, the Debtors propose to limit the aggregate amount of payments to be made on account of prepetition Taxes and Fees under this Motion to (i) \$5,799,000 on an interim basis and (ii) \$10,280,000 in an aggregate final amount, inclusive of amounts paid pursuant to the Interim Order, or such higher amount as may be set forth in any budget governing postpetition financing or the use of cash collateral.

3. For the avoidance of doubt, the requested authorization would be discretionary. In addition, the requested authorization would be without prejudice to the Debtors’ rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate and would extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

4. In addition, the Debtors request that the Court authorize all banks and financial institutions to receive, process, honor, pay, and, if necessary, reissue all prepetition and postpetition checks, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the bank accounts used by the Debtors to satisfy their obligations in connection with the Taxes and Fees approved herein, upon receipt by each bank or financial institution of notice of such authorization, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Debtors additionally request that the Court authorize them to issue new postpetition checks to replace any checks that may nevertheless be dishonored and to reimburse any expenses that holders of claims

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<sup>2</sup> It is possible that Taxes and Fees owed to additional entities may be uncovered by the Debtors subsequent to the filing of this Motion. The Debtors will serve on any of the subsequently identified entities a copy of this Motion and the Interim and Final Orders entered with respect to the Motion.



in connection with the Taxes and Fees may incur as a result of any bank's failure to honor a prepetition check.

5. As set forth below, the Taxes and Fees at issue are appropriate for payment to the extent that they are priority or secured claims that are payable in full or, alternatively, under the personal liability theory or the doctrine of necessity. By paying the Taxes and Fees in the ordinary course of business, as and when due, the Debtors will avoid unnecessary disputes with the Taxing Authorities—and expenditures of time and money resulting from such disputes—over myriad issues that are typically raised by the Taxing Authorities as they attempt to enforce their rights to collect Taxes and Fees.

### **JURISDICTION**

6. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), 506(a), 507(a)(8) and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “*Bankruptcy Code*”) and rule 6003 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

## **BACKGROUND**

7. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

8. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies’ Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

9. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the “*First Day Declaration*”)<sup>3</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>4</sup>

## **THE TAXES AND FEES**

10. Prior to the Petition Date, the Debtors incurred obligations related to the Taxes and Fees, which include:<sup>5</sup>

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<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>4</sup> The First Day Declaration and other relevant case information is available from (a) the Court’s website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors’ proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

<sup>5</sup> The Debtors incur various taxes related to their employees which are separately addressed in the *Motion of Debtors for Interim and Final Orders (A) Authorizing Payment of Certain Prepetition Workforce Obligations, (B) Authorizing Continuance of Workforce Programs, (C) Authorizing Payment of Withholding and Payroll-Related Taxes, and (D) Authorizing Payment of Prepetition Claims Owing to Workforce Program Administrators or Providers*, filed contemporaneously herewith.

- (a) **Sales and Use Taxes.** The Debtors incur, collect, and remit sales taxes to the Taxing Authorities, in connection with the sale and distribution of products in their stores and through online orders. Additionally, the Debtors purchase a variety of products and materials necessary for the operation of their business from vendors who may not operate in the state where the property is to be delivered and, therefore, do not charge the Debtors sales tax in connection with such purchases. In these cases, applicable law generally requires the Debtors to subsequently pay use taxes on such purchases to the applicable Taxing Authorities. Accordingly, the Debtors seek authority to pay and remit any such prepetition sales and use taxes to the relevant Taxing Authorities.
- (b) **Income Taxes.** In the ordinary course of operating their businesses, the Debtors incur international, federal, state and local income taxes. The Debtors believe they are current with respect to payment of income taxes, but out of an abundance of caution seek authority to pay any prepetition income taxes.
- (c) **Franchise Taxes / Business Fees.** The Debtors are required to pay various franchise taxes, business licensing and related fees required to conduct business in jurisdictions in which the Debtors operate.
- (d) **Property Taxes.** State and local laws in the jurisdictions where the Debtors operate generally grant Taxing Authorities the power to levy property taxes against the Debtors' real and personal property. To avoid the imposition of statutory liens on their real and personal property, the Debtors typically pay property taxes in the ordinary course of business.
- (e) **Rent Taxes.** The Debtors incur commercial rent taxes related to their store locations in the borough of Manhattan, New York, NY.
- (g) **Other Taxes.** The Debtors incur additional taxes and fees including bag taxes, sugar taxes, and miscellaneous taxes not accounted for in the above categories which the Debtors are required to pay to Taxing Authorities.

11. Although, as of the Petition Date, the Debtors are substantially current in the payment of assessed and undisputed Taxes and Fees, certain Taxes and Fees attributable to the prepetition period may not yet have become due and owing or may be or become subject to audit by the applicable Taxing Authority. The Debtors' estimate of Taxes and Fees accrued prior to the Petition Date is as follows:<sup>6</sup>

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<sup>6</sup> Due to the COVID-19 pandemic, certain jurisdictions where the Debtors operate have granted extensions on tax obligations including income tax payments. As a result, it is unclear when and in what amount certain Taxes

<b>Category</b>	<b>Approximate Amount Accrued as of Petition Date</b>	<b>Approximate Amount Due Within 21 Days</b>
Sales and Use Taxes	\$ 7,080,000	\$ 3,981,000
Income Taxes	\$ 1,190,000	\$ 969,000
Franchise Taxes / Business Fees	\$ 700,000	\$ 494,000
Property Taxes	\$ 1,170,000	\$ 302,000
Rent Taxes	\$ 30,000	\$ 22,000
Other Taxes	\$ 110,000	\$ 31,000
<b>Total</b>	<b>\$ 10,280,000</b>	<b>\$ 5,799,000</b>

12. Continuing to pay the Taxes and Fees as they come due will preserve the resources of the Debtors' estates and advance the Debtors' goal of a successful restructuring. If the Taxes and Fees are not timely paid, the Debtors may be required to spend time and incur attorneys' fees and other costs to resolve a multitude of related issues, each turning on the particular terms of applicable laws, including whether (a) the obligations are priority, secured, or unsecured in nature, (b) the obligations are proratable or fully prepetition or postpetition, and (c) penalties, interest, attorneys' fees, and costs can continue to accrue on a postpetition basis and, if so, whether such penalties, interest, attorneys' fees, and costs are priority, secured, or unsecured in nature.

13. These Chapter 11 Cases are complicated due to the nature of the Debtors' business and the particulars of the Debtors' capital structure, and the Debtors' focus should be on addressing their operational and financial issues in a manner that will maximize recoveries. In

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and Fees payable by the Debtors may come due. The Debtors request authorization to pay all Taxes and Fees as they come due in the ordinary course of business.

this context, paying the Taxes and Fees carries relatively insignificant costs and will have no meaningful effect on the recoveries of creditors in the Chapter 11 Cases, particularly in view of the priority or secured status associated with such obligations. Moreover, the payment amount will likely be offset in no small part by the amount of postpetition resources that the Debtors will conserve by obviating the need to spend time and money to address disputes with the Taxing Authorities.

14. Nonpayment or delayed payment of the Taxes and Fees may also subject the Debtors to efforts by certain Taxing Authorities, whether or not permissible under the Bankruptcy Code, to revoke the Debtors' licenses and other privileges either on a postpetition or postconfirmation basis. Moreover, certain of the Taxes and Fees may be considered to be obligations as to which the Debtors' officers and directors may be held directly or personally liable in the event of nonpayment. These collection efforts by the Taxing Authorities would create obvious distractions for the Debtors and their officers and directors in their efforts to bring the Chapter 11 Cases to a successful conclusion. Accordingly, the Debtors believe the relief requested herein is both essential to continue ongoing operations without disruption and in the best interests of the Debtors, their estates, and all interested parties.

15. Certain of the Taxing Authorities may not have been paid or may have been sent checks and/or fund transfers for Taxes and Fees that may or may not have been presented or cleared as of the Petition Date. Similarly, in other cases, Taxes and Fees have accrued or are accruing, but have not yet become due and payable and, thus, any checks or fund transfers will be issued on a postpetition basis. Accordingly, the Debtors request entry of the Interim and Final Orders authorizing their banks and other financial institutions to receive, process, honor pay and, if necessary, reissue all prepetition and postpetition checks and fund transfers, including

prepetition checks and electronic payment and transfer requests that the Debtors reissue or rerequest postpetition, issued by the Debtors in payment of Taxes and Fees that had not been honored and paid as of the Petition Date and authorizing the Debtors' banks and financial institutions to rely on the representations of the Debtors as to which checks and fund transfers should be honored and paid in respect of Taxes and Fees, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

### **BASIS FOR RELIEF**

#### **I. CERTAIN OF THE TAXES AND FEES MAY BE SECURED OR PRIORITY CLAIMS UNDER THE BANKRUPTCY CODE.**

16. To the extent that the Taxes and Fees are priority claims pursuant to section 507(a)(8) of the Bankruptcy Code, or secured claims pursuant to section 506(a) of the Bankruptcy Code, their payment should be authorized on the basis that they are required to be paid in full as a condition to satisfying the plan confirmation requirements under section 1129 of the Bankruptcy Code or, in any event, that they would be entitled to payment before any prepetition non-priority unsecured claim. And in fact, the Debtors believe that the vast majority of the Taxes and Fees constitute either priority claims under section 507(a)(8) or secured claims under section 506(a) of the Bankruptcy Code. Therefore, the Debtors' payment of the Taxes and Fees now, will likely affect only the timing of the payments and not the amounts to be received by the Taxing Authorities. Moreover, by paying legitimate tax claims now, the Debtors will avoid any unnecessary fees, interest, or penalties that might otherwise be asserted. Other creditors and parties in interest, therefore, will not be prejudiced—and, indeed, will ultimately benefit—if the relief sought herein is granted by this Court.

## **II. PAYING THE TAXES AND FEES IS A SOUND EXERCISE OF BUSINESS JUDGMENT AND SHOULD BE APPROVED.**

17. This Court may also authorize the Debtors to pay the Taxes and Fees under sections 363(b) of the Bankruptcy Code. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor “may use, sell, or lease, other than in the ordinary course of business, property of the estate” after notice and a hearing. 11 U.S.C. § 363(b)(1). Generally, the debtor is only required to “show that a sound business purpose” justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring “good business reason” for use under section 363(b) of the Bankruptcy Code). This standard prohibits other parties from second-guessing the debtor’s business judgment if the debtor has shown that the proposed use will benefit the debtor’s estate. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

18. Failure to pay the Taxes and Fees to the Taxing Authorities in full and on time, thereby risking the cessation of normal relations between the Taxing Authorities and the Debtors, would harm the Debtors’ estates to a far greater extent than the amount of the prepetition Taxes and Fees owing. Foremost, the Taxing Authorities could determine to take precipitous action, including a marked increase in audits, a flurry of lien filings, and significant administrative maneuvering at the expense of the Debtors’ time and resources. Prompt and regular payment of

the Taxes and Fees will avoid this unnecessary governmental action. Thus, paying the Taxes and Fees reflects a sound exercise of the Debtors' business judgment.

### **III. PAYING THE TAXES AND FEES IS NECESSARY TO THE SUCCESS OF THESE CHAPTER 11 CASES AND SHOULD BE APPROVED**

19. In addition, the Debtors should be authorized to pay the Taxes and Fees because doing so is necessary to the success of these chapter 11 cases. Section 105(a) of the Bankruptcy Code provides that a bankruptcy court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). Courts have interpreted this provision to authorize payments on prepetition claims where the payments are essential to the success of the debtor's chapter 11 process under what is known as the “necessity of payment doctrine.” *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) (“Thus, the ‘necessity of payment’ doctrine...teaches no more than, if a payment of a claim which arose prior to reorganization is essential to the continued operation of the [debtor's business] during reorganization, payment may be authorized...”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) “provides a statutory basis for payment of pre-petition claims” under necessity of payment doctrine); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (“The appropriate standard...is commonly referred to as ‘the necessity of payment doctrine.’”).

20. Because of the adverse consequences that could follow if the Taxes and Fees are not paid, doing so is necessary to the Debtors' reorganization efforts. The Debtors' very ability to continue operations in jurisdictions where the Taxes and Fees are not paid could be jeopardized. Even where the consequences are not so severe, the potential for disruption, distraction, and incurring unnecessary costs is very real and could thwart the Debtors'



restructuring efforts. Accordingly, the Debtors should be authorized to pay the Taxes and Fees under section 105(a) of the Bankruptcy Code and the necessity of payment doctrine.

#### **IV. CERTAIN “TRUST FUND” TAXES ARE NOT PROPERTY OF THE DEBTORS’ ESTATES AND SHOULD BE AUTHORIZED TO BE PAID**

21. Certain of the Taxes and Fees may constitute so-called “trust fund” taxes, which are required to be collected from third parties and held in trust for payment to the Taxing Authorities. Such taxes are not considered property of the estates under section 541(d) of the Bankruptcy Code. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 59 (1990); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 97 (3d Cir. 1994) (holding that income required to be withheld by city ordinance and state law is held “in trust” for the taxing authority); *DeChiaro v. N.Y. State Tax Comm’n*, 760 F.2d 432, 433-34 (2d Cir. 1985) (holding that a sales tax that is required by state law to be collected by sellers from their customers is a “trust fund” tax). The Debtors, therefore, arguably have no equitable interest in the applicable Taxes and Fees that are trust fund taxes, are obligated to pay over the collected amounts, and should be authorized to do so.

#### **V. ABSENT THE REQUESTED RELIEF, THE DEBTORS’ OFFICERS AND DIRECTORS MAY BE PERSONALLY LIABLE FOR NON-PAYMENT OF CERTAIN TAXES AND FEES**

22. Additionally, under the laws of many states, officers and directors may be held directly or personally liable for the nonpayment of certain of these taxes. It is in the best interest of the Debtors’ estates to eliminate the possibility that officers and directors will become subject to time-consuming and potentially damaging distractions.

23. These Chapter 11 Cases are complicated due to, among other things, the nature and geographic scope of the Debtors’ businesses, and the Debtors’ focus should be on addressing their operational and financial issues in a manner that will maximize recoveries. In this context,

the payment of the Taxes and Fees is insignificant and will have no meaningful effect on the recoveries of creditors in these Chapter 11 Cases, particularly in view of the priority or secured status of a significant portion of such obligations. Moreover, the payment amount will likely be offset in no small part by the amount of postpetition resources that the Debtors will conserve by obviating the need to spend time and money to address disputes with the Taxing Authorities that are unnecessary and wasteful of the resources of the Debtors and this Court.

#### **VI. PRECEDENT CASES SUPPORT THE GRANTING OF THE REQUESTED RELIEF**

24. The relief requested in this Motion is similar to relief granted by numerous courts, including this court in other chapter 11 cases in this district. *See, e.g., In re Hexion Holdings LLC*, Case No. 19-10684 (KG) (Bankr. D. Del. Apr. 2, 2019) (authorizing debtors to pay prepetition taxes and fees in the ordinary course of business); *In re Imerys Talc America Inc.*, Case No. 19-10289 (LSS) (Bankr. D. Del. Feb. 13, 2019) (same); *In re J & M Sales Inc.*, Case No. 18-11801 (LLS); (Bankr. D. Del. Aug. 27, 2018) (same); *In re Samuels Jewelers, Inc.*, Case No. 18-11818(KJC) (Aug. 8, 2018) (same); *In re Enduro Res. Partners LLC*, Case No. 18-11174 (KG) (Bankr. D. Del. Jun. 8, 2018) (same); *In re Claire's Stores, Inc.*, Case No. 18-10584 (MFW) (Bankr. D. Del. Apr. 17, 2018) (same).

#### **PROCESSING OF CHECKS AND ELECTRONIC FUND TRANSFERS SHOULD BE AUTHORIZED**

25. The Debtors have sufficient funds to pay any amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing and cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Taxes and Fees. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer

requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND  
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

26. Certain aspects of the relief requested herein are subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant this relief on an expedited basis if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

27. Additionally, with respect to any aspect of the relief sought herein that constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

**RESERVATION OF RIGHTS**

28. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other

applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

#### **NOTICE**

29. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; (p) the Taxing Authorities and (q) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be

served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank.]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Orders, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Joseph M. Mulvihill  
Michael R. Nestor (No. 3526)  
Kara Hammond Coyle (No. 4410)  
Andrew L. Magaziner (No. 5426)  
Joseph M. Mulvihill (No. 6061)  
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**LATHAM & WATKINS LLP**

Richard A. Levy (*pro hac vice* pending)  
Caroline A. Reckler (*pro hac vice* pending)  
Asif Attarwala (*pro hac vice* pending)  
Brett V. Newman (*pro hac vice* pending)  
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- and -

George A. Davis (*pro hac vice* pending)  
Jeffrey T. Mispagel (*pro hac vice* pending)  
885 Third Avenue  
New York, New York 10022  
Telephone: (212) 906-1200  
Facsimile: (212) 751-4864  
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jeffrey.mispagel@lw.com

*Proposed Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

---

In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ___

---

**INTERIM ORDER  
AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES**

---

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an interim order authorizing the Debtors to pay any prepetition Taxes and Fees owing to the Taxing Authorities (this “*Interim Order*” and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States

---

<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized to pay all Taxes and Fees owing to the Taxing Authorities in the ordinary course of their business, as and when due, up to an aggregate amount of \$5,799,000 on account of prepetition Taxes and Fees without further order of this Court. Such Taxes and Fees are summarized in further detail in the chart below.

Category	Estimated Interim Amount
Sales and Use Taxes	\$ 3,981,000
Income Taxes	\$ 969,000
Franchise Taxes / Business Fees	\$ 494,000
Property Taxes	\$ 302,000
Rent Taxes	\$ 22,000
Other Taxes	\$ 31,000
<b>Total</b>	<b>\$ 5,799,000</b>

3. The Debtors may seek additional relief from this Court in the future in the event that the Debtors subsequently determine that additional prepetition Taxes and Fees are owed by the Debtors.

4. The Debtors' rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

5. Nothing in the Motion or this Interim Order shall be construed as impairing the Debtors' right to contest the validity, amount, or priority of any Taxes and Fees allegedly due or owing to any Taxing Authorities, or any claim or lien against the Debtors and all of the Debtors' rights with respect thereto are hereby reserved.

6. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the Taxes and Fees, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

7. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

8. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

9. Notwithstanding anything contained in the Motion or this Interim Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a "***DIP Order***"), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

10. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order shall be deemed an admission as to the validity of any

underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

11. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Interim Order shall be effective and enforceable immediately upon entry hereof.

12. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

14. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

15. A hearing to consider entry of an order granting the Motion on a final basis (the “*Final Hearing*”) shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_\_\_.m. (prevailing Eastern time). Any objections or responses to the entry of such an order must be filed on or before 4:00 p.m. (prevailing Eastern time) on \_\_\_\_\_, 2020, and served on (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (email: caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com), and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel (jeffrey.mispagel@lw.com); and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); (c) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los

Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (d) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (e) counsel to the administrative agent under the DIP ABL FILO Facility, Simpson Thacher & Bartlett LLP, 425 Lexington Ave. New York, New York 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (email: squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); and (f) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: trigg.erin@dorsey.com and kohn.samuel@dorsey.com). In the event that no objections to entry of the Proposed Final Order on the Motion are timely received, this Court may enter such Proposed Final Order without need for the Final Hearing.

16. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

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United States Bankruptcy Judge

**EXHIBIT B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

---

In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket Nos. ___ & ___

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**FINAL ORDER  
AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES**

---

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for a final order authorizing the Debtors, to pay any prepetition Taxes and Fees owing to the Taxing Authorities (this “*Final Order*”); and this Court having reviewed the Motion, the First Day Declaration, and the Interim Order entered on [\_\_\_], 2020; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); Lucky Oldco Corporation (7141); General Nutrition Investment Company (3878); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Government Services, LLC (2295); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Puerto Rico Holdings, Inc. (4559); GNC Puerto Rico, LLC (7234); and GNC China Holdco LLC (0004). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized to pay all Taxes and Fees owing to the Taxing Authorities in the ordinary course of their business, as and when due, up to an aggregate amount of \$10,280,000, inclusive of amounts paid pursuant to the Interim Order, or such higher amount as may be set forth in any budget governing postpetition financing or the use of cash collateral, on account of prepetition Taxes and Fees without further order of this Court.
3. The Debtors may seek additional relief from this Court in the future in the event that the Debtors subsequently determine that additional prepetition Taxes and Fees are owed by the Debtors.
4. The Debtors rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.
5. Nothing in the Motion or this Final Order shall be construed as impairing the Debtors’ right to contest the validity, amount, or priority of any Taxes and Fees allegedly due or owing to any Taxing Authorities, or any claim or lien against the Debtors and all of the Debtors’ rights with respect thereto are hereby reserved.



6. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the Taxes and Fees, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

7. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

8. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

9. Notwithstanding anything contained in the Motion or this Interim Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a “*DIP Order*”), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

10. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

11. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Final Order shall be effective and enforceable immediately upon entry hereof.

12. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

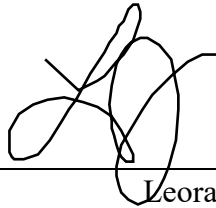
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United States Bankruptcy Judge



TAB PP

THIS IS **EXHIBIT “PP”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', written over a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	
	)	Case No. 20-11662 (____)
Debtors. <sup>1</sup>	)	
	)	(Joint Administration Requested)
	)	
	)	

**DEBTORS' THIRD (3<sup>RD</sup>) OMNIBUS MOTION FOR ENTRY OF AN  
ORDER (A) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES  
EFFECTIVE AS OF THE PETITION DATE AND (B) GRANTING RELATED RELIEF**

**PARTIES RECEIVING THIS MOTION SHOULD LOCATE THEIR  
NAMES AND THEIR LEASE LISTED ON SCHEDULE 1 TO THE  
PROPOSED ORDER ATTACHED HERETO AS EXHIBIT A.**

The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Order*”): (a) authorizing the rejection of certain unexpired leases and subleases, including any guaranties, amendments or modifications thereof (each, a “*Rejection Lease*,” and collectively, the “*Rejection Leases*”), a list of which is annexed as **Schedule 1** to **Exhibit A**, effective as of the Petition Date (as defined below), and (b)

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

authorizing the Debtors to abandon the personal property located at the premises related to the Rejection Leases (collectively, the “*Premises*”) as of the Petition Date.

### **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 365(a) and 554(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “*Bankruptcy Code*”), and Rules 6006 and 6007 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

### **BACKGROUND**

3. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies' Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day Declaration**")<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

### **MOTION SPECIFIC BACKGROUND**

6. As described in detail in the First Day Declaration, the Debtors have today filed these Chapter 11 Cases amid an unprecedented health crisis with difficult social, political and economic implications. While the Debtors would have preferred to wait out the current instabilities of the financial markets and retail industry, they simply could not afford to do so. The relief sought in this Motion is critical to preserve liquidity and maintain the Debtors' viability as a going concern.

#### **I. THE REJECTION LEASES**

7. As of the Petition Date, the Debtors are parties to approximately 3,616 real property leases in the United States, Canada and Puerto Rico, 772 of which are subleased to 330 franchisees. As part of their ongoing restructuring efforts, the Debtors are engaging in a comprehensive review

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court's website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors' proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

and analysis of their lease portfolio. After careful evaluation, the Debtors have identified 48 stores to be rejected (the “*Rejection Stores*”). As such, the Debtors have determined, in the exercise of their business judgment, that it is in the best interests of their estates to seek authority to reject the Rejection Leases associated with the Rejection Stores as of the Petition Date. Rejecting the Rejection Leases will allow the Debtors to avoid the accrual of unnecessary administrative expenses with no foreseeable benefits to the Debtors’ estates. Moreover, given the obligations under the Rejection Leases and current market conditions, the Debtors have concluded, in consultation with their advisors, that the Rejection Leases are not marketable and are unlikely to generate material value for the Debtors’ estates.

8. On June 18, 2020, the Debtors sent letters to each landlord counterparty (the “*Landlords*”) to the Rejection Leases, which were delivered no later than the Petition Date, notifying them that the Debtors were unequivocally surrendering possession of the Premises and abandoning any Debtor-owned personal property in conjunction therewith as of such time.

## **II. REMAINING PROPERTY**

9. Certain Rejection Stores store property that belongs to the Debtors, including, but not limited to, inventory, books and records, equipment, fixtures, furniture and other personal property (the “*Remaining Property*”). Before the Debtors vacated the Premises, the Debtors evaluated the Remaining Property located at the Premises and determined that (a) the Remaining Property is of inconsequential value or (b) the cost of removing and storing the Remaining Property for future use, marketing, or sale exceeded its value to the Debtors’ estates. Because the Debtors have no intent to operate the stores at the Premises, the Remaining Property will no longer be necessary for the administration of the Debtors’ estates.



10. Accordingly, to reduce postpetition administrative costs and in the exercise of the Debtors' sound business judgment, the Debtors believe that the abandonment of the Remaining Property is appropriate and in the best interests of the Debtors, their estates, and their creditors.

### **BASIS FOR RELIEF**

#### **I. REJECTION OF THE REJECTION LEASES REFLECTS THE DEBTORS' SOUND BUSINESS JUDGMENT.**

11. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The purpose behind section 365(a) is "to permit the trustee or debtor-in-possession to use valuable property of the estate and to renounce title to and abandon burdensome property." *In re Republic Airways Holdings Inc.*, 547 B.R. 578, 582 (Bankr. S.D.N.Y. 2016) (quoting *In re Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993)); *see also In re Exide Techs.*, 607 F.3d 957, 967 (3d Cir. 2010) ("Courts may use § 365 to free a [debtor] from burdensome duties that hinder its reorganization."); *N.L.R.B. v. Bildisco and Bildisco (In re Bildisco)*, 465 U.S. 513, 528 (1984) ("[t]he authority to reject an executory contract is vital to the basic purpose to a Chapter 11 reorganization, because rejection can release the debtor's estate from burdensome obligations that can impede a successful reorganization."). Pursuant to Bankruptcy Rule 6006(f), a trustee or debtor in possession may file a motion for the authority to reject multiple leases. Fed. R. Bankr. P. 6006(f).

12. The standard applied by courts to determine whether the assumption or rejection of an unexpired nonresidential lease should be authorized is the "business judgment" test, which requires a debtor to have determined that the requested assumption or rejection would be beneficial to its estate. *See Grp. Of Institutional Inv'rs v. Chi., Milwaukee St. Paul & Pac. R.R.*, 318 U.S. 523, 550 (1943) (noting that "the question whether a lease should be rejected...is one of business

judgment”); *In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff’d*, 465 U.S. 513 (“The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.”); *accord In re HQ Glob. Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003).

13. In applying the business judgment standard, bankruptcy courts give deference to a debtor’s decision to assume or reject leases. *See, e.g., Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989) (affirming the rejection of a service agreement as a sound exercise of the debtor’s business judgment when the bankruptcy court found that such rejection would benefit the debtors’ estate); *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001) (“[A] debtor’s decision to reject an executory contract must be summarily affirmed unless it is the product of bad faith, or whim, or caprice.”).

14. Rejection of the Rejection Leases is well within the Debtors’ business judgment and will serve to maximize the value of their estates. The Debtors seek authority to reject the Rejection Leases to avoid the incurrence of any additional unnecessary expenses related to the Rejection Leases and the maintenance of the Rejection Stores. The Debtors have concluded that the cost of maintaining the Rejection Stores outweighs any revenues that the Rejection Stores currently generate or are likely to generate in the future.

15. After evaluation and analysis, the Debtors have determined, in the exercise of their sound business judgment, that there is no net benefit that is likely to be realized from the Debtors’ continued efforts to retain and potentially market the Rejection Leases and that there is little, if any, likelihood that the Debtors will be able to realize value from the Rejection Leases. Accordingly, the Debtors have concluded that rejection of the Rejection Leases is in the best interest of the Debtors’ estates, their creditors, and other parties in interest.

**II. THE COURT SHOULD DEEM THE REJECTION LEASES REJECTED EFFECTIVE AS OF THE PETITION DATE AND AUTHORIZE DEBTORS TO ABANDON THE REMAINING PROPERTY.**

16. Section 365 of the Bankruptcy Code does not restrict a bankruptcy court from applying rejection retroactively. *See In re Jamesway Corp.*, 179 B.R. 33, 37 (S.D.N.Y. 1995) (stating that section 365 does not include “restrictions as to the manner in which the court can approve rejection”); *see also In re CCI Wireless, LLC*, 297 B.R. 133, 138 (D. Colo. 2003) (noting that section 365 “does not prohibit the bankruptcy court from allowing the rejection of leases to apply retroactively”).

17. Courts have held that a bankruptcy court may, in its discretion, authorize rejection retroactively to a date prior to entry of an order authorizing such rejection where the balance of equities favors such relief. *See In re Thinking Machs. Corp.*, 67 F.3d 1021, 1029 (1st Cir. 1995) (stating that “rejection under section 365(a) does not take effect until judicial approval is secured, but the approving court has the equitable power, in suitable cases, to order a rejection to operate retroactively”); *In re Chi-Chi’s, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (stating “the court’s power to grant retroactive relief is derived from the bankruptcy court’s equitable powers so long as it promotes the purposes of § 365(a)”; *In re CCI Wireless, LLC*, 297 B.R. at 140 (holding that a “court has authority under section 365(d)(3) to set the effective date of rejection at least as early as the filing date of the motion to reject”).

18. Here, the equities of these Chapter 11 Cases favor the Court’s approval of the retroactive rejection of the Rejection Leases to the Petition Date. Without such relief, the Debtors will potentially incur unnecessary administrative expenses related to the Rejection Leases—agreements that provide no benefit to the Debtors’ estates in light of their goal to maximize value of the business as a going concern. *See* 11 U.S.C. § 365(d)(3).

19. Moreover, the Landlords will not be unduly prejudiced if the Rejection Leases are rejected effective as of the Petition Date because the Debtors have served this Motion on the Landlords and/or their agents or representatives by electronic mail and/or facsimile, on the date hereof, and by overnight mail, the following day, stating that the Debtors intend to reject the Rejection Leases effective as of the Petition Date. Furthermore, the Debtors have, on or before the date hereof, turned over the keys to the Premises to the Landlords or their representatives and abandoned the Premises, and in conjunction therewith indicated that they were unequivocally surrendering possession of the Premises as a result thereof. Therefore, based on the Debtors' desire to eliminate the potential for administrative claims against their estates, and to avoid the potential accrual of any further obligations under the Rejection Leases, the Debtors respectfully submit that the retroactive rejection of the Rejection Leases as of the Petition Date is appropriate.

20. Further, the abandonment of the Remaining Property is appropriate and authorized by the Bankruptcy Code. *See* 11 U.S.C. § 554(a). Section 554(a) provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” *Id.* Courts generally give a debtor in possession great deference to its decision to abandon property. *See In re Vel Rey Props., Inc.*, 174 B.R. 859, 867 (Bankr. D.D.C. 1994) (“Clearly, the court should give deference to the trustee’s judgment in such matters.”). Unless certain property is harmful to the public, once a debtor has shown that it is burdensome or of inconsequential value to the estate, a court should approve the abandonment. *Id.*

21. Before deciding to abandon any Remaining Property, the Debtors determined that the costs of moving and storing such Remaining Property outweighed any benefit to the Debtors’

estates. Further, any efforts by the Debtors to move or market the Remaining Property would have unnecessarily delayed the Debtors' rejection of the Rejection Leases.

22. Accordingly, the Debtors respectfully submit that the Court deem the Rejection Leases rejected effective as of the Petition Date and authorize the Debtors to abandon the Remaining Property as of such date.

### **RESERVATION OF RIGHTS**

23. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (f) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

### **NOTICE**

24. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange

Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; (p) the counterparties to the Rejection Leases (via overnight mail) and (q) all parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank.]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Order, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Joseph M. Mulvihill

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- and -

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*Proposed Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Order**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (____)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ____

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**THIRD (3<sup>RD</sup>) OMNIBUS ORDER (A)  
AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES  
EFFECTIVE AS OF THE PETITION DATE AND (B) GRANTING RELATED RELIEF**

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Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for an order (this “**Order**”), (a) authorizing the Debtors to reject certain unexpired leases of real property (each, a “**Rejection Lease**,” and collectively, the “**Rejection Leases**”), a list of which is annexed as **Schedule 1** hereto, effective as of the Petition Date; and (b) authorizing the Debtors to abandon the Remaining Property located at the Premises as of the Petition Date; and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the First Day Declaration and all of the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and Bankruptcy Rule 6006, the Rejection Leases identified in **Schedule 1** attached hereto, to the extent not already terminated in accordance with their applicable terms or upon agreement of the parties, are hereby rejected effective as of the Petition Date.
3. The Debtors are authorized, but not directed, to abandon the Remaining Property that is owned by the Debtors and located on the Premises and all such property is deemed abandoned effective as of the Petition Date. The Landlords to each Rejection Lease are authorized to dispose of the abandoned Remaining Property without liability to the Debtors or any third party and, to the extent applicable, the automatic stay is modified to allow such disposition.
4. Nothing herein shall prejudice any party's rights to assert that the Rejection Leases are not, in fact, executory within the meaning of section 365 of the Bankruptcy Code.

5. Any proofs of claim for damages in connection with the rejection of the Rejection Leases, if any, shall be filed on or before the later of (a) the claims bar date established by the Court in these Chapter 11 Cases, if any, and (b) thirty (30) days after entry of this Order.

6. Nothing in the Motion or this Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any particular claim would constitute an allowed claim. Nothing contained in this Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

7. The requirements set forth in Bankruptcy Rules 6006 and 6007 are satisfied.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

### Schedule 1

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
1.	1174	Brookfield Properties Brookfield Property Partners L.P. 350 N. Orleans Street, Suite 300 Chicago, IL 60654	General Nutrition Corporation	Piere Bossier Mall #520 2950 East Texas Ave. Bossier City, LA
2.	2278	YAM Properties 15750 N. Northsight Blvd Scottsdale, AZ 85260	General Nutrition Corporation	Grayhawk Plaza 20701 N. Scotsdale Rd Scottsdale, AZ
3.	2655	Rockstep Capital Corporation 1445 North Loop West , Suite 625 Houston, TX 77008	General Nutrition Corporation	Janesville Mall 2500 Milton Ave Janesville, WI
4.	4001	OPB (EMTC) Inc. c/o Cushman & Wakefield Asset Services Inc. 5100 Erin Mills Parkway Mississauga , ON L5M 4Z5	General Nutrition Centres Company	Erin Mills Town Centre 5100 Erin Mills Pkwy Mississauga, ON
5.	4013	CF Realty Holdings Inc 20 Queen Street W Toronto , ON M5H 3R4	General Nutrition Centres Company	Masonville Place 1680 Richmond St North London, ON
6.	4029	2725312 Canada Inc. c/o 2973758 Canada Inc. 1055 Dunsmuir Street, Suite 1800 Vancouver , BC V7X 1B1	General Nutrition Centres Company	Willowbrook S.C. 19705 Fraser Hwy Langley, BC
7.	4031	Shape Properties, Inc. 2020 One Bentall Centre 505 Burrard Street , Box 206 Vancouver , BC V7X 1M6	General Nutrition Centres Company	Brentwood Mall 4567 Lougheed Highway Burnaby, BC
8.	4042	Hoopp Realty Inc. c/o Cushman & Wakefield Asset Services Inc. One Queen Street East, Suite 300 Toronto, ON M5C 2W5	General Nutrition Centres Company	Marlborough Mall 51A Memorial Drive NE Calgary, AB

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
9.	4047	Bonnie Doon Shopping Centre LTD c/o Morguard Investments Limited 214 82nd Avenue and 83rd Street Edmonton, AB T6C 4E3	General Nutrition Centres Company	Bonnie Doon S.C. 82nd Ave & 83rd St Edmonton, AB
10.	4163	Calloway Real Estate Investment Trust Inc. 700 Applewood Crescent, Suite 100 Vaughan, Ontario L4K 5X3	General Nutrition Centres Company	Smartcentres Corner Brook 22 Murphy Square Corner Brook, NL
11.	4166	First Capital (Morningside) Corporation Attn: Sr VP Central Canada & VP Legal Affairs 85 Hanna Avenue, Suite 400 Toronto, Ontario M6K 3S3	General Nutrition Centres Company	Morningside Crossing 4525 Kingston Road Scarborough, ON
12.	4168	Max Becker Enterprised Limited c/o Schlegel Urban Development Williamsburg TC 325 Max Becker Drive, Suite 201 Kitchener , Ontario N2E 4H5	General Nutrition Centres Company	Williamsburg TC 325 Max Becker Dr Kitchener, ON
13.	4236	Mayfair Shopping Centre LP 95 Wellington Street West, Suite 300 Toronto , Ontario M5J 2R2	General Nutrition Centres Company	Mayfair Shopping Centre 3147 Douglas Street Victoria, BC
14.	4240	BC IMC Realty Corporation c/o Quad Real Property Group, LP 199 Bay Street , Suite 2100 Toronto , Ontario M5L 1G2	General Nutrition Centres Company	Bower Place 4900 Molly Banister Dr Red Deer, AB
15.	4282	First Queensborough Shopping Centres Limited 700 Applewood Crescent, Suite 100 Vaughan, Ontario L4K 5X3	General Nutrition Centres Company	Queensborough Landing 805 Boyd St New Westminster, BC
16.	4500	Riokim Holdings (Alberta) Inc., c/o RioCan Real Estate Investment Trust Rio Can Yonge Eglinton Centre 2300 Young Street, Suite 500 Toronto , Canada M4P 1E4	General Nutrition Centres Company	Shawnessy Town Centre 210-350 Shawville Blvd SE Calgary, AB

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
17.	5225	Shepherd Investors, LP 1800 Post Oak Blvd, Suite 400 Houston , TX 77056	General Nutrition Corporation	Sheppard Square 2055 Westheimer Houston, TX
18.	6097	Arboretum Joint Venture LLC c/o American Asset Corporation 3700 Arco Corporate Drive, Suite 350 Charlotte, NC 28273	General Nutrition Corporation	The Arboretum Shopping Ce 3339 Pineville Matthews Charlotte, NC
19.	6194	Oviedo Mall Holding LLC 1700 Oviedo Mall Blvd. Oviedo, FL 32765	General Nutrition Corporation	Oviedo Marketplace 1385 Oviedo Marketplace B Oviedo, FL
20.	6389	Flaum Mgmt 400 Andrews Street , Suite 500 Rochester, NY 14604	General Nutrition Corporation	Genesee Valley S. C. 4290 Lakeville Rd Geneseo, NY
21.	8997	Weingarten Realty 4440 N. 36th Street , Suite 200 Phoenix , AZ 85018	General Nutrition Corporation	Madera Village 9121 E. Tanque Verde Rd Tucson, AZ
22.	8693	Rancho Marketplace Gateway, LLC c/o California Drive-In Theatres Inc 120 North Robertson Blvd. Los Angeles , CA 90048	General Nutrition Corporation	Rancho Marketplace S/C Burbank, CA
23.	9482	Mountain Gate-Corona LP 13 Corporate Plaza, #150 Newport Beach , VA 92660	General Nutrition Corporation	Mountain Gate Plaza 160 W. Foothill Parkway Corona, CA
24.	3905	Mirage Marketplace Partners One LLC 567 San Nicolas Drive, #130 Newport Beach , CA 92660	General Nutrition Corporation	Monterey Marketplace Rancho Mirage, CA
25.	3201	Redmond Plaza II, LLC c/o Woodbury Corporation 2733 East Parleys Way, Suite 300 Salt Lake City, UT 84109	General Nutrition Corporation	Village At Redmond Ridge 23535 NE Novelty Hill Rd Redmond, WA
26.	3180	Hathaway Properties LLC 820 S. Greenville West Drive Greenville, MI 48838	General Nutrition Corporation	The Marketplace Shoppes Greenville, MI

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
27.	1175	Grand Avenue City Mall, LLC 275 West Wisconsin Ave. Milwaukee, WI 53203	General Nutrition Corporation	The Shops Of Grand Avenue Milwaukee, WI
28.	7620	PMF Investments LLC c/o Franklin Pacific 15015 Main Street, Suite 203 Bellevue , WA 98007	General Nutrition Corporation	Green Firs Shopping Centre University Place, WA
29.	9024	Riverside Landing LLC c/o Dickinson Development Corp. 1266 Furnace Brook Parkway Quincy, MA 02746	General Nutrition Corporation	Riverside Landing 81 Coggeshall St New Bedford, MA
30.	6508	NW Blakeney Retail LLC c/o Northwood Investors 575 Fifth Avenue, 23rd Floor New York, NY 10017	General Nutrition Corporation	Blakeney Shop Center 9864 Rea Road Charlotte, NC
31.	1137	Dover Parkade LLC c/o Paramount Realty Services Inc. 1195 Route 70, Suite 2000 Lakewood, NJ 08701	General Nutrition Corporation	Tri-City Plaza 2360 Route 9 Toms River, NJ
32.	6336	Cano, Inc. 2500 Eldo Road, Suite 1 Monroeville , PA 15146	General Nutrition Corporation	Andover Marketplace 1966 Bunker Lake Blvd Andover, MN
33.	3034	Weikel Rancho Bernardo LP c/o Boardwalk Development Inc. 16909 West Bernardo Drive San Diego, CA 92127	General Nutrition Corporation	Rancho Bernardo Town Cent 11952 Bernardo Plaza Dr Rancho Bernardo, CA
34.	5771	Buzz Oates LLC c/o Buzz Oats Management Services 8615 Elder Creek Road Sacramento , CA 95828	General Nutrition Corporation	Riverpoint Marketplace 775 Ikea Ct West Sacramento, CA
35.	3310	261 West, LLC c/o Haymes Investment Company 261 West LLC c/o Haymes Investment Company	General Nutrition Corporation	360 Eighth Ave 360 8th Avenue New York, NY

	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
		5 Penn Plaza, 24th Floor New York, NY 10001		
36.	7176	Marquee-Brawley, LLC 8255 Towne Center Drive, #950 San Diego, CA 92121	General Nutrition Corporation	Brawley Gateway 1050 S Brawley Ave 102 Brawley, CA
37.	6665	BDG Gotham Plaza LLC c/o Blumenfeld Development Group Ltd 300 Robins Lane Syosset , NY 11791	General Nutrition Corporation	163 E 125th St New York, NY
38.	7894	National Realty Corporation Attn: Lori Braccili 1001 Baltimore Pike Springfield, PA 19064	General Nutrition Corporation	Edgmont Square S/C 4815 West Chester Pike Newtown Square, PA
39.	2464	PC Sterling Height LLC 1303 Riverplace Boulevard, #1900 Jacksonville, FL 32207	General Nutrition Corporation	Forum @ Gateways 44625 Mound Road Sterling Heights, MI
40.	2496	Rockstep Willmar, LLC 1445 North Loop West, Suite 625 Houston, TX 77098	General Nutrition Corporation	Kandi Mall 1605 First Street South Willmar, MN
41.	3446	Southpark Mall LLC 1 East Wacker Street, Suite 3600 Chicago, IL 60601	General Nutrition Corporation	Southpark Mall 500 Southpark Center Strongsville, OH
42.	3890	Optimus Mason, LLC 1900 Polaris Parkway, Suite 425 Columbus, OH 43240	General Nutrition Corporation	The Shoppes Of Mason 5220 Kings Mills Road Mason, OH
43.	7148	Terramar Retail Centers LLC 4695 MacAuthur Ct. Newport Beach, CA 92660	General Nutrition Corporation	Tierrasanta Town Center 10645-G Tierrasanta Blvd San Diego, CA
44.	9841	Osborne Place LLC 4967 S. 155th Street Omaha, NE 68137	General Nutrition Corporation	One Osborne Place 4103 Osborne Dr. W. Hastings, NE

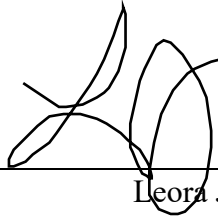


	<b>Store No.</b>	<b>Counterparty Landlord and Address</b>	<b>Debtor Counterparty</b>	<b>Leased Location</b>
45.	3019	Union Square Investments LP c/o Pacific Rim Financial Corp 30 Baywood Avenue San Mateo, CA 94402	General Nutrition Corporation	Union Square M/P 1748 Decoto Road Union City, CA
46.	7420	Cross Pointe Developers LLC 1224 Mill Street Building D, Suite 103 East Berlin, CT 06023	General Nutrition Corporation	Cross Pointe Center 1250-L Western Blvd Jacksonville, NC
47.	274	Publix Super Markets Inc Attn: VP Real Estate 3300 Publix Corporate Parkway Lakeland, FL 33811	General Nutrition Corporation	Dupont Lakes Sc 2783 Elkcam Blvd Deltona, FL
48.	3417	Micromont Holdings 6, LLC c/o US Restaurant Properties 8140 Walnut Hill Lane, Suite 400 Dallas, TX 75231	General Nutrition Corporation	E 17th Ave Retail 1508 E 17th Ave Hutchinson, KS



TAB QQ

THIS IS **EXHIBIT “QQ”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to read 'Leora Jackson', written over a horizontal line.

---

Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**MOTION OF DEBTORS FOR ORDERS  
(A) PROHIBITING UTILITY COMPANIES FROM ALTERING OR  
DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES,  
(B) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT,  
(C) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY  
COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT, AND  
(D) AUTHORIZING PAYMENT OF ANY PREPETITION SERVICE FEES**

The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Interim Order*”) and **Exhibit B** (the “*Proposed Final Order*,” and together with the Proposed Interim Order, the “*Proposed Orders*”), respectively, (a) approving the Debtors’ proposed assurance of postpetition payment to the Utility Companies (as defined below), (b) approving the additional assurance procedures described below

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are:GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234).The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

as the method for resolving disputes regarding adequate assurance of payment to Utility Companies, (c) prohibiting the Utility Companies from altering, refusing, or discontinuing services to or discriminating against the Debtors except as may be permitted by the proposed procedures, and (d) authorizing payment of any prepetition Service Fees (as defined below).

2. In addition, the Debtors request that the Court authorize all banks and financial institutions to receive, process, honor, pay, and, if necessary, reissue all prepetition and postpetition checks, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the bank accounts used by the Debtors to satisfy their obligations in connection with the Service Fees approved herein, upon receipt by each bank or financial institution of notice of such authorization, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Debtors additionally request that the Court authorize them to issue new postpetition checks to replace any checks that may nevertheless be dishonored and to reimburse any expenses that the Payment Processor (as defined below) may incur as a result of any bank's failure to honor a prepetition check.

### **JURISDICTION**

3. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C.

§§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a) and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “*Bankruptcy Code*”) and rule 6003 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

### **BACKGROUND**

4. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.

5. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies’ Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

6. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the “*First Day Declaration*”)<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court’s website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors’ proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

## **THE UTILITY SERVICES AND THE PROPOSED ADEQUATE ASSURANCE**

7. The Debtors use utility services such as electricity, water, telephone, internet, and other similar products and services (the “*Utility Services*”) across the United States and Canada in their headquarters, manufacturing and distribution centers, and thousands of retail locations. The Utility Services are provided by a number of different providers who provide services to the Debtors directly or indirectly through a landlord (each a “*Utility Company*,” and, collectively, the “*Utility Companies*”). A list of the Utility Companies and the Utility Services they provide is attached to this Motion as **Exhibit C**.<sup>4</sup> As used herein, the Utility Companies do not include any utility provider the Debtors pay through rent payments, though it may include certain landlords that the Payment Processor (as defined herein) pays on the Debtors’ behalf for Utility Services.

8. Uninterrupted Utility Services are essential to the Debtors’ ongoing business operations and the overall success of the Chapter 11 Cases. Without Utility Services at any of their operating locations, the Debtors’ businesses could be negatively affected and value could be lost to their estates, whether in the form of lost sales in their stores, supply chain problems leading to increased costs, or management disruptions causing any number of problems in the Debtors’ complex, multinational operations.

9. In general, the Debtors have established satisfactory payment histories with the Utility Companies and payments have been made on a regular and timely basis. To the best of the Debtors’ knowledge, there are no material defaults or arrearages with respect to invoices for prepetition Utility Services as of the Petition Date. To facilitate timely and efficient processing and payment of invoices with respect to the Utility Services, the Debtors contract, in the ordinary

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<sup>4</sup> For the avoidance of doubt, the presence or absence of the name of any party in **Exhibit C** shall not constitute an admission or stipulation of any kind by the Debtors, including that any party is or is not a “utility” within the meaning of section 366 of the Bankruptcy Code.

course of business, with CASS Information Systems, Inc. (the “**Payment Processor**”) to process and remit payments to certain Utility Companies on the Debtors’ behalf. The Payment Processor receives, processes, and reviews applicable utility bills and submits to the Debtors a master invoice on account of unpaid and processed utility bills in exchange for a fee of \$1.45 per invoice (the “**Service Fees**”). Following a review of each such invoice, the Debtors remit payment to the Payment Processor and the Payment Processor arranges for payment to the applicable Utility Companies. The Debtors remit Service Fees related to Utility Services provided in the United States each business day and remit Service Fees related to Utility Services provided in Canada on a monthly basis. During the twelve months preceding the Petition Date, the Debtors remitted approximately \$9,000 per month in Service Fees to the Service Provider. As of the Petition Date, the Debtors estimate that approximately \$2,915 in Service Fees remain outstanding and payable, all of which will come due and owing during the first 21 days following the Petition Date.

10. The Debtors intend to pay all postpetition obligations owed to the Utility Companies in the ordinary course of business and in a timely manner. Nevertheless, to provide additional assurance of payment for future services to the Utility Companies, the Debtors will deposit approximately \$947,000, which is an amount equal to approximately fifty percent (50%) of the Debtors’ historical average monthly costs of Utility Services provided by the Utility Companies based on the twelve months before the Petition Date (the “**Adequate Assurance Deposit**”),<sup>5</sup> into an existing, segregated, interest-bearing account at JPMorgan Chase Bank, N.A. in the name of Debtor GNC Holdings, Inc., with last four digits 7167,<sup>6</sup> within twenty (20) days of

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<sup>5</sup> For the avoidance of doubt, the Debtors are not providing any adequate assurance deposits on account any party who Debtors pay indirectly for Utility Services through rent payments.

<sup>6</sup> More information on the Debtors’ bank accounts and cash management system are set forth in the *Motion of Debtors for Orders (A) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (B) Authorizing Continuation of Existing Deposit*



the Petition Date.<sup>7</sup> The balance of the Adequate Assurance Deposit will be maintained during the Chapter 11 Cases, subject to adjustment by the Debtors to account for the termination or beginning of new Utility Services or entry into other arrangements with respect to adequate assurance of payment reached with individual Utility Companies.

11. The Debtors propose that the Adequate Assurance Deposit may be adjusted and/or reduced by the Debtors to account for any of the following: (i) the extent to which the Adequate Assurance Deposit includes any amount on account of a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, (ii) the termination of a Utility Service by a Debtor regardless of any Additional Adequate Assurance Request (as defined below), (iii) the closure of a utility account with a Utility Company for which funds have been contributed for the Adequate Assurance Deposit, or (iv) any other arrangements with respect to adequate assurance of payment reached by a Debtor with individual Utility Companies; *provided*, that, with respect to the Debtors’ termination of a Utility Service or closure of a utility account with a Utility Company, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon reconciliation and payment by the Debtors of such Utility Company’s final invoice in accordance with applicable nonbankruptcy law, to the extent that there are no outstanding disputes related to postpetition payments due.

12. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors’ ability to pay for future Utility Services in the ordinary course of business, constitutes sufficient adequate assurance to the Utility Companies. If any Utility Company believes that

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*Practices, (C) Authorizing Continuation of Intercompany Transactions, and (D) Granting Administrative Claim Status to Postpetition Intercompany Claims* filed contemporaneously herewith.

<sup>7</sup> Three Utility Companies (Constellation NewEnergy, Inc., Engie Resources, and Southern California Edison) previously received deposits totaling approximately \$288,000. Nonetheless, the proposed Adequate Assurance Deposit includes amounts relating to such Utility Companies.

additional assurance is required, it may request the assurance pursuant to the following procedures (the “*Additional Assurance Procedures*”):

- (a) Except as provided by the Additional Assurance Procedures, the Utility Companies are forbidden to (i) alter, refuse, or discontinue services to, or discriminate against, the Debtors on account of unpaid prepetition invoices or any objections to the Debtors’ Adequate Assurance Deposit or due to the commencement of the Chapter 11 Cases or (ii) require the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the establishment of the Adequate Assurance Deposit.
- (b) The Debtors shall serve on the Utility Companies (i) copies of this Motion and the Interim Order within forty-eight (48) hours after the entry thereof and (ii) a copy of the Final Order within forty-eight (48) hours after the entry thereof.
- (c) In the event that a Utility Company asserts that the Adequate Assurance Deposit is not adequate assurance of payment as contemplated by section 366(c)(2) of the Bankruptcy Code, that Utility Company shall serve a written request (an “*Additional Assurance Request*”) for adequate assurance in addition to or in lieu of its rights in the Adequate Assurance Deposit. All Additional Assurance Requests shall be delivered by mail and email (where available) to each Utility Notice Party.<sup>8</sup>
- (d) Any Additional Assurance Request must (i) set forth the location(s) for which Utility Services are provided, (ii) set forth the account number(s) for which Utility Services are provided, (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposit(s), (iv) set forth what the Utility Company would accept as satisfactory adequate assurance of payment, and (v) provide a facsimile

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<sup>8</sup> The “*Utility Notice Parties*” are: (a) GNC Holdings, Inc., 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, Attn: Cam Lawrence (email: cam-lawrence@gnc-hq.com); (b) proposed co-counsel to the Debtors, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett V. Newman (email: caroline.reckler@lw.com, asif.attarwala@lw.com, and brett.newman@lw.com); and (c) proposed co-counsel to the Debtors, Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Joseph Mulvihill and Jared Kochenash (email: jmulvihill@ycst.com and jkochenash@ycst.com); (d) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); and (e) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com) (each, a “*Utility Notice Party*”).

number and an email address to which the Debtors may respond to the Additional Assurance Request.

- (e) Upon the Debtors' receipt of an Additional Assurance Request, the Debtors shall promptly negotiate with the Utility Company to resolve the Additional Assurance Request.
- (f) Without further order of the Court or notice to the Court and after consultation with counsel to the Ad Hoc Group of Crossover Lenders and the Ad Hoc FILO Term Lender Group, the Debtors may resolve an Additional Assurance Request by entering into agreements granting additional assurance to the requesting Utility Company if the Debtors agree to alternative provisions with the Utility Company; provided however, that the Debtors shall maintain a summary record of such agreements and their respective terms, to be made available, on request, to (i) counsel to the agent for the Debtors' postpetition financing facility, (ii) any statutory committee appointed in these Chapter 11 Cases, and (iii) the U.S. Trustee.
- (g) If the Debtors are not able to reach a resolution with the Utility Company within ten (10) days of the Debtors' receipt of an Additional Assurance Request (or such later date as agreed to by the Debtors and the requesting Utility Company), the Debtors shall request a hearing (the "**Determination Hearing**") before this Court to determine the adequacy of assurance of payment with respect to the particular Utility Company pursuant to section 366(c)(3) of the Bankruptcy Code.
- (h) The Determination Hearing shall be an evidentiary hearing at which the Court shall determine whether the Adequate Assurance Deposit and the additional assurance of payment requested by the Utility Company should be modified pursuant to section 366(c)(3)(A) of the Bankruptcy Code. Pending resolution of any Additional Adequate Assurance Request, the Utility Company making such request shall be prohibited from altering, refusing, or discontinuing service to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Additional Adequate Assurance Procedures.
- (i) Any Utility Company that does not serve an Additional Assurance Request in accordance with the Additional Assurance Procedures shall be deemed to have received adequate assurance of payment that is satisfactory to the Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code.
- (j) All Utility Companies, including subsequently added Utility Companies, shall be prohibited from altering, refusing or discontinuing Utility Services

to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, absent further order of this Court.

13. The Debtors request a final hearing on this Motion to be held within thirty (30) days after the Petition Date to ensure that, if a Utility Company argues that the Adequate Assurance Deposit or the Additional Assurance Procedures are not satisfactory and that the Utility Company is entitled to unilaterally alter, refuse, or discontinue Utility Services to the Debtors immediately following the thirtieth (30th) day after the Petition Date, the Debtors will have the opportunity to address these assertions in time to avoid any potential termination of Utility Services.

#### **SUBSEQUENTLY IDENTIFIED UTILITY COMPANIES**

14. The Debtors reserve the right to amend **Exhibit C** attached hereto to add or delete any Utility Company. To the extent that the Debtors subsequently identify any additional Utility Companies that provide Utility Services to them, the Debtors propose to add these Utility Companies to **Exhibit C** and to have the terms of the orders with respect to this Motion apply to any of these Utility Companies. The Debtors will serve on any of the subsequently identified Utility Companies a copy of this Motion and the order entered with respect to this Motion, along with an amended **Exhibit C** that includes these subsequently-added Utility Companies. The Debtors propose that the resolution of any Additional Assurance Request submitted by any newly added Utility Company will occur in accordance with the Additional Assurance Procedures. The Debtors further reserve the right to assert or determine that any of the entities now or hereafter listed on **Exhibit C** is not a “utility” within the meaning of section 366(a) of the Bankruptcy Code.

15. To the extent necessary, the Debtors will increase the Adequate Assurance Deposit by 50 percent of the historical average monthly amount paid to any subsequently-added Utility Companies. Further, the Debtors will withdraw from the Adequate Assurance Deposit any

amounts corresponding to Utility Companies whose Utility Services to the Debtors are terminated or that otherwise are removed from Exhibit C.

### **BASIS FOR RELIEF**

#### **I. The Proposed Adequate Assurance Deposit is Sufficient.**

16. Congress enacted section 366 of the Bankruptcy Code to protect debtors from utility service cutoffs upon a bankruptcy filing while, at the same time, providing utility companies or providers with adequate assurance that the debtors will pay for postpetition services. See H.R. Rep. No. 95-595, at 350 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6306. In the context of Chapter 11 Cases, the statutory framework for debtor protections and adequate assurance obligations was modified by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) with the addition of section 366(c) of the Bankruptcy Code.

17. Under section 366(c) of the Bankruptcy Code, a utility may alter, refuse or discontinue utility service if a debtor has not provided satisfactory adequate assurance within thirty (30) days of its bankruptcy filing. In addition, section 366(c) of the Bankruptcy Code restricts the factors that a court can consider when determining whether an adequate assurance proposal is, in fact, adequate. Specifically, courts may not consider (a) the absence of a security deposit before the debtor’s petition date, (b) the debtor’s history of timely payments, or (c) the availability of an administrative expense priority, in determining the amount of a deposit. Section 366(c), however, does not limit the court’s ability to determine the amount of payment necessary, if any, to provide adequate assurance. Indeed, section 366(c) of the Bankruptcy Code now gives courts more discretion in determining the amount of payment necessary for adequate assurance than they previously had. Compare 11 U.S.C. § 366(b) (2004) (pre-BAPCPA) (“On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance.” (emphasis added)), with

11 U.S.C. § 366(c)(3)(A) (2005) (post-BAPCPA) (“On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance payment under paragraph (2).”).

18. The Utility Services are crucial to the Debtors’ operations. Should the Utility Companies refuse or discontinue service, even for a brief period, the Debtors’ business operations would be severely disrupted, and, simultaneously, the Debtors would be forced to address numerous requests by Utility Companies in an unorganized manner at a critical period in the Chapter 11 Cases. By making the Adequate Assurance Deposit and establishing the Additional Assurance Procedures, the Debtors are providing adequate assurance to the Utility Companies and implementing an orderly process to determine any challenges to the adequacy of that adequate assurance, avoiding these potential harms to their estates. The relief requested in this Motion, therefore, is necessary for a smooth transition by the Debtors into chapter 11.

19. Furthermore, the relief requested herein does not undermine the rights of the Utility Companies under the Bankruptcy Code. First, the Adequate Assurance Deposit is one of the acceptable forms of adequate protection set forth in sections 366(b) and 366(c)(1) of the Bankruptcy Code. In other words, the Debtors are not seeking to bypass the limits on forms of security imposed by the Bankruptcy Code. Second, the Utility Companies may exercise their rights under section 366(c)(2) of the Bankruptcy Code in accordance with the Additional Assurance Procedures. Third, whatever rights the Utility Companies have under section 366(c)(3) of the Bankruptcy Code would be preserved.

20. The Debtors maintain that the relief requested herein strikes a fair balance between the rights of Utility Companies and the Debtors’ rights under the Bankruptcy Code and the need to continue to receive the Utility Services upon which their businesses depend.

21. Similar relief to the relief requested herein has been granted by numerous courts in this district subsequent to the 2005 amendments to the Bankruptcy Code. *See, e.g., In re Hexion Holdings LLC*, Case No. 19-10684 (KG) (Bankr. D. Del. Apr. 1, 2019); *In re Imerys Talc Am. Inc.*, Case No. 19-10289 (LSS) (Bankr. D. Del. Feb. 13, 2019); *In re J & M Sales Inc.*, Case No. 18-11801 (LSS) (Bankr. D. Del. Sept. 20, 2018); *In re New MACH Gen, LLC*, Case No. 18-11368 (MFW) (Bankr. D. Del. June 28, 2018); *In re The Rockport Co., LLC*, Case No. 18-11145 (LSS) (Bankr. D. Del. June 12, 2018); *In re Claire's Stores, Inc.*, Case No. 18-10584 (MFW) (Bankr. D. Del. Apr. 17, 2018); *In re Rentech WP U.S. Inc.*, Case No. 17-12958 (CSS) (Bankr. D. Del. Jan. 16, 2018).

## **II. Payment of Prepetition Service Fees is Warranted Under Sections 363(b) and 105(a) of the Bankruptcy Code.**

22. To the extent that payment of the Service Fees would be deemed to constitute a use of property outside the ordinary course of business, a basis for authorizing such payment is found under section 363 of the Bankruptcy Code. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor “may use, sell, or lease, other than in the ordinary course of business, property of the estate” after notice and a hearing. 11 U.S.C. § 363(b)(1). Generally, the debtor is only required to “show that a sound business purpose” justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring “good business reason” for use under section 363(b) of the Bankruptcy Code). This standard prohibits other parties from second-guessing the debtor’s business judgment if the debtor has shown that the proposed use will benefit the debtor’s estate. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the

debtor's conduct."); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.").

23. Paying the Service Fees reflects a sound exercise of the Debtors' business judgment and should be approved. The Debtors rely on the Payment Processor to coordinate billing and payment of their obligations to the majority of the Utility Companies. Absent the Payment Processor's services, the Debtors would likely experience disruptions to their ability to pay Utility Companies in a timely manner. Further, absent the Payment Processor's services, the Debtors would have to coordinate payment to thousands of Utility Companies themselves, consuming valuable time and manpower at a time when those resources are better directed towards ensuring a successful restructuring.

24. Under these circumstances, it is the Debtors' business judgment that the failure to pay the Service Fees could have a material adverse impact on the day-to-day operations of their businesses and to their prospects for reorganizing successfully. Therefore, the Debtors respectfully request authorization to pay the Service Fees under sections 363(b) of the Bankruptcy Code.

25. In addition, the Debtors should be authorized to pay the Service Fees because doing so is necessary to the success of their reorganization. Section 105(a) of the Bankruptcy Code provides that a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). Courts have interpreted this provision to authorize payments on prepetition claims where the payments are essential to the success of the debtor's reorganization under what is known as the "necessity of payment doctrine." *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) ("Thus, the 'necessity of payment' doctrine...teaches no more than, if a payment of a claim which arose prior to reorganization is essential to the continued operation of the [debtor's business] during



reorganization, payment may be authorized...”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code “provides a statutory basis for payment of pre-petition claims” under necessity of payment doctrine); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (“The appropriate standard...is commonly referred to as ‘the necessity of payment doctrine.’”).

26. As set forth above, paying the Service Fees is necessary to help the Debtors preserve the stability, continuity, and success of their core businesses and, therefore, necessary to the success of their reorganization. Failing to pay the Service could lead to severe operational disruptions, administrative costs to manage those disruptions, and opportunity costs as the Debtors’ personnel devote their time to managing through these crises instead of maximizing sales and profitability. These harmful effects could reverberate through the Chapter 11 Cases and jeopardize the Debtors’ path to emergence as a revitalized enterprise. Thus, the Debtors should be authorized to pay the Service Fees under the necessity of payment doctrine and section 105(a) of the Bankruptcy Code.

**PROCESSING OF CHECKS AND  
ELECTRONIC FUND TRANSFERS SHOULD BE AUTHORIZED**

27. The Debtors have sufficient funds to pay any amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing and cash collateral. In addition, under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Service Fees. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive,

process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND  
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

28. Certain aspects of the relief requested herein are subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant this relief on an expedited basis if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

29. Additionally, with respect to any aspect of the relief sought herein that constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

**RESERVATION OF RIGHTS**

30. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or

authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

### **NOTICE**

31. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; (p) the Utility Companies; (q) certain of the Debtors' landlords that directly pay for Utility Services; (r) the Service Provider; and (s) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Orders, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Joseph M. Mulvihill

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- and -

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*Proposed Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ___

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**INTERIM ORDER**  
**(A) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES,**  
**(B) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT,**  
**(C) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT, AND**  
**(D) AUTHORIZING PAYMENT OF ANY PREPETITION SERVICE FEES**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an Interim Order, (a) prohibiting the Debtors’ Utility Companies from altering, refusing, discontinuing service or discriminating against the Debtors, (b) approving the Adequate Assurance Deposit as adequate assurance of postpetition payment to the Utility Companies, (c) establishing procedures for resolving any subsequent requests by the Utility Companies for additional assurance of payment, and (d) authorizing payment of any prepetition Service Fees; and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are:GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234).The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Interim Hearing*”); and upon the First Day Declaration and the record of the Interim Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. Absent further order of this Court, the Utility Companies, including any subsequently-added Utility Companies, are hereby prohibited from altering, refusing, or discontinuing service to, or discriminating against, the Debtors on account of unpaid prepetition invoices or due to the commencement of the Chapter 11 Cases, or requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than in accordance with the Additional Assurance Procedures contained herein.
3. The Debtors shall deposit a total of \$947,000 (the “*Adequate Assurance Deposit*”) into an existing, segregated, interest-bearing account at JPMorgan Chase Bank, N.A. in the name

of Debtor GNC Holdings, Inc., with last four digits 7167,<sup>3</sup> within twenty (20) days after the Petition Date; *provided, however*, that the liens of the agent for the Debtors' postpetition financing facility shall extend to the Debtors' and their estates' reversionary interest in the Adequate Assurance Deposit. The Adequate Assurance Deposit shall serve as a cash security deposit to provide adequate assurance of payment for Utility Services provided to the Debtors after the Petition Date and through the pendency of these cases. The amount of the Adequate Assurance Deposit will remain \$947,000 throughout the Chapter 11 Cases (*i.e.*, the amount will not be recalculated), unless otherwise adjusted as provided for herein. The Debtors shall maintain the Adequate Assurance Deposit until the earlier of the Court's entry of an order authorizing the return of the Adequate Assurance Deposit to the Debtors or the effective date of a plan of reorganization for the Debtors (at which time the funds comprising the Adequate Assurance Deposit shall automatically, without further order of the Court, be returned to the Debtors or reorganized Debtors, as applicable).

4. The Debtors are authorized, but not directed to pay prepetition Service Fees to the Payment Processor in an amount not to exceed \$2,915 and to continue to pay postpetition Service Fees in the ordinary course of business.

5. The following procedures (the "***Additional Assurance Procedures***") are hereby approved with respect to all Utility Companies, including all subsequently added Utility Companies:

- (a) Except as provided by the Additional Assurance Procedures, the Utility Companies are forbidden to (i) alter, refuse, or discontinue services to, or

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<sup>3</sup> More information on the Debtors' bank accounts and cash management system are set forth in the *Motion of Debtors for Orders (A) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (B) Authorizing Continuation of Existing Deposit Practices, (C) Authorizing Continuation of Intercompany Transactions, and (D) Granting Administrative Claim Status to Postpetition Intercompany Claims.*



discriminate against, the Debtors on account of unpaid prepetition invoices or any objections to the Debtors' Adequate Assurance Deposit, or due to the commencement of the Chapter 11 Cases or (ii) require the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the establishment of the Adequate Assurance Deposit.

- (b) The Debtors shall serve on the Utility Companies copies of the Motion and this Interim Order within forty-eight (48) hours after the entry hereof.
- (c) In the event that a Utility Company asserts that the Adequate Assurance Deposit is not adequate assurance of payment as contemplated by section 366(c)(2) of the Bankruptcy Code, that Utility Company shall serve a written request (an "***Additional Assurance Request***") for adequate assurance in addition to or in lieu of its rights in the Adequate Assurance Deposit. All Additional Assurance Requests shall be delivered by mail and email (where available) to each Utility Notice Party.<sup>4</sup>
- (d) Any Additional Assurance Request must (i) set forth the location(s) for which Utility Services are provided, (ii) set forth the account number(s) for which Utility Services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposit(s), (iv) set forth what the Utility Company would accept as satisfactory adequate assurance of payment and (v) provide a facsimile number and an email address to which the Debtors may respond to the Additional Assurance Request.
- (e) Upon the Debtors' receipt of an Additional Assurance Request, the Debtors shall promptly negotiate with the Utility Company to resolve the Additional Assurance Request.
- (f) Without further order of the Court or notice to the Court and after consultation with counsel to the Ad Hoc Group of Crossover Lenders and

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<sup>4</sup> The "***Utility Notice Parties***" are: (a) GNC Holdings, Inc., 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, Attn: Cam Lawrence (email: cam-lawrence@gnc-hq.com); (b) proposed co-counsel to the Debtors, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett V. Newman (email: caroline.reckler@lw.com, asif.attarwala@lw.com, and brett.newman@lw.com); and (c) proposed co-counsel to the Debtors, Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Joseph Mulvihill and Jared Kochenash (email: jmulvihill@ycst.com and jkochenash@ycst.com); (d) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-134, Attn: Robert J. Dehney (rdhney@mna.com); and (e) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com) (each, a "***Utility Notice Party***").

the Ad Hoc FILO Term Lender Group, the Debtors may resolve an Additional Assurance Request by entering into agreements granting additional assurance to the requesting Utility Company if the Debtors agree to alternative provisions with the Utility Company; *provided, however*, that the Debtors shall maintain a summary record of such agreements and their respective terms, to be made available, on request, to (i) counsel to the agent for the Debtors' postpetition financing facility, (ii) any statutory committee appointed in these Chapter 11 Cases, and (iii) the U.S. Trustee.

- (g) If the Debtors are not able to reach a resolution with the Utility Company within ten (10) days of the Debtors' receipt of an Additional Assurance Request (or such later date as agreed to by the Debtors and the requesting Utility Company), the Debtors shall request a hearing (the "***Determination Hearing***") before this Court to determine the adequacy of assurance of payment with respect to the particular Utility Company pursuant to section 366(c)(3) of the Bankruptcy Code.
- (h) The Determination Hearing shall be an evidentiary hearing at which the Court shall determine whether the Adequate Assurance Deposit and the additional assurance of payment requested by the Utility Company should be modified pursuant to section 366(c)(3)(A) of the Bankruptcy Code. Pending resolution of any Additional Adequate Assurance Request, the Utility Company making such request shall be prohibited from altering, refusing, or discontinuing service to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Additional Adequate Assurance Procedures.
- (i) Any Utility Company that does not serve an Additional Assurance Request in accordance with the Additional Assurance Procedures shall be deemed to have received adequate assurance of payment that is satisfactory to the Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code.
- (j) All Utility Companies, including subsequently added Utility Companies, shall be prohibited from altering, refusing or discontinuing Utility Services to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, absent further order of this Court.

6. The Debtors are authorized to amend **Exhibit C** attached to the Motion to add or delete any Utility Company, and this Interim Order shall apply in all respects to any Utility Company that is subsequently added to **Exhibit C** to the Motion. For those Utility Companies that are subsequently added to **Exhibit C**, the Debtors shall serve a copy of the Motion and this

Interim Order on the Utility Company, along with an amended **Exhibit C** that includes the Utility Company. The Debtors shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility Company is added to the Utility Company List by an amount equal to fifty percent of the estimated average monthly cost of such Utility Services based on historical averages over the preceding twelve months. Any such subsequently-added Utility Company shall otherwise be subject in all respects to the Additional Assurance Procedures.

7. The Debtors may amend the Utility Company List to delete a Utility Company, or may seek to terminate a Utility Company, only if the Debtors have provided fourteen days' advance notice to such Utility Company, and have not received any objection from such Utility Company. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Company may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete from the Utility Company List unless and until the fourteen days' notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company, or until any such objection has been resolved consensually or by order of the Court.

8. The Additional Adequate Assurance Procedures, the Adequate Assurance Deposit, and the Debtors' ability to pay for future Utility Services in the ordinary course of business constitute adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code.

9. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer

requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the Taxes and Fees, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

10. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

11. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

12. Notwithstanding anything contained in the Motion or this Interim Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each

such order, a “*DIP Order*”), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

13. Notwithstanding anything to the contrary in the Motion or this Interim Order, any payment made or authorization hereunder shall be subject to the applicable budget and/or cash collateral authorization requirements imposed on the Debtors under any order(s) of the Court authorizing the Debtors’ use of cash collateral and postpetition debtor-in-possession financing facilities.

14. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

15. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Interim Order shall be effective and enforceable immediately upon entry hereof.

16. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

17. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

18. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

19. A hearing to consider entry of an order granting the Motion on a final basis (the “*Final Hearing*”) shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_\_ .m. (prevailing Eastern

time). Any objections or responses to the entry of such an order must be filed on or before 4:00 p.m. (prevailing Eastern time) on \_\_\_\_\_, 2020, and served on (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (email: caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com), and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel (jeffrey.mispagel@lw.com); and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); (c) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (d) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (e) counsel to the administrative agent under the DIP ABL FILO Facility, Simpson Thacher & Bartlett LLP, 425 Lexington Ave. New York, New York 10017, Attn: Sandy

Qusba, Daniel L. Biller, and Jamie Fell (email: [squsba@stblaw.com](mailto:squsba@stblaw.com), [daniel.biller@stblaw.com](mailto:daniel.biller@stblaw.com), and [jamie.fell@stblaw.com](mailto:jamie.fell@stblaw.com)); and (f) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: [trigg.erin@dorsey.com](mailto:trigg.erin@dorsey.com) and [kohn.samuel@dorsey.com](mailto:kohn.samuel@dorsey.com)). In the event that no objections to entry of the Proposed Final Order on the Motion are timely received, this Court may enter such Proposed Final Order without need for the Final Hearing.

20. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT B**

**Proposed Final Order**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket Nos. ___ & ___

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**FINAL ORDER**  
**(A) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES, (B) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT, (C) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT, AND (D) AUTHORIZING PAYMENT OF ANY PREPETITION SERVICE FEES**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of a Final Order, (a) prohibiting the Debtors’ Utility Companies from altering, refusing, discontinuing service or discriminating against the Debtors, (b) approving the Adequate Assurance Deposit as adequate assurance of postpetition payment to the Utility Companies, (c) establishing procedures for resolving any subsequent requests by the Utility Companies for additional assurance of payment, and (d) authorizing payment of any prepetition Service Fees; and this Court having reviewed the Motion, the First Day Declaration, and the Interim Order entered on [], 2020; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are:GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234).The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Final Hearing*”); and upon the First Day Declaration and the record of the Final Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on a final basis, as set forth herein.
2. Absent further order of this Court, the Utility Companies, including any subsequently-added Utility Companies, are hereby prohibited from altering, refusing, or discontinuing service to, or discriminating against, the Debtors on account of unpaid prepetition invoices or due to the commencement of the Chapter 11 Cases, or requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than in accordance with the Additional Assurance Procedures contained herein.
3. To the extent not already deposited pursuant to the Interim Order, the Debtors shall deposit a total of \$947,000 (the “*Adequate Assurance Deposit*”) into an existing, segregated, interest-bearing account at JPMorgan Chase Bank, N.A. in the name of Debtor GNC Holdings,

Inc. with last four digits 7167,<sup>3</sup> upon entry of this Final Order; *provided, however*, that the liens of the agent for the Debtors' postpetition financing facility shall extend to the Debtors' and their estates' reversionary interest in the Adequate Assurance Deposit. The Adequate Assurance Deposit shall serve as a cash security deposit to provide adequate assurance of payment for Utility Services provided to the Debtors after the Petition Date and through the pendency of these cases. The amount of the Adequate Assurance Deposit will remain \$947,000 throughout the Chapter 11 Cases (*i.e.*, the amount will not be recalculated), unless otherwise adjusted as provided for herein. The Debtors shall maintain the Adequate Assurance Deposit until the earlier of the Court's entry of an order authorizing the return of the Adequate Assurance Deposit to the Debtors or the effective date of a plan of reorganization for the Debtors (at which time the funds comprising the Adequate Assurance Deposit shall automatically, without further order of the Court, be returned to the Debtors or reorganized Debtors, as applicable).

4. The Debtors are authorized, but not directed to pay prepetition Service Fees (to the extent not already paid pursuant to the Interim Order) to the Payment Processor in an amount not to exceed \$2,915 and to continue to pay postpetition Service Fees in the ordinary course of business.

5. The following procedures (the "***Additional Assurance Procedures***") are hereby approved with respect to all Utility Companies, including all subsequently added Utility Companies:

- (a) Except as provided by the Additional Assurance Procedures, the Utility Companies are forbidden to (i) alter, refuse, or discontinue services to, or

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<sup>3</sup> More information on the Debtors' bank accounts and cash management system are set forth in the *Motion of Debtors for Orders (A) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (B) Authorizing Continuation of Existing Deposit Practices, (C) Authorizing Continuation of Intercompany Transactions, and (D) Granting Administrative Claim Status to Postpetition Intercompany Claims*.

discriminate against, the Debtors on account of unpaid prepetition invoices or any objections to the Debtors' Adequate Assurance Deposit, or due to the commencement of the Chapter 11 Cases or (ii) require the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the establishment of the Adequate Assurance Deposit.

- (b) The Debtors shall serve on the Utility Companies copies of this Final Order within forty-eight (48) hours after the entry hereof.
- (c) In the event that a Utility Company asserts that the Adequate Assurance Deposit is not adequate assurance of payment as contemplated by section 366(c)(2) of the Bankruptcy Code, that Utility Company shall serve a written request (an "***Additional Assurance Request***") for adequate assurance in addition to or in lieu of its rights in the Adequate Assurance Deposit. All Additional Assurance Requests shall be delivered by mail and email (where available) to each Utility Notice Party.<sup>4</sup>
- (d) Any Additional Assurance Request must (i) set forth the location(s) for which Utility Services are provided, (ii) set forth the account number(s) for which Utility Services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposit(s), (iv) set forth what the Utility Company would accept as satisfactory adequate assurance of payment and (v) provide a facsimile number and an email address to which the Debtors may respond to the Additional Assurance Request.
- (e) Upon the Debtors' receipt of an Additional Assurance Request, the Debtors shall promptly negotiate with the Utility Company to resolve the Additional Assurance Request.
- (f) Without further order of the Court or notice to the Court and after consultation with counsel to the Ad Hoc Group of Crossover Lenders and

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<sup>4</sup> The "***Utility Notice Parties***" are: (a) GNC Holdings, Inc., 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222, Attn: Cam Lawrence (email: cam-lawrence@gnc-hq.com); (b) proposed co-counsel to the Debtors, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett V. Newman (email: caroline.reckler@lw.com, asif.attarwala@lw.com, and brett.newman@lw.com); and (c) proposed co-counsel to the Debtors, Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Joseph Mulvihill and Jared Kochenash (email: jmulvihill@ycst.com and jkochenash@ycst.com); (d) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-134, Attn: Robert J. Dehney (rdehney@mna.com); and (e) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com) (each, a "***Utility Notice Party***").

the Ad Hoc FILO Term Lender Group, the Debtors may resolve an Additional Assurance Request by entering into agreements granting additional assurance to the requesting Utility Company if the Debtors agree to alternative provisions with the Utility Company; *provided, however*, that the Debtors shall maintain a summary record of such agreements and their respective terms, to be made available, on request, to (i) counsel to the agent for the Debtors' postpetition financing facility, (ii) any statutory committee appointed in these Chapter 11 Cases, and (iii) the U.S. Trustee.

- (g) If the Debtors are not able to reach a resolution with the Utility Company within ten (10) days of the Debtors' receipt of an Additional Assurance Request (or such later date as agreed to by the Debtors and the requesting Utility Company), the Debtors shall request a hearing (the "***Determination Hearing***") before this Court to determine the adequacy of assurance of payment with respect to the particular Utility Company pursuant to section 366(c)(3) of the Bankruptcy Code.
- (h) The Determination Hearing shall be an evidentiary hearing at which the Court shall determine whether the Adequate Assurance Deposit and the additional assurance of payment requested by the Utility Company should be modified pursuant to section 366(c)(3)(A) of the Bankruptcy Code. Pending resolution of any Additional Adequate Assurance Request, the Utility Company making such request shall be prohibited from altering, refusing, or discontinuing service to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Additional Adequate Assurance Procedures.
- (i) Any Utility Company that does not serve an Additional Assurance Request in accordance with the Additional Assurance Procedures shall be deemed to have received adequate assurance of payment that is satisfactory to the Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code.
- (j) All Utility Companies, including subsequently added Utility Companies, shall be prohibited from altering, refusing or discontinuing Utility Services to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, absent further order of this Court.

6. The Debtors are authorized to amend **Exhibit C** attached to the Motion to add or delete any Utility Company, and this Final Order shall apply in all respects to any Utility Company that is subsequently added to **Exhibit C** to the Motion. For those Utility Companies that are subsequently added to **Exhibit C**, the Debtors shall serve a copy of the Motion and this Final Order

on the Utility Company, along with an amended **Exhibit C** that includes the Utility Company. The Debtors shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility Company is added to the Utility Company List by an amount equal to fifty percent of the estimated average monthly cost of such Utility Services based on historical averages over the preceding twelve months. Any such subsequently-added Utility Company or Additional Assurance Request shall otherwise be subject in all respects to the Additional Assurance Procedures.

7. The Debtors may amend the Utility Company List to delete a Utility Company, or may seek to terminate a Utility Company, only if the Debtors have provided fourteen days' advance notice to such Utility Company, and have not received any objection from such Utility Company. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Company may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete from the Utility Company List unless and until the fourteen days' notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company, or until any such objection has been resolved consensually or by order of the Court.

8. The Additional Adequate Assurance Procedures, the Adequate Assurance Deposit, and the Debtors' ability to pay for future Utility Services in the ordinary course of business constitute adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code.

9. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors to process, honor, pay, and, if necessary, reissue any and all checks

and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the Taxes and Fees, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

10. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

11. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

12. Notwithstanding anything contained in the Motion or this Final Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors

to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a “*DIP Order*”), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

13. Notwithstanding anything to the contrary in the Motion or this Final Order, any payment made or authorization hereunder shall be subject to the applicable budget and/or cash collateral authorization requirements imposed on the Debtors under any order(s) of the Court authorizing the Debtors’ use of cash collateral and postpetition debtor-in-possession financing facilities.

14. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

15. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Final Order shall be effective and enforceable immediately upon entry hereof.

16. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

17. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge



**Exhibit C**

**Utility Companies**

The Utility Companies known and identified by the Debtors to date are listed below.

While the Debtors have used their best efforts to list all of their Utility Companies below, it is possible that certain Utility Companies may have been inadvertently omitted from this list. Accordingly, the Debtors reserve the right, under the terms and conditions of the Motion and without further order of the Court, to amend this **Exhibit C** to add any Utility Companies that were omitted therefrom and to apply the relief requested to all those entities.

In addition, the Debtors reserve the right to argue that any entity now or hereafter listed on this **Exhibit C** is not a “utility” within the meaning of Bankruptcy Code Section 366(a).

<b>Provider</b>	<b>Service</b>	<b>Account Number(s) (if available)</b>	<b>Monthly Average Spend (\$)</b>	<b>Adequate Assurance (\$)</b>	<b>Address</b>
CPBP-V ASSOCIATES LP	Landlord Water/Sewer	GNCLI2322	17	9	AMCAP INCORPORATED 333 LUDLOW ST SOUTH TOWER 8TH FLOOR STAMFORD, CT 06902
HSC HOLDINGS LLC	Landlord Electric Non-Service	3001322	464	232	BOHANNON DEVELOPMENT CO SIXTY 31ST AVE SAN MATEO, CA 94403
MIKE'S PLACE LLC	Landlord Solid Waste Landlord Water/Sewer	GNC5007GREENHURSTPLAZA	73	36	CASSIA COMPANY PO BOX 191007 BOISE, ID 83719
TCCI BROAD STREET LLC #0510	Landlord Water/Sewer	184847000	13	7	CAST PO BOX 1450 COLUMBUS, OH 43216

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CROSSING AT FLEMING ISLAND CDD	Water/Sewer	283937	81	40	CLAY COUNTY UTIL AUTH 3176 OLD JENNINGS RD MIDDLEBURG, FL 32068
JOYFOR JOINT VENTURE ESSC	Landlord Water/Sewer	GENERGNC7894	18	9	CONTINENTAL DEVELOPERS LLC 1604 WALNUT STREET 4TH FLOOR PHILADELPHIA, PA 19103
ORANGE IMPROVEMENTS PRTRNSHP	Landlord Water/Sewer	1002493	11	5	DLC MANAGEMENT CORP PO BOX 5122 WHITE PLAINS, NY 10602
CALN TOWNSHIP CTMA	Non-Service Water/Sewer	57760	44	22	DNB FIRST PO BOX 1004 DOWNINGTON, PA 19335
HEMPFIELD WATER AUTHORITY	Water/Sewer	960500	6	3	FULTON BANK PO BOX 7567 LANCASTER, PA 17604
LSREF3 SPARTAN GENESEE LLC	Landlord Electric Landlord Water/Sewer	820	313	157	GENESEE VALLEY CENTER 3341 S LINDEN RD FLINT, MI 48507
CSHV WAUGH CHAPEL LLC	Landlord Water/Sewer	GENER7074	33	16	GREENBERG GIBBONS COMMN ATTN LEASE ADMINISTRATION 10096 RED RUN BLVD SUITE 100

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					OWINGS MILLS, MD 21117
RACINE MALL LLC	Landlord Electric	D444	386	193	HULL PROPERTY GROUP PO BOX 204227 AUGUSTA, GA 30917
SEWARD MERIDIAN PLAZA	Landlord Gas Landlord Water/Sewer	GENERALNUTRITIONINC	144	72	LEE REALTY LLC PO BOX 877001 WASILLA, AK 99687
OASG HAZLET LLC	Landlord Water/Sewer	49052	37	19	ONYX MANAGEMENT GROUP LLC 900 ROUTE 9 NORTH SUITE 400 WOODBIDGE, NJ 07095
CASTE VILLAGE INC	Landlord Electric Landlord Water/Sewer	252020	165	83	OXFORD DEVELOPMENT CO ONE OXFORD CENTRE 45TH FLOOR PITTSBURGH, PA 15219
MALL 1 BAY PLAZA LLC	Landlord Electric	GNC	352	176	PRESTIGE PROPRTES&DEVELOP MNT 546 FIFTH AVE 15TH FLOOR NEW YORK, NY 10036
OLD BRIDGE RETAIL INVEST LLC	Landlord Water/Sewer	443742	60	30	RAPPAPORT MANAGEMENT COMPANY 8405 GREENSBORO DRIVE 8TH FLOOR

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					MCLEAN, VA 22102
HOMER ELECTRIC ASSOCIATION INC	Electricity	96388001	326	163	SOUTHEASTERN DATA COOP PO BOX 530812 ATLANTA, GA 30353
UB IRONBOUND LP	Landlord Water/Sewer	18523485	22	11	URSTADT BIDDLE PROPERTIES PO BOX 371328 PITTSBURGH, PA 15250
WESTSHORE MALL INVESTORS LLC	Landlord Water/Sewer	12331340	2	1	VERSA MANAGEMENT ROYAL OAK, MI 48067
VESTAR ORCHARD TOWN CENTER LLC	Landlord Water/Sewer Water/Sewer	GNC009230, GNC9230, GNC009230	28	14	VESTAR PROPERITES INC CITY OF INDUS, CA 91716
CONSUMERS ENERGY	Gas	100004226377, 100004871149, 100006323487, 100010780813, 100010955969, 100011345475, 100012137327, 100012356299, 100013004062, 100017105428, 100018219590, 100020510002, 100021413404, 100022674046, 100024994616, 100026328052, 100029496807, 100041811744, 100050171576, 100060485461, 100061811624, 103011185107, 103017379563, 103029325588, 103035123431	1,352	676	530 W WILLOW ST LANSING, MI 48906
CIRCLEVILLE PARTNERS LP	Landlord Water/Sewer	183991000	94	47	#2530 CA PO BOX 1450 COLUMBUS, OH 43216

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
STONERIDGE PLAZA SHOPS LLC	Landlord Water/Sewer	HO4837	29	14	#4760 C PO BOX 1450 COLUMBUS, OH 43216
0345 LINCOLN COMMONS OWNER LLC	Landlord Electric	TEMP	260	130	0345 LINCOLN COMMONS OWNER LLC
CASEYVILLE TOWNSHIP SEWER	Water/Sewer	204069000	35	18	1 ECOLOGY DRIVE O'FALLON, IL 62269
CITY OF BROCKVILLE	Water/Sewer	4325088535001	44	22	1 KING ST WEST VICTORIA BUILDING BROCKVILLE, ON K6V7A
CITY OF GREENCASTLE MUNIE UTIL	Non-Service Water/Sewer	1200003801	35	18	1 N LOCUST ST PO BOX 288 GREENCASTLE, IN 46135
EVANSVILLE IN WATERWORKS DEPT	Water/Sewer	90708766338703	126	63	1 NW ML KING JR BLVDRM 104EVANSVILLE, IN47740
BOROUGH OF GLASSBORO WTR SWR	Water/Sewer	313112	63	31	1 S MAIN ST GLASSBORO, NJ 08028
TOWNSHIP OF DENVILLE	Non-Service Trash Water/Sewer	48235	50	25	1 ST MARY'S PLACE DENVILLE, NJ 07834
CROMWELL FIRE DIST-WATER DIV	Water/Sewer	262064	70	35	1 WEST ST CROMWELL, CT 06416
LOGAN TOWNSHIP	Water/Sewer	L201170	57	29	100 CHIEF LOGAN CIRCLE ALTOONA, PA 16602

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF LOMPOC	Electricity Trash Water/Sewer	54241001	362	181	100 CIVIC CENTER PLAZA LOMPOC, CA 93436
WESTFIELD GAS & ELECTRIC	Electricity Gas	112606314598	425	213	100 ELM ST WESTFIELD, MA 01085
OSHAWA PUC NETWORKS INC	Electricity Non-Service	10758801, 11323302	571	286	100 SIMCOE ST S OSHAWA, ON L1H 7M7
CITY OF MILTON	Electricity	2399	183	92	1000 LAUREL ST MILTON, WA 98354
CORNWALL ELECTRIC	Electricity Non-Service	1065731	355	177	1001 SYDNEY ST CORNWALL, ON K6H3K
CITY OF CROWN POINT	Non-Service Water/Sewer	2032095001	47	25	101 N EAST ST CROWN POINT, IN 46307
CITY OF GRANTS PASS	Water/Sewer	27636227035	308	154	101 NORTHWEST A ST GRANTS PASS, OR 97526
MADISON UTILITIES	Non-Service Water/Sewer	100146701	21	11	101 RAY SANDERSON DR MADISON, AL 35758
CITY OF CHANUTE	Electricity Gas Non-Service Trash Water/Sewer	57069002	420	210	101 S LINCOLN P O BOX 723 CHANUTE, KS 66720
MADISON WATER & SEWER	Water/Sewer	166596303	109	55	101 W MAIN ST MADISON, IN 47250

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
JAMESTOWN WATER DEPT	Water/Sewer	666700	44	22	102 3RD AVE SE JAMESTOWN, ND 58401
CORAL SPRINGS IMPROVEMENT DIST	Non-Service Water/Sewer	460547701	109	55	10300 N W 11TH MANOR CORAL SPRINGS, FL 33071
PACIFIC POWER	Electricity Non-Service	3856287001, 15365771001, 18479896018, 33638399002, 35172761001, 35172761002, 35172761003, 45582881002, 45582881003, 45582881006, 45582881007, 45582881009, 45582881012, 60134831001, 63415348001, 96434903001, 3856287001, 33638399002, 45582881007	4,000	2,007	1033 NE 6TH AVE PORTLAND, OR 97256
CITY OF EMPORIA	Non-Service Water/Sewer	14694352400	(3,259)	187	104 E 5TH PO BOX 928 EMPORIA, KS 66801
VILLAGE OF CHICAGO RIDGE	Water/Sewer	20106100001	70	35	10455 S RIDGELAND CHICAGO RIDGE, IL 60415
JJ GUMBERG CO	Landlord Water/Sewer	2581160	7	3	1051 BRINTON RD PITTSBURGH, PA 15221
CITY OF MEBANE	Water/Sewer	10540400	53	26	106 E WASHINGTON ST MEBANE, NC 27302
CLEARFIELD MUNICIPAL AUTHORITY	Non-Service Water/Sewer	1580	90	45	107 E MARKET ST CLEARFIELD, PA 16830
CITY OF GULF BREEZE	Gas Non-Service Water/Sewer	26539016884	31	15	1070 SHORELINE DR GULF BREEZE, FL 32561
CITY OF MT VERNON IL	Water/Sewer	28905085501	58	29	1100 MAIN ST PO BOX 1708

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					MT VERNON, IL 62864
CITY OF GALAX	Water/Sewer	242900	34	17	111 E GRAYSON ST GALAX, VA 24333
LONDON HYDRO	Electricity Non-Service	5426152, 50423707, 51005041, 5426152, 51005041	903	452	111 HORTON ST PO BOX 3060 LONDON, ON N6A4J
CITY OF PEKIN	Water/Sewer	13755000	24	12	111 S CAPITOL ST PEKIN, IL 61554
CITY OF CHARDON	Water/Sewer	45880002	275	137	111 WATER ST CHARDON, OH 44024
CITY OF WEST BEND WATER UTIL	Water/Sewer	37175200	20	10	1115 S MAIN ST WEST BEND, WI 53095
COLUMBIA CITY UTILITIES	Electricity Non-Service	39915201	300	151	112 S CHAUNCEY ST COLUMBIA CITY, IN 46725
CITY OF WINTER SPRINGS UTILITY	Water/Sewer	22420001	32	16	1126 E STATE RD 434 WINTER SPRING, FL 32708
CITY OF LOWER BURRELL	Water/Sewer	3046	45	23	115 SCHREIBER ST LOWER BURRELL, PA 15068
CITY OF NEPTUNE BEACH	Water/Sewer	12676957563	46	23	116 FIRST ST NEPTUNE BEACH, FL 32266
CITY OF GRENADA WATER DEPT	Non-Service Water/Sewer	44756	168	84	116 MAIN ST GRENADA, MS 38901
LIBERTY UTILITIES NH	Electricity Gas	4460852544100140, 4463945244306440, 4450014544100140, 4452028744133010,	1,372	686	116 NORTH MAIN STREET



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		4454036144165770, 4455916744197320, 4459397944255980, 4467191544100140			CONCORD, NH 03301
CITY OF FERNANDINA BEACH	Non-Service Trash Water/Sewer	1506675611124, 15066756, 1506675611124	65	35	1180 SOUTH 5TH ST FERNANDINA BEACH, FL 32034
VIAVID BROADCASTING CORP	Telecom	Unknown	481	240	118-998 HARBOURSIDE DRIVE NORTH VANCOUVER, BC V7P 3T2
WADSWORTH UTILITIES	Electricity	83610549001	311	156	120 MAPLE ST WADSWORTH, OH 44281
HIGHLAND SEWER & WATER AUTH	Water/Sewer	6910	35	17	120 TANK DRJOHNSTOWN, PA15904
CITY OF MISSION	Non-Service Trash Water/Sewer	23182302	35	20	1201 E 8TH ST MISSION, TX 78572
MOUNT LAUREL TWP MUA	Water/Sewer	5030101AK	23	11	1201 S CHURCH ST MT LAUREL, NJ 08054
STATE COLLEGE BOROUGH WTR AUTH	Water/Sewer	B00190006	23	11	1201 W BRANCH RD STATE COLLEGE, PA 16801
CITY OF SILVIS	Water/Sewer	10189003	42	21	121 11TH ST SILVIS, IL 61282
CITY OF DIXON	Water/Sewer	430692101	38	19	121 W SECOND ST DIXON, IL 61021
STROUD TOWNSHIP SEWER AUTH	Non-Service Water/Sewer	2145A22	55	28	1211 N 5TH ST STROUDSBURG, PA 18360

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
NEW CHICAGO WATER WORKS	Non-Service Water/Sewer	11009	40	20	122 HUBER BLVD HOBART, IN 46342
METROPOLITAN HUNTINGTON LLC	Landlord Water/Sewer	1028210017207140, GENERGNC003616	14	7	1220 DUBLIN RD COLUMBUS, OH 43215
MARION MUNICIPAL WATER DEPT	Water/Sewer	90290139000	37	18	1225 6TH AVE STE 150 MARION, IA 52302
VOLUSIA COUNTY WATER	Water/Sewer	11093001	61	30	123 W INDIANA AVE DELAND, FL 32720
BOROUGH OF EPHRATA	Water/Sewer	22682000	11	6	124 S STATE ST EPHRATA, PA 17522
CITY & CO OF BUTTE SILVER BOW	Water/Sewer	M759900000	28	14	124 W GRANITE ST BUTTE, MT 59701
TOWN OF AURELIUS	Water/Sewer	82175	163	82	1241 W GENESEE ST RD AUBURN, NY 13021
TUCKASEIGEE WATER & SEWER AUTH	Water/Sewer	110900	143	72	1246 W MAIN ST SYLVA, NC 28779
CITY OF CLEMSON	Water/Sewer	883113	42	21	1250 TIGER BLVD STE 2 CLEMSON, SC 29631
SUPERIOR PROPANE	Propane	286220001	70	35	1265 E ARTHUR ST THUNDER BAY, ON P7E6E
CITIZENS GAS FUEL CO	Gas	1051029100	229	114	127 N MAIN ST PO BOX 40

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					ADRIAN, MI 49221
CITY OF OSWEGO	Water/Sewer	5107115310	86	43	13 W ONEIDA ST OSWEGO, NY 13126
THE YORK WATER CO	Water/Sewer	118878406484	32	16	130 EAST MARKET ST BOX 15089 YORK, PA 17405
CITY OF STURGIS	Electricity	501005031	347	174	130 N NOTTAWA ST STURGIS, MI 49091
PENINSULA LIGHT COMPANY	Electricity	924691029248	182	91	13315 GOODNOUGH DR NW GIG HARBOR, WA 98332
BURLINGTON HYDRO	Electricity Non-Service Water/Sewer	74480001, 74480002, 74480002, 74480001	747	373	1340 BRANT STREET BURLINGTON, ON L7R 3Z7
CITY OF BELLEFONTAINE UTIL DPT	Non-Service Water/Sewer	3489335	56	28	135 N DETROIT ST BELLEFONTAINE, OH 43311
MOREHEAD UTILITY PLANT BOARD	Gas Water/Sewer	122354000	57	29	135 S WILSON AVE MOREHEAD, KY 40351
VILLAGE OF CRESTWOOD	Non-Service Water/Sewer	2724845	38	19	13840 S CICERO AVE CRESTWOOD, IL 60445
SOUTH CAROLINA ELECTRIC & GAS	Electricity Gas	1210106385713, 1210106385713, 1210107047286, 9210094849759, 9210103920886	443	221	1400 LADY ST COLUMBIA, SC 29218
CITY OF AMERICUS	Water/Sewer	202591	21	11	1404 EAST FORSYTH ST AMERICUS, GA 31709

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
AVISTA	Electricity Gas	1775497114, 2226434623, 3297678824, 7919194697, 8261182729, 2000100000, 3297678824, 4428630000, 6085773933, 7919194697, 8261182729	970	485	1411 E MISSION AVE SPOKANE, WA 99252
CHAPEL ASSOCIATES LLC	Landlord Water/Sewer	264038	163	82	1414 ATWOOD AVE SUITE 260 JOHNSTON, RI 02919
CITY OF N CANTON PUBLIC UTIL	Water/Sewer	95751	37	18	145 N MAIN ST N CANTON, OH 44720
WASHINGTON SUBURBAN SANITARY C	Non-Service Water/Sewer	3966610000, 2010350000, 3966610000, 6422100000, 8280020000, 8472150000, 9937900000	(177)	85	14501 SWEITZER LANE LAUREL, MD 20707
WINDSOR TOWNSHIP SEWER	Water/Sewer	98314320	38	19	1480 WINDSOR RD RED LION, PA 17356
CITY OF APOPKA	Trash Water/Sewer	1210850	70	35	150 E 5TH ST APOPKA, FL 32703
LOGAN VALLEY REALTY LLC NAMDAR	Landlord Electric	120	190	95	150 GREAT NECK RD STE 304 GREAT NECK, NY 11021
BANKS COUNTY WATER SYSTEM	Non-Service Water/Sewer	4044	47	24	150 HUDSON RIDGE SUITE 5 HOMER, GA 30547
CITY OF IMLAY CITY	Water/Sewer	CED2001801000002	27	13	150 NORTH MAIN STREET IMLAY CITY, MI 48444
CHAMPION ENERGY SERVICES LLC	Electricity Non-Service	77561, 77583, 77594, 77714, 104283, 104485, 104623, 106812, 106813, 106814, 106871, 106873, 106874, 107419, 107420, 107421, 107511, 107512, 107513, 107514,	4,088	2,068	1500 RANKIN ROAD #200 HOUSTON, TX 77073

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		107515, 108065, 108066, 108164, 108165, 108166, 108167, 108454, 108455, 108839, 108874, 108876, 108877, 109232, 109233, 109513, 109549, 109550, 109578, 109579, 109988, 110133, 110134, 110300, 110301, 110667, 104623, 107421, 107511, 107513, 107515, 108164, 108876, 109549, 109578, 109579, 110667			
FORT PAYNE WATER WORKS BOARD	Non-Service Water/Sewer Trash	423474, 423475, 423474	109	56	153 20TH ST NEFORT PAYNE, AL35967
LEHI CITY CORP	Electricity	40603845	247	123	153 NORTH 100 EAST LEHI, UT 84043
BRICK TOWNSHIP MUA	Water/Sewer	359281415	67	34	1551 HIGHWAY 88 WEST BRICK, NJ 08724
UNIVERSITY AREA JOINT AUTH	Water/Sewer	1185	51	26	1576 SPRING VALLEY RD STATE COLLEGE, PA 16801
CITY OF DUBOIS BUREAU OF WATER	Non-Service Water/Sewer	41710	3	5	16 W SCRIBNER AVE DUBIOS, PA 15801
CITY OF CHICAGO HEIGHTS	Non-Service Water/Sewer	50200249201	21	20	1601 CHICAGO RD CHICAGO HEIGHTS, IL 60411
CINNAMINSON SEWER AUTHORITY	Water/Sewer	11221020014032901CC2	40	20	1621 RIVERTON RD CINNAMINSON, NJ 08077
GATEWAY PLAZA 31 LLC	Landlord Water/Sewer	GNC5866	97	49	1667 E LINCOLN AVE ORANGE, CA 92865

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
VERNON TOWNSHIP SANITARY AUTH	Water/Sewer	30481	38	19	16678 MCMATH AVE MEADVILLE, PA 16335
MOON TWP MUNICIPAL AUTHORITY	Water/Sewer	401100000	28	14	1700 BEAVER GRADE RD SUITE 200 MOON TOWNSHIP, PA 15108
GRAND HAVEN BRD OF LIGHT & PWR	Electricity	63913001	310	155	1700 EATON DRIVE GRAND HAVEN, MI 49417
WESTON SANITARY BOARD	Water/Sewer	17172000	29	15	171 MAIN AVE WESTON, WV 26452
PALMETTO UTILITIES INC	Water/Sewer	1519433970098	114	57	1713 WOODCREEK FARMS RD SUITE A ELGIN, SC 29045
UTILITY RECOVERY SYSTEMS INC	Water/Sewer	21421	62	31	1721 S FRANKLIN RD STE 200 INDIANAPOLIS, IN 46239
BENTON CHARTER TOWNSHIP	Non-Service Water/Sewer	M139002061000A04	31	16	1725 TERRITORIAL RD BENTON HARBOR, MI 49022
LANDIS SEWERAGE AUTHORITY	Water/Sewer	07278F23, 07460B6	164	82	1776 S MILL RD VINELAND, NJ 08360
SVF UNIVERSITY WESTWOOD LLC	Landlord Water/Sewer	772393	48	24	1801 W OLYMPIC BLVD PASADENA, CA 91199
PETERBOROUGH UTILITIES SVCS	Electricity	17793630076	291	145	1867 ASHBURNHAM DR PO BOX 4125 STATION

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					MAIN PETERBOROUGH, ON K9J6Z
OSTERMAN PROPANE	Propane	2010123	22	11	1870 S WINTON RD SUITE 200 ROCHESTER, NY 14618
CITY OF BAY CITY	Non-Service Trash Water/Sewer	1700010001	145	73	1901 5TH ST BAY CITY, TX 77414
CITY OF PERU	Electricity Non-Service Water/Sewer	102037303	776	388	1901 FOURTH ST PO BOX 299 PERU, IL 61354
WHITEHALL TOWNSHIP AUTHORITY	Water/Sewer	10900	35	18	1901 SCHADT AVE WHITEHALL, PA 18052
NEWBERRY TWP SEWER	Non-Service Water/Sewer	3895	54	27	1915 OLD TRAIL RD ETTERS, PA 17319
CITY OF MARY ESTHER	Non-Service Water/Sewer	144500	104	52	195 CHRISTOBAL RD N WATER DEPT MARY ESTHER, FL 32569
BALDWINEMC	Electricity	530586001	187	93	19600 STATE HIGHWAY 59 SUMMERDALE, AL 36580
BLACKMAN CHARTER TOWNSHIP	Water/Sewer	1212700	15	8	1990 W PARNALL RD JACKSON, MI 49201
PPL ELECTRIC UTILITIES CORP	Electricity	741618048, 1539108016, 2127019007, 3860126006, 5417095012, 6138134000, 6545079012, 7280984015, 8973707021, 9589142020, 9858722003	994	497	2 N 9TH ST RPC GENN1 ALLENTOWN, PA 18101

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
PPL ELECTRIC UTILITIES	Electricity	1425094061, 4651873062, 5637321035, 6127530096, 7225738015, 8457241028, 9617968018, 9853280019	769	385	2 NORTH 9TH STREET CPC-GENN1 ALLENTOWN, PA 18101
WILTON WATER & SEWER AUTHORITY	Water/Sewer	1354	14	7	20 TRAVER RD GANSEVOORT, NY 12831
MILTON HYDRO DISTRIBUTION INC	Electricity Water/Sewer	12557001	440	220	200 CHISHOLM DR MILTON, ON L9T 3G9
JOINTLY OWNED NATURAL GAS	Gas Non-Service	235023401	35	18	200 DUNBAR RD BYRON, GA 31008
CITY OF DAVISON	Water/Sewer	690000	64	32	200 E FLINT ST SUITE 2 DAVISON, MI 48423
CITY OF WEIRTON UTILITIES	Water/Sewer	1717	30	15	200 MUNICIPAL PLAZA WEIRTON, WV 26062
CITY OF ST CHARLES MISSOURI	Water/Sewer	41252002	232	116	200 N 2ND ST ST CHARLES, MO 63301
JACKSONVILLE MUNICIPAL UTIL	Water/Sewer	13359000	39	19	200 W DOUGLAS JACKSONVILLE, IL 62650
ALLIANT GAS PINNACLE PROPANE	Propane	854900	101	50	200 W LONGHORN RD PAYSON, AZ 85541
CITY OF BROOKFIELD UTILITIES	Water/Sewer	208209208209	34	17	2000 N CALHOUN RD BROOKFIELD, WI 53005
MARSHFIELD UTILITIES	Electricity	205174	325	163	2000 S CENTRAL AVE P O BOX 670 MARSHFIELD, WI 54449



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
STRATHCONA COUNTY	Water/Sewer	1006543301	26	13	2001 SHERWOOD DRIVESHERWOOD PARK, ABT8A 3W7
CITY OF GILLETE	Electricity Water/Sewer	5268303384	381	190	201 E 5TH ST GILLETTE, WY 82716
CITY OF EFFINGHAM WATER DEPT	Water/Sewer	30101430101	33	17	201 E JEFFERSON AVE PO BOX 1345 EFFINGHAM, IL 62401
TOWN OF BRIDGEWATER	Water/Sewer	000389H	18	9	201 GREEN ST BRIDGEWATER, VA 22812
CITY OF OCALA	Electricity Water/Sewer Trash	503274182592, 508675155201, 528676111703, 508675155201	1,493	747	201 SE 3RD ST OCALA, FL 34471
SASK POWER	Electricity	510002339206	339	170	2025 VICTORIA AVE REGINA, SK S4P0S
CITY OF GRAND BLANC	Non-Service Water/Sewer	97510	37	18	203 E GRAND BLANC RD GRAND BLANC, MI 48439
CITY OF CALUMET CITY	Water/Sewer	40207800001	3	1	204 PULASKI RD PO BOX 1519 CALUMET CITY, IL 60409
MARSHALLTOWN WATER WORKS	Trash Water/Sewer	153084403	67	34	205 E STATE ST P O BOX 1420 MARSHALLTOWN, IA 50158
BEAVER DAM WATER UTILITY	Water/Sewer	12322101	48	24	205 S LINCOLN AVE BEAVER DAM, WI 53916

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CITY OF FRANKLIN	Electricity Non-Service Water/Sewer	3604150	394	197	207 W 2ND AVE FRANKLIN, VA 23851
CONSUMERS ENERGY	Electricity Gas	734403, 100006501876, 100011064241, 100012211676, 100012356505, 100018276616, 100021589120, 100023600305, 100025919331, 100026435055, 100027819034, 100028594610, 100033577220, 103012922144, 103022483376, 103030278628, 103036788786, 103036803924, 100011064241, 100021589120, 100023600305, 100033577220	6,056	3,028	2074 242ND ST MARSHALLTOWN, IA 50158
SOUTHWESTERN VA GAS CO	Gas	95495	14	7	208 LESTER ST MARTINSVILLE, VA 24112
CITY OF NICEVILLE	Non-Service Trash Water/Sewer	100177003	157	81	208 N PARTIN DR NICEVILLE, FL 32578
OWATONNA PUBLIC UTILITIES	Electricity Gas	704243	246	123	208 S WALNUT P O BOX 800 OWATONNA, MN 55060
CITY OF BRYANT WATER SEWER	Water/Sewer	8834000	43	21	210 S W 3RD ST BRYANT, AR 72022
JOSEPH BRUNNER INC	Waste Removal	Unknown	1,708	854	211 BRUNNER ROAD ZELIENOPLE, PA 16063
CITY OF PERRYSBURG	Non-Service Water/Sewer	3790370002	66	33	211 E BOUNDARY ST PERRYSBURG, OH 43551
CITY OF STERLING	Water/Sewer	277489001	18	9	212 3RD AVE STERLING, IL 61081

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CITY OF MONROE COMBINED UTIL	Gas Non-Service Trash Water/Sewer	231003270000	126	66	215 N BROAD ST PO BOX 725 MONROE, GA 30655
ROCKFORD SALISBURY LLC	Landlord Water/Sewer	COLLEGESQUAREGNC001623	15	8	219 WEST NINTH ST STE 230 WILMINGTON, DE 19801
YAMPA VALLEY ELECTRIC ASSN INC	Electricity	1160023001	218	109	2211 ELK RIVER RD STEAMBOAT SPG, CO 80487
JESSAMINE COUNTY WATER DIST 1	Water/Sewer	106556	155	78	2225 LEXINGTON RD NICHOLASVILLE, KY 40356
CENTER TOWNSHIP WATER AUTH	Non-Service Water/Sewer	8368, 8368, SP8851	73	37	224 CENTER GRANGE RD ALIQUIPPA, PA 15001
HUTCHINSON UTILITIES COMMISSON	Electricity Non-Service	436760	265	133	225 MICHIGAN ST SE HUTCHINSON, MN 55350
KERRVILLE PUB	Electricity Non-Service	43365001	184	92	2250 MEMORIAL BLVD KERRVILLE, TX 78028
CITY OF BIG RAPIDS	Trash Water/Sewer	205031074003	111	55	226 N MICHIGAN AVE BIG RAPIDS, MI 49307
CITY OF BUFORD	Gas Non-Service	1101402502	31	15	2300 BUFORD HWY BUFORD, GA 30518
CITY OF CUYAHOGA FALLS	Electricity Water/Sewer	61525	349	174	2310 SECOND ST CUYAHOGA FALL, OH 44221
PUBLIC PARKING AUTH OF PITTSBG	Landlord Hvac Non-Service	207GNCUTIL, 207GNC, 207GNCUTIL	87	44	232 BOULEVARD OF THE ALLIES

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
	Landlord Water/Sewer				PITTSBURGH, PA 15222
GREATER PEORIA SANITARY DIST	Water/Sewer	141492701	6	3	2322 S DARST ST PEORIA, IL 61607
CITY OF KENDALLVILLE UTILITIES	Water/Sewer	350230000	72	36	234 S MAIN ST KENDALLVILLE, IN 46755
DORCHESTER CTY WTR & SWR DEPT	Water/Sewer	72094100097, 73025900095	114	57	235 DEMING WAY SUMMERVILLE, SC 29483
CAPE FEAR PUBLIC UTILITY AUTH	Water/Sewer	10166959	260	130	235 GOVERNMENT CENTER DRIVE WILMINGTON, NC 28403
ROSLYN WATER DISTRICT	Water/Sewer	40007010	7	3	24 W SHORE RD PO BOX 326 ROSLYN, NY 11576
VILLAGE OF PLOVER	Water/Sewer	481300	25	13	2400 POST RD PLOVER, WI 54467
VILLAGE OF JOHNSON CITY MUNICI	Water/Sewer	68860	30	15	243 MAIN ST JOHNSON CITY, NY 13790
LIBERTY PLACE RETAIL ASSOC LP	Landlord Electric	2149214000	149	75	24408 NETWORK PLACE CHICAGO, IL 60673
PENNICHUCK	Water/Sewer	10026629244904	40	20	25 MANCHESTER STPO BOX 1947MERRIMACK, NH03054
WASHINGTON COUNTY SERVICE AUTH	Water/Sewer	10232450	56	28	25122 REGAL DR ABINGDON, VA 24211

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PARK TYSEN ASSOCIATES LLC	Landlord Electric	701575078500009	7	3	255 EXECUTIVE DR SUITE 302 PLAINVIEW, NY 11803
SHAKOPEE PUBLIC UTILITIES COMM	Electricity	21105001	215	108	255 SARAZIN ST PO BOX 470 SHAKOPEE, MN 55379
JONES ONSLOW EMC	Electricity	5000016363	446	223	259 WESTERN BLVD JACKSONVILLE, NC 28546
EPHRATA TOWNSHIP SWR AUTH	Water/Sewer	41030	36	18	265 AKRON RD EPHRATA, PA 17522
AUBURN WATER SEWERAGE DISTRICT	Water/Sewer	482598001	37	18	268 COURT ST P O BOX 414 AUBURN, ME 04212
THE BARBER COMPANIES	Landlord Water/Sewer	703960008	80	40	27 INVERNESS CENTER PKWY BIRMINGHAM, AL 35242
CRESCENTA VALLEY WTR DISTRICT	Water/Sewer	29769000	278	139	2700 FOOTHILL BLVD LA CRESCENTA, CA 91214
WHISPERING WOODS ENTERPRSE LLC	Landlord Water/Sewer	20773	48	24	27600 NORTHWESTERN HIGHWAY SOUTHFIELD, MI 48034
CITY OF LEXINGTON	Electricity Gas Water/Sewer	282980	492	246	28 W CENTER ST LEXINGTON, NC 27292
CITY OF REVERE TAX COLLECTOR	Water/Sewer	605442	56	28	281 BROADWAY REVERE, MA 02151

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GEUS CITY OF GREENVILLE	Electricity Non-Service	211029565001	449	231	2810 WESLEY ST GREENVILLE, TX 75401
BELLEVUE WATER UTILITY	Water/Sewer	554000	49	24	2828 ALLOUEZ AVE GREEN BAY, WI 54311
CENTRAL HUDSON GAS & ELEC CORP	Electricity Gas	56400550085, 76360410054	340	170	284 SOUTH AVE POUGHKEEPSIE, NY 12601
LIBERTY UTILITES	Gas Non-Service	11017018000, 21015445000, 21015445000	34	17	2845 BRISTOL CIR OAKVILLE, ON L6H 7H7
MUNICIPALITY OF N GRENVILLE	Non-Service Water/Sewer	17207100001	61	31	285 COUNTY RD #44, PO BOX 130 KEMPTVILLE, ON K0G 1J0
TOCCOA NATURAL GAS	Gas Non-Service	29005	18	9	291 WESTGATE PLAZA FRANKLIN, NC 28734
COLUMBIA REA	Electricity	14775	198	99	2929 MELROSE ST WALLA WALLA, WA 99362
GROTON UTILITIES	Electricity	3145001	765	383	295 MERIDIAN ST GROTON, CT 06340
CITY OF ROSEVILLE	Non-Service Water/Sewer	146026364, 840032206	114	65	29777 GRATIOT AVE ROSEVILLE, MI 48066
TOWNSHIP OF PALMER UTILITY BIL	Water/Sewer	150150, 156370	20	10	3 WELER PLACE PALMER, PA 18045
CITY OF CENTERVILLE	Non-Service Water/Sewer	3802	67	34	300 E CHURCH ST CENTERVILLE, GA 31028

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NAHATAN REALTY LLC	Landlord Electric	GENERGNC003505	152	76	300 POND ST RANDOLPH, MA 02368
DURANT CITY UTILITIES AUTH	Non-Service Trash Water/Sewer	30010304	35	18	300 W EVERGREEN ST DURANT, OK 74701
EBENSBURG BOROUGH	Water/Sewer	16360	45	22	300 W HIGH ST EBENSBURG, PA 15931
CITY OF WINTER GARDEN	Water/Sewer	6625842897	58	29	300 W PLANT ST WINTER GARDEN, FL 34787
DANIELS ROAD PARTNERS LP	Landlord Water/Sewer	DANIE33301	18	9	301 EAST LAS OLAS BLVD 5TH FLOOR FT LAUDERDALE, FL 33301
SCOTT TOWNSHIP SEWER FUND	Water/Sewer	24048771701	81	41	301 LINDSAY RD CARNEGIE, PA 15106
VILLAGE OF FORSYTH	Water/Sewer	30130000	9	4	301 S ROUTE 51 FORSYTH, IL 62535
KITCHENER WILMOT HYDRO INC	Electricity Non-Service	R0625153903, R2225619914	376	188	301 VICTORIA ST S PO BOX 9021 KITCHENER, ON N2G4P
CITY OF SEYMOUR SMSU	Non-Service Water/Sewer	2014240901	40	20	301-309 N CHESTNUT ST SEYMOUR, IN 47274
CITY OF GAYLORD	Water/Sewer	MAIW001413000004	79	40	305 E MAIN ST GAYLORD, MI 49735
CORINTH GAS & WATER DEPT	Gas Non-Service	203404103404	5	3	305 W WALDRON ST CORINTH, MS

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	Trash Water/Sewer				
HEBER LIGHT & POWER CO	Electricity	14391001	206	103	31 SOUTH 100 W HEBER CITY, UT 84032
SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE	Electricity	Unknown	170	85	311 E WILCOX DRIVE SIERRA VISTA, AZ 85635
EDGEWORTH MUNICIPAL AUTHORITY	Water/Sewer	139980000, 139980301, 220011411, 233960201, 233960210, 234030002, 234130101	1,358	679	313 BEAVER RD SEWICKLEY, PA 15143
WALNUT STREET PROPERTIES	Landlord Gas Landlord Water/Sewer	GENERGNC003841	91	46	313 S CONVENT AVE TUCSON, AZ 85701
CLAY COUNTY UTILITY AUTHORITY	Water/Sewer	165662	41	20	3176 OLD JENNINGS RDMIDDLEBURG, FL32068
RICE LAKE UTILITIES	Electricity Water/Sewer	603000000	503	251	320 W COLEMAN ST RICE LAKE, WI 54868
COPLAY-WHITEHALL SEWER AUTH	Water/Sewer	301090000	15	8	3213 MACARTHUR RD WHITEHALL, PA 18052
FREMONT UBO	Water/Sewer	3297233600	43	22	323 S FRONT ST FREMONT, OH 43420
VICTORY ELECTRIC COOP	Electricity	1155209	298	149	3230 N 14TH AVE DODGE CITY, KS 67801
WHITEHALL PUBLIC SERVICE DIST	Water/Sewer	1161	16	8	3247 FAIRMOUNT AVE FAIRMONT, WV 26554
CITY OF DALY CITY	Water/Sewer	1601278027	42	21	333 90TH ST DALY CITY, CA 94015



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IMPERIAL IRRIGATION DISTRICT	Electricity	50476109, 50553609, 50674886, 50703950	1,061	531	333 E BARIONI BLVD PO BOX 937 IMPERIAL, CA 92251
CITY OF MCHENRY	Non-Service Water/Sewer	110871774001	29	14	333 S GREEN ST MCHENRY, IL 60050
THE MID AMERICA MGMT CORP	Landlord Electric Landlord Water/Sewer Non-Service	911000182	326	196	3333 RICHMOND RD #350 BEACHWOOD, OH 44122
SYNERGY NORTH	Electricity	149997144378	413	206	34 CUMBERLAND ST N THUNDER BAY, ON P7A4L
THE CITY OF NILES	Electricity Water/Sewer	511668153474	500	250	34 W STATE ST NILES, OH 44446
TOMS RIVER MUNICIPAL UTIL AUTH	Non-Service Water/Sewer	2447862	24	12	340 W WATER ST TOMS RIVER, NJ 08753
SOUTHEAST DAVIESS COUNTY WATER	Water/Sewer	3006055002	14	7	3400 BITTEL RD OWENSBORO, KY 42301
SOUTHEAST DAVIESS COUNTY WATER DISTRICT	Water/Sewer	Unknown	5	3	3400 BITTEL ROAD OWENSBORO, KY 42301
LIMESTONE VALLEY ENTERPRISES	Landlord Water/Sewer	GENERGNC008974	5	3	3403 LANCASTER PIKE WILMINGTON, DE 19805
FAIRBANKS NATURAL GAS LLC	Gas	109723637AIRPORTWAYACU	138	69	3408 INTERNATIONAL WAY FAIRBANKS, AK 99701
CITY OF WILDWOOD WATER UTILITY	Water/Sewer	50329000	15	8	3416 PARK BLVD WILDWOOD, NJ 08260

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LLOYD CROSSING SHOPPING CTR	Landlord Water/Sewer	GENERGNC002919	88	44	350 MASSACHUSETTS AVE STE 400 INDIANAPOLIS, IN 46204
EGG HARBOR TWP MUNIE UTIL AUTH	Water/Sewer	27156	28	14	3515 BARGAINTOWN RD EGG HARBOR TO, NJ 08234
CITY OF LOCUST GROVE	Non-Service Water/Sewer	90492402	109	54	3644 HIGHWAY 42 PO BOX 900 LOCUST GROVE, GA 30248
SOUTH WALTON UTILITY CO INC	Non-Service Water/Sewer	6000	46	23	369 MIRAMAR BEACH DR MIRAMAR BEACH, FL 32550
CITY OF HIALEAH	Non-Service Water/Sewer	71745000, 161120000, 71745000, 94868000, 147669000, 161120000	154	89	3700 W 4TH AVE HIALEAH, FL 33012
VILLAGE WASTEWATER CO INC	Non-Service Water/Sewer	GNC36SUGARCREEK	46	23	380 BELLA VISTA WAY BELLA VISTA, AR 72714
MORENO VALLEY UTILITY	Electricity	701110003	438	219	380 N SAN JACINTO ST HEMET, CA 92543
CITY OF LAKE WORTH	Water/Sewer	50000046000	58	29	3805 ADAM GRUBB LAKE WORTH, TX 76135
CITY OF NEW BERLIN WTR UTILITY	Water/Sewer	10700045	31	16	3805 S CASPER DR NEW BERLIN, WI 53151
EAST BELTLINE DEVELOPMENT LLC	Landlord Water/Sewer	2036C	5	2	38500 WOODWARD AVE SUITE 200

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					BLOOMFIELD HI, MI 48304
BAY CO DEPT OF WATER & SEWER	Water/Sewer	B20151944311	93	47	3933 PATTERSON RD BAY CITY, MI 48706
GUELPH HYDRO	Electricity Non-Service	802985000480590, 1117095000508240, 1117095000541970, 802985000480590	153	109	395 SOUTHGATE DR GUELPH, ON N1G 4Y1
HOLMDEL TOWNSHIP SWR DEPT	Water/Sewer	28100014	46	23	4 CRAWFORDS CORNER RD HOLMDEL, NJ 07733
VILLAGE OF LAKE BLUFF	Water/Sewer	30524295500	5	3	40 E CENTER AVE LAKE BLUFF, IL 60044
SPANISH FORK CITY UTILITIES	Electricity	228101	262	131	40 S MAIN SPANISH FORK, UT 84660
CITY OF OVIEDO	Water/Sewer	6275521868	96	48	400 ALEXANDRIA BLVD OVIEDO, FL 32765
ORANGEVILLE HYDRO LIMITIED	Electricity Non-Service	7580023004	315	174	400 C LINE ORANGEVILLE, ON L9W3Z
CITY OF BEEVILLE	Water/Sewer	63029400	19	10	400 N WASHINGTON BEEVILLE, TX 78102
CITY OF HALLANDALE BEACH	Water/Sewer	86879031438	51	26	400 S FEDERAL HWY HALLANDALE BE, FL 33009
CITY OF DEERFIELD BEACH	Non-Service Water/Sewer Trash	185260204065, 399	186	94	401 SW 4TH ST DEERFIELD BEA, FL 33441

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COMM CO EQUITIES	Landlord Electric Landlord Water/Sewer	8G	383	191	4036 TELEGRAPH RD STE 201 BLOOMFIELD HI, MI 48302
BENCHMARK CASCADES LLC	Landlord Water/Sewer	GNC10	77	39	4053 MAPLE RDSUITE 200AMHERST, NY14226
CITY OF E LANSING	Water/Sewer	911180001	31	16	410 ABBOT RD EAST LANSING, MI 48823
BRODHEAD CREEK REGIONAL AUTH	Non-Service Water/Sewer	30200	46	23	410 MILL CREEK RD E STROUDSBURG, PA 18301
DUQUESNE LIGHT CO	Electricity Non-Service	389200000, 405460000, 1170340000, 1405460000, 1837420000, 2059760000, 2405460000, 4110920000, 5101300000, 5110920000, 5333805557, 5544400000, 6101300000, 6110920000, 6447850000, 6496230000, 7110920000, 7289200826, 7694610000, 8289200000, 9289200000, 9446110000, 6101300000, 7289200826	20,989	10,588	411 7TH AVE PITTSBURGH, PA 15219
CITY OF SEAFORD UTILITIES	Electricity	3857032	558	279	414 HIGH ST PO BOX 1100 SEAFORD, DE 19973
CITY OF ZEPHYRHILLS	Non-Service Water/Sewer	882924002402334	34	18	415 PISGAH CHURCH RD STE 374 GREENSBORO, NC 27455
CITY OF ST MARYS	Electricity Non-Service Water/Sewer	32002, 32002, 100508004	487	243	418 OSBORNE ST ST MARYS, GA 31558
SERVICE ELECTRIC TELEPHONE CO	Telecom	Unknown	9	4	4242 MAUCH CHUNK ROAD COPLAY, PA 18037-2198

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
WMUA	Water/Sewer	111108140	66	33	433 JOHN F KENNEDY WAY WILLINGBORO, NJ 08046
CITY OF TALLAHASSEE	Electricity Gas Non-Service Trash Water/Sewer	2782517479, 2999285610, 4813334610, 2999285610, 2192153369, 2782517479, 4813334610, 2782517479, 4813334610, 2192153369, 2782517479, 2999285610, 4813334610	890	452	435 N MACOMB ST RELAY BOX TALLAHASSEE, FL 32301
TOWNSHIP OF ALPENA	Water/Sewer	2011384	61	31	4385 US 23 N ALPENA, MI 49707
BOROUGH OF HANOVER	Water/Sewer	5102571852	36	18	44 FREDERICK ST HANOVER, PA 17331
NORTH WARREN MUNICIPAL AUTH	Water/Sewer	50013701	57	28	44 HOSPITAL DR WARREN, PA 16365
CEDAR REVERE LLC	Landlord Water/Sewer	C00025222	75	37	44 SOUTH BAYLES AVE SUITE 304 PORT WASHINGT, NY 11050
ENBRIDGE GAS NEW BRUNSWICK	Gas Non-Service	11017018000, 21015445000	71	35	440 WISLEY RD #101 FREDERICTON, NB E3B 7G5
KENOSHA WATER UTILITY	Water/Sewer	2072209799000	23	12	4401 GREEN BAY RD KENOSHA, WI 53144
PACE WATER SYSTEMS INC	Water/Sewer	36882	35	17	4401 WOODBINE RD PACE, FL 32571
AMERICAN WATER & ENERGY SAVERS	Electricity Gas Landlord Water/Sewer	618259, 619064, 297020, 677906, 866877, 884682, 889868, 157531, 618259, 734113, 773300, 884682, 157275, 157531, 202298, 460461, 509637, 569486, 619059, 670806,	1,112	620	4431 N DIXIE HWY BOCA RATON, FL 33431

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
	Non-Service Water/Sewer	688059, 702498, 721231, 727098, 734113, 769244, 773300, 837911			
AW BILLING SERVICES LLC	Electricity Gas Landlord Water/Sewer Non-Service Water/Sewer	618259, 619064, 677906, 866877, 884682, 889868, 618259, 619059, 670806, 727098, 734113, 773300, 884682, 157531, 460461, 509637, 619059, 670806, 688059, 721231, 727098, 734113, 769244, 773300	532	364	4431 NORTH DIXIE HIGHWAY BOCA RATON, FL 33431
CITY OF ONTARIO	Water/Sewer	12108000	48	24	444 SW 4TH ST ONTARIO, OR 97914
PORTAGE CO WATER RESOURCES	Water/Sewer	2991745000, 4990681600	134	67	449 S MERIDIAN ST PO BOX 812 RAVENNA, OH 44266
CITY OF WINDER	Gas Trash Water/Sewer	4673402, 6120000, 6120000	118	59	45 E ATHENS ST PO BOX 568 WINDER, GA 30680
LEBANON VALLEY MALL CO	Landlord Water/Sewer Water/Sewer	E09, 358	45	22	4500 PERKIOMEN AVE READING, PA 19606
SUEZ WATER DELAWARE	Non-Service Water/Sewer	2704459730000, 4406303010000, 10000544122222, 10004243421111, 10004770152212, 205797104501, 208133920000, 209664820000, 209751320000, 2704459730000, 2705640973118, 4406303010000, 6104332730000, 10000544122222, 10004243421111, 10004770152212, 20000039810000	(747)	245	461 FROM ROAD #400 PARAMUS, NJ 07652
CITY OF DAHLONEGA	Trash Water/Sewer	42401003	82	41	465 RILEY RD DAHLONEGA, GA 30533
CARDINAL NATURAL GAS	Gas Non-Service	71004266001	38	19	4699 E CUMBERLAND RD

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					BLUEFIELD, WV 24701
CHARTER TWP OF CHESTERFIELD	Trash Water/Sewer	4050221500	43	21	47275 SUGARBUSH RD CHESTERFIELD, MI 48047
FRANKLIN TWP DEPT OF WTR UTILI	Water/Sewer	98489	19	9	475 DEMOTT LANE SOMERSET, NJ 08873
TOWNSHIP OF WAYNE	Water/Sewer	800282009	45	23	475 VALLEY RD WAYNE, NJ 07470
CITY OF HERNANDO	Non-Service Water/Sewer	50146005	213	107	475 W COMMERCE ST HERNANDO, MS 38632
BIG FLATS WATER DEPT	Water/Sewer	1092000	19	10	476 MAPLE ST BIG FLATS, NY 14814
AMHERST UTILITIES DEPT	Electricity Water/Sewer	6547001	370	185	480 PARK AVE PO BOX 470 AMHERST, OH 44001
VILLAGE OF MATTESON	Water/Sewer	5025222202, 5025222700	626	313	4900 VILLAGE COMMONS MATTESON, IL 60443
LCEC	Electricity Non-Service	9408700, 11997478, 17224687, 82173432, 82333526, 82505873, 82506379, 85910000, 4434120000, 9408700, 11997478, 17224687, 82173432, 82333526, 82505873, 82506379, 85910000	1,604	894	4980 BAYLINE DRIVE N FT MEYERS, FL 33917
GSU	Electricity Non-Service	1180176201, 1180358401	515	258	500 REGENT ST PO BOX 250 SUDBURY, ON P3E4P

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
GRAND RAPIDS PUBLIC UTIL COMM	Electricity	510250110250	242	121	500 SE 4TH ST GRAND RAPIDS, MN 55744
PUC SERVICES INC	ElectricityNon-Service	2773906	143	105	500 SECOND LINE ESAULT STE MARIE, ONP6A 6P2
BELL CANADA	Telecom	BW2B0JVU999, 9058537570259, 9057913613086, 9057510550847, 9056770154299, 9056121301338, 9055073340179, 9054531600600, 9052572069357, 8192461976729, 8076234306, 7054743555152, 6139383502769, 6138317143324, 6138234059874, 6133891198230, 6133451129519, 6132580749759, 527813947, 527784478, 527784454, 526816450, 526816327, 526816192, 526816005, 526815356, 525797413, 524023006, 5195411400981, 5194725121932, 5193716872305, 5192506700358, 5147313037665, 4509661299709, 4506883718957, 4506541115517, 4504203698045, 4166906654915, 4162400173786, 4162227077968	48	24	5115 CREEKBANK ROAD MISSISSAUGA, ON L4W 5R1
CITY OF ROCKINGHAM	Water/Sewer	11005	14	11	514 ROCKINGHAM RD ROCKINGHAM, NC 28379
ENERGIE NB POWER	Electricity Non-Service	58231704, 72338912, 76190858, 72338912	455	227	515 KING STREET, PO BOX 2000 STN A FREDERICTON, NB E3B 4X1
IOWA AMERICAN WATER	Non-Service Water/Sewer	1011210000445070	12	6	5201 GRAND AVE DAVENPORT, IA 52807



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF WEATHERFORD	Non-Service Trash Water/Sewer	18157100005	87	43	522 W RAINEY AVE WEATHERFORD, OK 73096
BROOKINGS MUNICIPAL UTILITIES	Electricity Non-Service Water/Sewer	6699000	198	122	525 WESTERN AVE BROOKINGS, SD 57006
WATERLOO NORTH HYDRO INC	Electricity Non-Service	2441320724413	401	200	526 COUNTRY SQUIRE RD WATERLOO, ON N2J4G
NEWFOUNDLAND POWER INC	Electricity Non-Service	14029615	581	291	55 KENMOUNT RD ST. JOHNS, NL A1B 3P6
JARDEL CO INC	Landlord Water/Sewer	19	16	8	555 E CITY AVE SUITE 1130 BALA CYNWYD, PA 19004
ALASKA ELECTRIC LIGHT & POWER	Electricity	41068202	58	29	5601 TONGARD CT JUNEAU, AK 99801
DOYLESTOWN BOROUGH WATER DEPT	Water/Sewer	16425000	30	15	57 W COURT ST DOYLESTOWN, PA 18901
AUTOMOTIVE REALTY CORP	Landlord Hvac Landlord Water/Sewer Non-Service	KK5299	86	43	573 EAST FORDHAM RD BRONX, NY 10458
CITY OF MEDICINE HAT	Electricity Gas Non-Service Trash Water/Sewer	5316231056108	424	212	580 FIRST STREET SE MEDICINE HAT, AB T1A 8E6
CITY OF WARREN UTILITY SVCS	Water/Sewer	C49382971001	16	8	580 LAIRD AVE SE PO BOX 670 WARREN, OH 44482

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
NEWMARKET HYDRO LTD	Electricity	26269105	262	131	590 STEVEN CT NEWMARKET, ON L3Y 6Z2
KENNEBEC WATER DIST	Water/Sewer	219531	24	12	6 COOL ST PO BOX 356 WATERVILLE, ME 04903
CITY OF ABERDEEN	Water/Sewer	2403	31	15	60 N PARKE ST ABERDEEN, MD 21001
ELYTUS LTD	Waste Removal	Unknown	177,234	88,617	601 S HIGH ST COLUMBUS, OH 43215
GREATER DICKSON GAS AUTHORITY	Gas	210146003958	31	16	605 E WALNUT ST DICKSON, TN 37055
VERENDRYE ELECTRIC COOPERATIVE	Electricity	1394600	228	114	615 HWY 52 WEST VELVA, ND 58790
PRISTINE ELECTRIC LLC	Electricity	Unknown	97	49	6154 N 400 E GREENFIELD, IN 46140
DEPARTMENT OF PUBLIC UTILITIES	Electricity Gas Trash Water/Sewer	51169461, 5964542, 51169461, 17402030001	414	207	618 2ND ST SOUTH PO BOX 1048 VIRGINIA, MN 55792
HOLLAND BOARD OF PUBLIC WORKS	Electricity	2217087010, 2529240504, 2529241504	605	303	625 HASTINGS AVE HOLLAND, MI 49423
CITY OF COLLEGE PLACE	Non-Service Water/Sewer	8704	122	66	625 S COLLEGE AVE COLLEGE PLACE, WA 99324
CITY AND COUNTY OF HONOLULU	Water/Sewer	6288395685	38	19	630 S BERETANIA ST HONOLULU, HI 96843

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
VILLAGE OF GREENDALE	Water/Sewer	221204000	18	9	6500 NORTHWAY GREENDALE, WI 53129
VILLAGE OF FOX LAKE	Water/Sewer	7913902200	87	44	66 THILLEN DR FOX LAKE, IL 60020
MARIETTA POWER WATER	Electricity Water/Sewer	34080277165, 34080258815, 34080277165	419	209	675 N MARIETTA PKWY MARIETTA, GA 30060
WILMINGTON UTILITY BILLING	Non-Service Trash Water/Sewer	2507283	71	36	69 N SOUTH ST WILMINGTON, OH 45177
CITY OF HAZARD UTILITIES	Gas Water/Sewer	17244000, 17244000, 17244001	36	18	700 MAIN ST HAZARD, KY 41701
CALHOUN UTILITIES	Electricity Water/Sewer	60001034801	442	221	700 W LINE ST CALHOUN, GA 30701
CAMINO REAL LLC	Landlord Water/Sewer	GNC323	27	14	7004 MARKETPLACE DR GOLETA, CA 93117
CITY OF KERRVILLE	Non-Service Water/Sewer	46069005	421	210	701 MAIN ST KERRVILLE, TX 78028
VILLAGE OF FOX POINT	Water/Sewer	538989019	129	64	7200 N SANTA MONICA BLVD FOX POINT, WI 53217
NIAGARA PENINSULA ENERGY	Electricity Non-Service	840538501	232	116	7447 PIN OAK DR PO BOX 120 NIAGARA FALLS, ON L2E6S
LIBERTY UTILITIES GEORGIA	Gas	6757610067118810, 6757614567118960	100	50	12725 WEST INDIAN SCHOOL RD SUITE

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					D101 AVONDALE, AZ 85392
CITY OF SPRINGFIELD UTIL BILLI	Non-Service Water/Sewer	56450017897	85	43	76 E HIGH STSPRINGFIELD, OH45502
PACIFIC GAS & ELECTRIC CO	Electricity Gas Non-Service	131798905, 742919370, 800214153, 964290206, 1156745087, 1171253650, 1354895373, 1670018289, 1755757609, 2137634240, 2190769192, 2301411838, 2682301513, 3714676079, 3923928560, 4495398132, 4676476352, 5259834680, 6051792432, 6459088831, 6704246705, 6922993562, 6966414065, 7049703587, 7211214069, 7258439644, 7380098838, 7461447824, 7551058829, 7566695161, 7743671237, 7815352536, 8048770803, 8749681808, 9294942705, 9965145168, 131798905, 800214153, 1156745087, 1755757609, 2137634240, 2301411838, 4495398132, 6051792432, 7566695161, 8749681808, 9965145168, 131798905, 8749681808	15,779	7,899	77 BEALE ST SAN FRANCISCO, CA 94106
DELTA CHARTER TOWNSHIP	Water/Sewer	5019	216	108	7710 W SAGINAW HIGHWAY LANSING, MI 48917
SOUTH STICKNEY SANITARY DIST	Water/Sewer	109311	12	6	7801 LAVERGNE AVE BURBANK, IL 60459
ENWIN UTILITIES	Electricity Non-Service Water/Sewer	7230400, 10605302, 10605302	536	324	787 OUELLETTE AVE WINDSOR, ON N9A 5T7
MACON WATER AUTHORITY	Water/Sewer	111701, 145128	169	84	790 SECOND ST P O BOX 108

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					MACON, GA 31202
NIAGARA ON THE LAKE HYDRO	Electricity Non-Service	2594301	309	154	8 HENEGAN RD VIRGIL, ON L0S 1T0
WEST PENN POWER	Electricity Non-Service	100090364215, 100091002426, 100091386597, 100094524822, 100094724190, 100096113541, 100096361405, 100096720600, 100096980436, 100100717741, 100101447355, 100107255778, 100110249800, 100111883946, 100132152628, 100100717741, 100111883946, 100132152628	1,271	639	800 CABIN HILL DR GREENSBURG, PA 15606
MONONGAHELA POWER	Electricity Non-Service	110080472779, 110080850552, 110082138931, 110082443968, 110083446937, 110083782588, 110085744487, 110086636674, 110087147101, 110083446937	3,805	1,918	800 CABIN HILL DRIVE GREENSBURG, PA 15606
MOUNDSVILLE WTR & SANITARY BDS	Non-Service Water/Sewer	1041001610005	46	25	800 SIXTH ST MOUNDSVILLE, WV 26041
BRAINERD PUBLIC UTILITIES	Electricity Non-Service	185170000	181	130	8027 HIGHLAND SCENIC RD PO BOX 373 BRAINERD, MN 56401
CITY OF NATCHITOCHE UTIL DEPT	Electricity Trash Water/Sewer	9190527348	402	201	806 2ND ST NATCHITOCHE, LA 71457
CITY OF SUNNYSIDE	Trash Water/Sewer	2666	108	54	818 E EDISON AVE SUNNYSIDE, WA 98944
CITY OF HORNEILL	Water/Sewer	6069	28	14	82 MAIN ST PO BOX 627

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					HORNELL, NY 14843
PP&L INC	Electricity	734001006, 1413064008, 4105104009, 7272081005	310	155	827 HAUSMAN RD ALLENTOWN, PA 18104
LB DUNKIRK GATEWAY LP	Water/Sewer	52151	30	15	8405 GREENSBORO DR 8TH FLOOR MCLEAN, VA 22012
BLUEWATER POWER DIST CORP	Electricity	2007105	240	120	855 CONFEDERATION ST PO BOX 2140 SARNIA, ON N7T7L
GAINES CHARTER TOWNSHIP	Water/Sewer	MARP001827HAIR02	18	9	8555 KALAMAZOO AVE SE CALEDONIA, MI 49316
HOLLEY NAVARRE WATER SYS	Non-Service Water/Sewer	1190800	37	19	8574 TURKEY BLUFF RD NAVARRE, FL 32566
OAKVILLE HYDRO	Electricity Water/Sewer	11815501, 17107802, 17107802	731	366	861 REDWOOD SQ PO BOX 1900 OAKVILLE, ON L6J5E
CITY OF SOUTHAVEN	Water/Sewer	2294	42	21	8710 NORTHWEST DR SOUTHAVEN, MS 38671
TILDEN TOWNSHIP SEWER	Water/Sewer	470033	60	30	874 HEX HIGHWAY HAMBURG, PA 19526
HARRISONBURG ELEC COMMISSION	Electricity	14577001	472	236	89 W BRUCE ST HARRISONBURG, VA 22801

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
VILLAGE OF NYACK WATER DEPT	Water/Sewer	2564400	10	5	9 N BROADWAY NYACK, NY 10960
WATERTOWN MUNICIPAL UTILITIES	Electricity	80001268400	212	106	901 FOURTH AVE SW WATERTOWN, SD 57201
CENTRAL GEORGIA EMC	Electricity Non-Service	172280001	321	161	923 S. MULLBERRY ST JACKSON, GA 30233
THE CONNECTICUT WATER CO	Water/Sewer	190104, 209222, 219948	258	129	93 W MAIN ST CLINTON, CT 06413
AVON WATER COMPANY	Non-Service Water/Sewer	328629	22	11	93 WEST MAIN ST CLINTON, CT 06413
95 FLRPT LLC & WR I XV	Landlord Water/Sewer	66631	282	141	PO BOX 823201 PHILADELPHIA, PA 19182
GEORGIA POWER	Electricity Non-Service	43076062, 265021010, 271669035, 338716019, 343760065, 345537117, 360249010, 455371016, 516642087, 593503023, 668583006, 811333034, 885799173, 960614046, 963662080, 1153058033, 1383402061, 1425931023, 1934906118, 2876499028, 2991563030, 3495574138, 3537285021, 3812008033, 3952583017, 4098781012, 4321795059, 4793913063, 5571128003, 5763804007, 6513202032, 6665639016, 7219868011, 7279906032, 7903366046, 8031054018, 8044051049, 8120678013, 8629740065, 9639921028, 6665639016, 8044051049	14,550	7,305	96 ANNEX ATLANTA, GA 30396
COWLITZ PUD	Electricity	4879607	257	129	961 12TH AVE LONGVIEW, WA 98632

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PLEASANT PRAIRIE UTILITIES	Water/Sewer	2744753312	134	67	9915 39TH AVE PLEASANT PR, WI 53158
KU	Electricity Non-Service	300000557722, 300000578611, 300000957872, 300001049851, 300001172174, 300001584006, 300001587629, 300004078022, 300004364448, 300006272094, 300014709616, 300019436009, 350004810932, 300006272094	4,556	2,284	A PPL COMPANY PO BOX 9001954 LOUISVILLE, KY 40290
TRUMBULL COUNTY WATER & SEWER	Water/Sewer	184903829710000, 188100040940000	45	23	ACCOUNTING DEPT 842 YOUNGSTOWN- KINGSVILLE RD VIENNA, OH 44473
ENERGY MANAGEMENT SYSTEMS	Landlord Water/Sewer Non-Service Water/Sewer	5741000061, 5772000008, 5772000008, 2159470502	50	25	ACCOUNTS RECEIVABLE DEPT 5772 PO BOX 646 EXTON, PA 19341
CITY OF BLOOMINGTON	Non-Service Water/Sewer	12602005, 6277000, 12602005	56	28	ACCOUNTS RECEIVABLE PO BOX 2500 BLOOMINGTON, IN 47402
CITY OF ADA	Trash	14278300	94	47	ADA CITY UTILITIES 210 W 13TH ADA, OK 74820
AUTORIDAD DE ACUEDUCTOS Y	Water/Sewer	Unknown	42	21	ALCANTARILLADOS DE PUERTO RICO PO BOX 70101 SAN JUAN, PR 9368101
AUTORIDAD DE ACUEDUCTOS Y	Non-Service Water/Sewer	215867011, 224485102, 226480044, 205899958, 208522862, 209833409,	3,455	1,801	ALCANTARILLADOS PO BOX 70101



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		212611883, 212886592, 213988025, 215378654, 215406513, 215769258, 215867011, 216170993, 216332858, 216682088, 217770528, 218471035, 221650872, 222525453, 223074808, 224084830, 224433524, 224485102, 224521534, 224588525, 225811595, 226480044			SAN JUAN, PR 00936
ALEXANDRIA MALL LLC	Landlord Electric	R0855600T0008814	70	35	RADIANT PARTNERS 145 W 45TH ST 10TH FLOOR NEW YORK, NY 10036
SUBURBAN PROPANE ANY DIV #	Propane	2232144197, 2720125907	445	222	ALL WHIPPANY NJ PO BOXES SINGLE ACCOUNTS ONLY WHIPPANY, NJ 07981
AOG	Gas	2265750	4	2	115 NORTH 12TH ST FORT SMITH, AR 72901
APEX BILLING SOLUTIONS	Non-Service Water/Sewer	1218620	50	32	901 FRONT AVE #208 COLUMBUS GA 31901
AQUA NEW JERSEY	Water/Sewer	16201961112874	21	10	PO BOX 70279 PHILADELPHIA, PA 19176
USPG PORTFOLIO FIVE LLC	Landlord Water/Sewer	94748000	38	19	ATTN A/R PO BOX 64-3906 CINCINNATI, OH 45264
CITY OF TARPON SPRINGS	Trash Water/Sewer	55983280000079	122	61	ATTN COLLECTION CTR PO BOX 5004

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					TARPON SPRING, FL 34688
EPB	Electricity	461551004, 471472001, 1410037000, 1891634002	1,254	627	ATTN REMITTANCE PROCESSING PO BOX 182254 CHATTANOOGA, TN 37422
CITY OF HINESVILLE	Trash Water/Sewer	26636042020	69	34	ATTN WATER DEPT 115 EAST M L KING JR DR HINESVILLE, GA 31313
AUBURN WATER DISTRICT	Water/Sewer	2739	11	5	1501 W SAMFORD AVE AUBURN, AL 36832
BAY CITY MALL PARTNERS LLC	Landlord Electric	E515	177	89	PO BOX 33721 DETROIT, MI 48232
BG MONMOUTH LLC	Landlord Water/Sewer Non-Service	3340102061100040000	22	34	PO BOX 73612 DEPT# 334010-20611-00049116 CLEVELAND, OH 44193
GREAT LAKES ENERGY	Electricity	290301001	287	144	BILL PAYMENT CTR 2183 N WATER RD HART, MI 49420
BLACK CHERRY LTD LIAB CO	Landlord Water/Sewer	3978742056000000000	8	4	PO BOX 532614 DEPT 525 ATLANTA, GA 30353
BLACK ROCK INC	Landlord Water/Sewer	2765014000	22	11	C/O CBRE FAMECO 625 W RIDGE PIKE SUITE A-100 CONSHOHOCKEN, PA 19428

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF JAMESTOWN	Water/Sewer	520048106102	15	8	BOARD OF PUBLIC UTILITIES PO BOX 700 JAMESTOWN, NY 14702
MARION NATURAL GAS SYSTEM	Gas Water/Sewer	60250003	190	95	BOARD OF WATERWORKS & SEWERS P O BOX 408 S PITTSBURG, TN 37380
LEGAL TAX SERVICE INC	Water/Sewer	BBS10073448, WMS97206995	78	39	BOROUGH OF BALDWIN PO BOX 10020 PITTSBURGH, PA 15236
CARBONDALE WATER & SEWER	Water/Sewer	491610010	21	10	BOX 2947 CARBONDALE, IL 62902
NEW JERSEY AMERICAN WATER	Non-Service Water/Sewer	1018210020383520, 1018210020383610, 1018210039403340, 1018210020383520, 1018210020383610, 1018210020951060, 1018210022752630, 1018210027920300, 1018210039370420, 1018210039403340, 1018210040360510, 1018220005697590	381	211	BOX 371331 PITTSBURGH, PA 15250
ELEXICON ENERGY	Electricity Non-Service	6002220200	464	232	BOX 4466 STATION A TORONTO, ON M5W4C
BERKSHIRE MALL LLC	Landlord Electric Landlord Water/Sewer	711714, BK2001	315	157	BOX 510159 PHILADELPHIA, PA 19175
SASK ENERGY	Gas Non-Service	77559053895	124	62	BOX 6300 STN MAIN REGINA, SK S4P4J

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
DUNCAN PUBLIC UTILITIES AUTH	Electricity Trash Water/Sewer	3634160000	449	225	BOX 969 DUNCAN, OK 73534
PG&E	Electricity Gas Non-Service	155147466, 218569643, 270173350, 552986411, 918281186, 1095331789, 1099693305, 1272719147, 1508360155, 1565457926, 1573916678, 1674435962, 2084936305, 2497330423, 2905413190, 2961923102, 3047354312, 3258732374, 3423300846, 3637644090, 3973573083, 3981934356, 4036720493, 4104295967, 4602698818, 4934392261, 5303390930, 5398148740, 5486147587, 5870340679, 5900491705, 5921750996, 5959864687, 6063861934, 6066125091, 6189676637, 6190101126, 6437807560, 6640731636, 6730103111, 6751585066, 6885862366, 6960342953, 7412294589, 7469644610, 7553112739, 8884998348, 8909427023, 9408798218, 9925176347, 270173350, 552986411, 918281186, 1272719147, 1453465556, 1508360155, 1674435962, 2905413190, 2939157599, 3423300846, 3981934356, 4036720493, 4066886039, 4602698818, 4934392261, 5486147587, 5706358372, 5870340679, 5959864687, 6751585066, 6960342953, 7056516619, 7086232851, 7124747621, 7615611080, 8139212015, 8909427023, 9267539619, 9724160684, 9925176347, 1508360155, 5398148740, 5921750996	23,794	11,899	BOX 997300 SACRAMENTO, CA 95899
VILLAGE OF BRADLEY	Non-Service Water/Sewer	35966140000	21	11	BRADLEY SEWER DEPT BRADLEY, IL 60915
CITY OF FREDERICKSBURG	Water/Sewer	725361	19	10	BRENDA A WOOD TREASURER

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					PO BOX 967 FREDERICKSBUR, VA 22404
BRIDGEWATER FALLS STATION LLC	Water/Sewer	32481	1	1	BRIDGEWATER FALLS STATION LLC REALTY19 W 44TH STREET SUITE 1002NEW YORK NY10036
BRIXMOR GA SOUTHLND SHOPPG CTR	Water/Sewer	5237076	3	2	BRIXMOR GA SOUTHLND SHOPPG CTR PO BOX 645341 CINCINNATI, OH 45645
BRIXMOR GA SOUTHLND SHPPNG CTR	Landlord Water/Sewer	5237076	34	17	BRIXMOR GA SOUTHLND SHOPPG CTR PO BOX 645341 CINCINNATI, OH 45645
BRIXMOR TRI CITY PLAZA LLC	Landlord Water/Sewer	4101010	26	13	BRIXMOR TRI CITY PLAZA LLC PO BOX 645344 CINCINNATI, OH 45264
BRF II SOUTHLAND LLC	Landlord Electric Landlord Water/Sewer	16	167	84	BROAD REACH RETAIL PARTNRS LLC 1111 BENFIELD BLVD SUITE 100 ANNAPOLIS, MD 21108
BRUNSWICK GLYNN COUNTY JOINT	Water/Sewer	1128302	20	10	1703 GLOUCESTER ST BRUNSWICK, GA 31520

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
BRISTOL TENNESSEE ESSENTIAL SV	Electricity Non-Service	1036408001	279	139	BTES PO BOX 549 BRISTOL, TN 37621
BUFFALO MARINE ASSOCIATES	Landlord Water/Sewer	110	24	12	PO BOX 823201 PHILADELPHIA, PA 19182
CENTURYLINK	Telecom	88492368, 16G9EJX6, 1381, 1380, 1379, 1008155243, 1008151109, 1008149399, 1008143787, 1FT0R2Q8, 02052813992, 313576161, 307910498, 474238349, 8013642239820, 00313062349, 00309975721, 00425043023, 7194885952230	16	8	BUSINESS SERVICES PO BOX 52187 PHOENIX, AZ 85072-2187
BYZANTINE PROPERTIES OF PA LP	Landlord Water/Sewer	00GNC8250	37	18	PO BOX 1567 BEAVER FALLS, PA 15010
SOMERS POINT LLC	Landlord Water/Sewer	0570028C3049	63	32	C/O BRAHIN MANAGEMENT CORP 1535 CHESTNUT ST STE 200 PHILADELPHIA, PA 19102
DULLES 28 CENTRE RETAIL GROUP	Landlord Solid Waste Landlord Water/Sewer	6280E9T0000133, 6280000000000	63	31	C/O LERNER CORPORATION ATTN COMMERCIAL A/R 2000 TOWER OAKS BLVD 8TH FLOOR ROCKVILLE, MD 20852
GRANITE TELECOMMUNICATIONS	Telecom	08880887	209	104	C/O T9906 PO BOX 9906 TORONTO, ON M5W 2J2

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CALVERT COUNTY TREASURER	Water/Sewer	10120613001	70	35	CALVERT COUNTY GOVERNMENT WATER & SEWERAGE DIV 175 MAIN ST PRINCE FREDER, MD 20678
MERIDIAN MALL RETAIL PROPERTIS	Landlord Electric	LGNCLIV0	267	133	CBL #0379 PO BOX 955607 ST LOUIS, MO 63195
CEDAR BLOOMSBURG LLC	Water/Sewer	900007196	6	3	CEDAR BLOOMSBURG LLC 44 SOUTH BAYLES AVE PORT WASHINGTON, NY 11050
CHARLOTTE COUNTY UTILITIES	Water/Sewer	22552069675	54	27	25550 HARBOR VIEW RD PORT CHARLOTTE, FL 33980
SHREWSBURY COMMONS LP	Landlord Water/Sewer	230GENE0018	11	5	CHESAPEAKE COMMERCIAL PROP INC 4750 OWINGS MILLS BLVD OWINGS MILLS, MD 21117
CITY OF LEBANON OHIO	Electricity Water/Sewer	994001	357	179	CITY BUILDING 50 S BROADWAY LEBANON, OH 45036
CITY OF COUNTRY CLUB HILLS	Water/Sewer	46009920002	76	38	CITY COLLECTOR 4200 MAIN ST

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					COUNTRY CLUB, IL 60478
CITY OF LIVE OAK	Non-Service Water/Sewer	3225312334	98	49	CITY HALL 101 SE WHITE AVE LIVE OAK, FL 32064
ELECTRIC CITY UTILITIES	Water/Sewer	355652842	52	26	CITY OF ANDERSON PO BOX 100146 COLUMBIA, SC 29202
CITY OF ANN ARBOR WATER UTIL	Water/Sewer	500310100324, 503975138956	158	79	CITY OF ANN ARBOR TREASURER DEPT# 77610 PO BOX 77000 DETROIT, MI 48277
CITY OF DAVENPORT	Non-Service Water/Sewer	9110063133	29	14	226 WEST 4TH ST DAVENPORT, IA 52801
CITY OF DURHAM	Water/Sewer	183109625264	9	5	CITY OF DURHAM PO BOX 30041 DURHAM, NC 27702
CITY OF EDINBURG	Non-Service Water/Sewer	33469502	24	12	415 W UNIVERSITY DR EDINBURG, TX 78541
CITY OF FARIBAULT	Water/Sewer	11144000	41	20	208 1ST AVENUE NW FARIBAUT, MN 55021
CITY LIGHT & WATER	Electricity Non-Service	3100302802	223	112	CITY OF FARMINGTON 110 W COLUMBIA ST FARMINGTON, MO 63640
PUBLIC WORKS COMMISSION	Electricity Water/Sewer	1586100000, 2599762241, 9633900000	1,266	633	CITY OF FAYETTEVILLE PO BOX 7000



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					FAYETTEVILLE, NC 28302
CITY OF GEORGETOWN	Electricity	10012311	242	121	300-1 INDUSTRIAL AVEGEORGETOWN, TX78626
CITY OF GLENDALE	Electricity Trash Water/Sewer	5001222301	34	17	CITY OF GLENDALE
CITY OF GREAT FALLS	Trash Water/Sewer	463660003	117	59	2 PARK DRIVE SOUTH CIVIC CENTER ROOM 104 GREAT FALLS, MT 59403
CITY OF HARRISONVILLE	Electricity Water/Sewer	153018603	54	45	CITY HALL 300 E PEARL ST HARRISONVILLE, MO 64701
CITY OF HIGH SPRINGS	Trash Water/Sewer	11676000	87	44	110 NW 1ST AVENUE HIGH SPRINGS, FL 32643
CITY OF HUNTSVILLE	Trash Water/Sewer	5146300	39	20	112 SPRAGINS ST HUNTSVILLE, AL 35801
CITY OF KOKOMO WASTEWATER UTIL	Non-Service Water/Sewer	1779146908, 28339048218	27	14	100 S UNION ST KOKOMO, IN 46901
CITY OF LAKE CHARLES	Non-Service Water/Sewer	131579320	25	13	326 W PUJO ST LAKE CHARLES, LA 70601
CITY OF LEOMINSTER	Water/Sewer	16500941230	7	3	25 WEST ST LEOMINSTER, MA 01453
CITY OF LONGMONT	Electricity Water/Sewer	37235711789	245	122	350 KIMBARK ST LONGMONT, CO 80501

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF MACCLENNY	Trash Water/Sewer	5027313	135	67	118 E. MACCLENNY AVE MACCLENNY, FL 32063
CITY TREASURER	Non-Service Trash Water/Sewer	78933, 48785, 11833, 48785, 78933	112	57	CITY OF MADISON PO BOX 2997 MADISON, WI 53701
CITY OF MARION	Water/Sewer	1090297001	11	5	CITY OF MARION
CITY OF MARTINSVILLE	Electricity Water/Sewer	501991701805000	289	144	PO BOX 1112 MARTINSVILLE, VA 24114
CITY OF MARYVILLE UTILITIES	Electricity	348789	25	13	400 WEST BROADWAY AVE MARYVILLE, TN 37801
CITY OF MIDLAND	Water/Sewer	13861402	44	22	PO BOX 1152 MIDLAND, TX 79702
CITY OF MILLINGTON	Non-Service Water/Sewer	2060302	27	14	7930 NELSON RD MILLINGTON, TN 38053
CITY OF O'FALLON	Water/Sewer	12875001	14	7	100 NORTH MAIN ST O'FALLON, MO 63366
CITY OF ORMOND BEACH	Trash Water/Sewer	259140	57	29	PO BOX 217 ORMOND BEACH, FL 32175
CITY OF OXFORD UTILITIES	Trash Water/Sewer	704150002	174	87	PO BOX 3383 OXFORD AL 38655
CITY OF PANAMA CITY	Non-Service Water/Sewer	8501010005	(163)	-	501 HARRISON AVE PANAMA CITY, FL 32402

<b>Provider</b>	<b>Service</b>	<b>Account Number(s) (if available)</b>	<b>Monthly Average Spend (\$)</b>	<b>Adequate Assurance (\$)</b>	<b>Address</b>
CITY OF PATTERSON	Water/Sewer	29181000	54	27	155 MARKET ST PATERSON, NJ 07505
CITY OF PIERRE	Electricity Water/Sewer	229354500	(23)	-	PO BOX 1253 PIERRE, SD 57501
CITY OF REDWOOD CITY	Non-Service Water/Sewer	C95788	100	50	PO BOX 3629 REDWOOD CITY, CA 94063
CITY OF RIVERSIDE PUBLIC UTIL	Electricity	206411001	152	76	3901 ORANGE ST RIVERSIDE, CA 92501
CITY OF ROHNERT PARK	Water/Sewer	8279000	95	48	130 AVRAM AVENUE ROHNERT PARK, CA 94928
CITY OF SALEM UTILITIES	Electricity Water/Sewer	1892001	85	43	CITY OF SALEM UTILITIES
CITY OF SASKATOON	Electricity Non-Service	101911285	5	2	222 3RD AVE NORTH SASKATOON, SK S7K 0J5
CITY OF SLIDELL	Trash Water/Sewer	4610236206	57	29	2055 SECOND ST SLIDELL, LA 70458
CITY OF STATESBORO	Non-Service Trash Water/Sewer	30802508	50	26	50 E MAIN ST STATESBORO, GA 30458
CITY OF STEUBENVILLE	Water/Sewer	4510222002	73	36	115 SOUTH 3RD ST STEUBENVILLE, OH 43952
CITY OF WATERLOO	Electricity Gas	440011003	21	11	715 MULBERRY ST WATERLOO, IA 50703
CITY OF WAYNESBORO	Water/Sewer	2259283897	35	17	305 W MAIN ST WAYNESBORO, VA 22980

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF WEST ALLIS	Water/Sewer	2203519307	85	43	6300 W MCGEOCH AVE WEST ALLIS, WI 53219
CITY OF WESTMINSTER	Water/Sewer	3301020002	12	6	CITY OF WESTMINSTER
CITY OF JACKSON	Non-Service Water/Sewer	MICW001766000001, 7902500000, MICW001766000001	50	25	CITY SERVICES DEPT #07-0006 PO BOX 1798 MEMPHIS, TN 38101
CITY OF GRANITE CITY IL	Non-Service Water/Sewer	123023500	20	10	CITY TREASURER P O BOX 1740 GRANITE CITY, IL 62040
CITY OF OXNARD	Water/Sewer	248953257957	123	62	CITY TREASURERS OFFICE 214 SOUTH C ST OXNARD, CA 93030
CITY UTILITIES OF SPRINGFIELD	Electricity Gas Non-Service	3195003510	163	81	CITY UTILITIES OF SPRINGFIELD
CLAIBORNE UTILITIES DISTRICT	Water/Sewer	201136001	18	9	630 DAVIS DR NEW TAZEWell, TN 37825
CLERMONT COUNTY WTR RESOURCES	Water/Sewer	126002501	38	19	CLERMONT COUNTY TREASURERLOCATIO N 00515CINNATI, OH45264
CITY OF WILSON	Electricity Gas Non-Service Water/Sewer	23303109606, 778330993, 23303109606	341	171	COLLECTION DIVISION PO BOX 2407 WILSON, NC 27894
CITY OF CONCORD	Electricity Water/Sewer	370607, 26072902, 30590600, 26072902	1,074	537	COLLECTIONS PO BOX 580469

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					CHARLOTTE, NC 28258
COLLEGE TOWNSHIP WATER AUTH	Water/Sewer	2004807000	7	4	1481 E COLLEGE AVE STATE COLLEGE, PA 16801
COLEMANS CROSSING LLC	Landlord Water/Sewer	116087000	24	12	COLLIERS INTERNATIONAL DEPT 8502-28 PO BOX 181300 FAIRFIELD, OH 45018
COLLUS POWER	Electricity	700405	198	99	43 STEWART RD COLLINGWOOD, ON L9Y 4M7
CONSOLIDATED EDISON CO OF NY	Electricity Gas Non-Service	211304034000001, 211426053301075, 211452042400067, 211818156563009, 212560118900031, 212572051000000, 212684531000011, 233663661200000, 252544150000000, 255680000461013, 255968156500043, 255972056022009, 266222265500024, 266409064800032, 302005469500049, 302103105500042, 302137045800070, 302137045801078, 313787157740030, 314221189500070, 314811012930013, 325113045500021, 325275047800038, 326167060200015, 401011278500048, 401101107200009, 403023047660019, 412011465500030, 412209073700055, 413017792000015, 413041007500114, 414103752000002, 414131569500070, 415137730000006, 427205136710092, 431001093700059, 431133348000009, 432013566000007, 435003457500063, 435319071700016, 437127155000122, 442031012700028, 444011304900021, 444013065000074, 445015113500038, 445123099500020,	32,464	18,763	COOPER STATION PO BOX 138 NEW YORK, NY 10276

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		446109004400033, 446123075849002, 451017219500061, 452109022500070, 453241105400016, 462129027700119, 471141107500029, 473425061000037, 482003125100017, 483133281700075, 499028041600023, 511024002800045, 522320015300081, 522618026500049, 522708054310070, 544543740000049, 544701022407098, 544707358100041, 555858269500005, 577810060930075, 588028124000028, 588809011510009, 611005029000007, 622077095500001, 622260060600051, 644919809000022, 655376091542011, 666238053300043, 677156174800062, 677334102100026, 688067193500004, 688108012500013, 688180071800071, 701245088620011, 701245088620037, 701575065000112, 211304034000001, 211818156563009, 302103105500042, 302137045800070, 313787157740030, 314221189500070, 325113045500021, 325275047800038, 326167060200015, 437127155000122, 445015113500038, 451017219500061, 511024002800045, 522320015300081, 522618026500049, 522708054310070, 544701022407098, 555858269500005, 577810060930075, 588028124000028, 588809011510009, 588916052600043, 211426053301075, 211452042400067, 212572051000000, 233663661200000, 252544150000000, 255968156500043, 266222265500024, 314811012930013, 325113045500021, 326167060200015, 412011465500030, 412209073700055, 414131569500070, 415137730000006, 435003457500063, 435319071700016,			

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		437127155000122, 442031012700028, 444011304900021, 445123099500020, 462129027700119, 473425061000037, 483133281700075, 511024002800045, 522708054310070, 544543740000049, 544701022407098, 555858269500005, 577810060930075, 588809011510009, 644919809000022, 666238053300043, 677156174800062, 677334102100026, 688067193500004, 688180071800071, 701245088620037, 701575065000112			
COVINGTON ELECTRIC SYSTEM	Electricity	203628002944	173	86	1469 S MAIN ST COVINGTON, TN 38019
COWETA FAYETTE EMC	Electricity	3207521001, 3207521004	607	304	807 COLLINSWORTH RD PALMETTO, GA 30268
HYDRO QUEBEC	Electricity Non-Service	299003610126, 299003618384, 299046882823, 299053478242, 299073883066, 299076466729, 299079843890, 299083105591, 299073883066, 299076466729, 299079843890	417	594	CP 11022 SUCC CENTRE VILLE MONTREAL, QC H3C4V
TELUS QUEBEC	Telecom	2563927711, 2383174279, 2381974122, 2311670386, 2226731016, 2217145373, 2167837239, 2070218412	14	7	CP 11674 MONTREAL, QC H3C 6E9
ENERGIR LP	Gas Non-Service	42010835900, 42013398203, 42017092406	276	156	CP 6115 SUCC CENTRE VILLE MONTREAL, QC H3C4N
PASCO COUNTY UTILITIES SRV BRN	Water/Sewer	139890	34	17	CUST INFO & SERV DEPT PO BOX 2139 NEW PT RICHEY, FL 34656

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CITY OF COOKEVILLE	Electricity Gas Non-Service Water/Sewer	78467	381	191	CUSTOMER SERVICE DEPT P O BOX 998 COOKEVILLE, TN 38503
CITY OF CLEARWATER	Gas Trash Water/Sewer	4219486, 4040517, 4040517, 4054040, 4117438	528	264	CUSTOMER SERVICE PO BOX 30020 TAMPA, FL 33630
ILLINOIS POWER MARKETING	Electricity	155060081, 275145022, 367146053, 876478738, 1972925298, 2323114025, 2403031089, 3481638027, 3703607691, 4368218112, 4831354024, 6223239023, 7142003910, 7155900658, 7665234412, 7676828171, 7823003513, 8026516013, 8235003216, 8848601212, 9816001919	2,235	1,117	DBA AMEREN ENERGY MARKETING 23532 NETWORK PLACE CHICAGO, IL 60673
PR FINANCING LP	Landlord Water/Sewer	255170250	357	178	DBA FRANCIS SCOTT KEY MALL PO BOX 951727 CLEVELAND, OH 44193
DDRM RIVERDALE SHOPS LLC	Landlord Water/Sewer	1026422121200040000	173	87	PO BOX 534461 DEPT 102642-21212- 40007 ATLANTA, GA 30353
DEERFOOT MALL CO OWNERSHIP	Landlord Electric Landlord Gas Landlord Water/Sewer	T0000417	125	62	DEERFOOT MALL CO OWNERSHIP
DELAWARE ELEC COOP INC	Electricity Non-Service	11161404	162	81	14198 SUSSEX HWY GREENWOOD, DE 19950
DELTA MONTROSE ELECTRIC ASSN	Electricity	9805259103	269	134	PO BOX 910 MONTROSE, CO 81401



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NORTH PROVIDENCE E&A LLC	Landlord Water/Sewer	221020	87	44	DEPARTMENT #2210 PO BOX 822315 PHILADELPHIA, PA 19182
WAREHAM WATER DISTRICT	Water/Sewer	19150	31	15	DEPARTMENT 6410 WOBURN, MA 01888
TOWN OF FRONT ROYAL	Water/Sewer	01181103B00	72	36	DEPARTMENT OF FINANCE PO BOX 1560 FRONT ROYAL, VA 22630
CHESTERFIELD COUNTY	Water/Sewer	633282056119	38	19	DEPARTMENT OF UTILITIES PO BOX 26725 RICHMOND, VA 23261
SECO ENERGY	Electricity	1011643502	258	129	DEPT # 3035 PO BOX 850001 ORLANDO, FL 32885
INDIAN RIVER COUNTY UTILITIES	Non-Service Water/Sewer	24057031302	31	16	DEPT #0067 PO BOX 850001 ORLANDO, FL 32885
DEMCO	Electricity	80288577001	173	87	DEPT 1340PO BOX 2153BIRMINGHAM, AL35287
JAMESTOWN SOUTH SHORE CENTER	Landlord Water/Sewer	JAMES94139	6	3	DEPT 134951 PO BOX 39000 SAN FRANCISCO, CA 94139
CAPREF PASEO LLC	Landlord Electric Landlord Hvac Landlord Water/Sewer	20100003	629	314	DEPT 20130 PO BOX 206249 DALLAS, TX 75320

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
VORH ASSOCIATES LLC	Landlord Electric	20397134	320	160	DEPT 77925 DETROIT, MI 48277
MACOMB CENTER HOLDINGS LLC	Landlord Electric	J30	228	114	DEPT CH10955 PALATINE, IL 60055
ROANOKE RAPIDS SANITARY DIST	Non-Service Water/Sewer	91069508400	34	19	DEPT CODE 3016 PO BOX 63016 CHARLOTTE, NC 28263
MARINA COAST WATER DISTRICT	Water/Sewer	18037000	85	43	11 RESERVATION RD MARINA, CA 93933
CITY OF CHARLOTTESVILLE	Gas	1096304	34	17	DEPT OF FINANCE PO BOX 591 UTILITY BILLING OFFICE CHARLOTTESVIL, VA 22902
CITY OF RICHMOND	Gas Non-Service Trash Water/Sewer	3354540104670, 3354540150529, 3354540158755, 3354540172901, 3354540214528, 3354540172901, 3354540150529, 3354540172901	270	150	DEPT OF PUBLIC UTILITIES PO BOX 26060 RICHMOND, VA 23274
CITY OF PHILADELPHIA	Water/Sewer	442192000701006, 0083520005675A29	534	267	DEPT OF REVENUE WATER REVENUE BUREAU PO BOX 41496 PHILADELPHIA, PA 19101
CITY OF QUINCY	Water/Sewer	2466924668	17	8	DEPT OF UTILITIES 730 MAINE ST QUINCY, IL 62301
CITY OF SHREVEPORT	Water/Sewer	551561093008	45	23	DEPT OF WATER AND SEWERAGE

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					PO BOX 30065 SHREVEPORT, LA 71153
REALPAGE UTILITY MANAGEMENT	Landlord Water/Sewer Non-Service	756391627001	25	13	DEPT#3167 PO BOX 2252 BIRMINGHAM, AL 35246
DESTIN WATER USERS INC	Water/Sewer	48300386200	88	44	218 MAIN ST DESTIN, FL 32541
TOWNSHIP OF MEDFORD	Water/Sewer	102617	59	29	DIV OF WATER AND SEWER 17 N MAIN ST MEDFORD, NJ 08055
CITY OF MOUNT VERNON	Water/Sewer	83034	47	23	DIV OF WATER AND WASTEWATER 3 NORTH GAY ST SUITE B MOUNT VERNON, OH 43050
DIVERSE POWER	Electricity	70222002	377	189	1400 SOUTH DAVIS ROAD PO BOX 160 LA GRANGE, GA 30241
SOUTH UNION TWP SEWAGE AUTH	Water/Sewer	4534	37	19	DOWNTOWN STATION PO BOX 2047 UNIONTOWN, PA 15401
TOWN OF DANVERS	Electricity	1400321200	396	198	DPW BUSINESS DIVISION PO BOX 3337 DANVERS, MA 01923

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
SPIRE	Gas Non-Service	17901000, 459230000, 571093418, 924101000, 1835911000, 3098041111, 3248971111, 3692081111, 3881321111, 4159111000, 4331871111, 4569551111, 4621790122, 4637271111, 4661941111, 4700170000, 5474610000, 6178101000, 6243361111, 6423993323, 7105272384, 8502084818, 8503667823, 8586621216, 8810140000, 8832901000, 9974211000, 200000660712, 200000660718, 200000660723, 571093418, 3692081111	1,714	859	DRAWER 2 ST LOUIS, MO 63171
DUBOIS MALL	Landlord Water/Sewer	10	40	20	PO BOX 74858 CHICAGO, IL 60694
CGCMT 2006 C4 5522 SHAFFER RD	Landlord Water/Sewer	10	16	8	DUBOIS MALL ATTN MALL OFFICE 5522 SHAFFER RD SUITE 125 DUBOIS, PA 15801
EBMUD	Water/Sewer	38310200001	71	36	375 11TH ST OAKLAND, CA 94607
NEW YORK STATE ELEC & GAS CORP	Electricity Gas Non-Service	10010097276, 10010405453, 10010581170, 10011161154, 10011460325, 10013037923, 10013301279, 10013369219, 10036590510, 10038852603, 10010097276, 10011161154, 10019119626, 10036590510, 10010097276, 10010405453, 10010581170, 10013369219	1,743	874	EDI INVOICING ONLY PO BOX 5550 ITHACA, NY 14852
SULPHUR SPRINGS VALLEY	Electricity	3333801	319	160	ELECTRIC COOP PO BOX 52788 PHOENIX, AZ 85072
AUTORIDAD DE ENERGIA	Electricity	Unknown	249	125	ELECTRICA DE PUERTO RICO PO BOX 363508

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					SAN JUAN, PR 9363508
ELIZABETHTOWN UTILITES	Water/Sewer	8605000	20	10	200 W DIXIE AVE ELIZABETHTOWN, KY 42701
ENERCARE CONNECTIONS T46115	Electricity Non-Service	9819471394	298	149	PO BOX 9175 STATION A TORONTO, CA M5W 4K9
ENERGY NORTH PROPANE	Propane	203117058	44	22	75 REGIONAL DR CONCORD, NH 03301
ENERGY+ INC	Electricity	4742300	163	81	1500 BISHOP ST N CAMBRIDGE, ON N1R 5X6
ENFIELD SQUARE REALTY LLC	Landlord Water/Sewer	EN010049	6	3	C/O NAMCO REALTY 150 GREAT NECK RD STE 304 GREAT NECK, NY 11021
MONTGOMERY COUNTY	Water/Sewer	177207624462, 232921551334, 291439517056	86	43	ENVIRONMENTAL SERVICES PO BOX 645728 CINCINNATI, OH 45264
EPCOR ELECTRICTY DISTRBN ON INC	Electricity	700405	180	90	43 STEWART RD COLLINGWOOD, ON L9Y 4M7
ERIE COUNTY SEWER & WATER	Water/Sewer	65720	47	23	2900 COLUMBUS AVE SANDUSKY, OH 44870
EXCELA HEALTH VENTURES LLC	Landlord Water/Sewer	EXCEL15203, EXCEL15601	95	48	EXCELA HLTH WESTMORELAND HSP ATTN MICKI SMITH 532 WEST PITTSBURGH ST

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					GREENSBURG, PA 15601
FEDERAL REALTY INV TRUST	Water/Sewer	2487, 10004	33	16	PO BOX 8500 PHILADELPHIA, PA 19178
FEDERAL REALTY INVESTMENT TRST	Landlord Water/Sewer	LGENNU1001	5	2	PO BOX 8500 PHILADELPHIA, PA 19178
CORP OF THE CITY OF KITCHENER	Gas Non-Service	110014495, 110128626	50	32	FINANCE & CORPORATE SERVICES REVENUE DIVISION PO BOX 1113 KITCHENER, ON N2G4R
CITY OF MATTOON	Water/Sewer	321630001	16	8	FINANCE DEPT 208 N 19TH ST PO BOX 99 MATTOON, IL 61938
HYDRO OTTAWA	Electricity Non-Service	79174244008903100000, 87437630008938000000, 79174244008903100000	273	136	FINANCE DEPT PO BOX 8700 OTTAWA, ON K1G3S
CITY OF LAS CRUCES	Gas	300004455120465	23	12	FINANCE/CASHIER PO BOX 20000 LAS CRUCES, NM 88004
FLINT EMC	Electricity	32642601001	290	145	109 WEST MARION ST REYNOLDS, GA 31076
ALECTRA UTILITIES	Electricity Non-Service	9840088309	254	127	FORMERLY ENERSOURCE INC PO BOX 3700 CONCORD, ON L4K5N

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
ALECTRA UTILITES CORP	Electricity Non-Service	5990871300, 6990871300, 8147600000, 9585530000, 9879831920, 5990871300, 6990871300	653	326	FORMERLY HORIZON UTILITES PO BOX 3700 CONCORD, ON L4K5N
ALECTRA UTILITIES	Electricity Non-Service	5201830000, 6996905089, 5201830000	472	236	FORMERLY POWERSTREAM PO BOX 3700 CONCORD, ON L4K 5
ALECTRA UTILITES CORP	Electricity Non-Service Water/Sewer	1156530000, 2626632591, 2907972661, 3692831383, 3990871300, 4438890521, 4651788486, 4839809857, 4990871300, 7386610000, 8147600000, 9585530000, 9867320000, 9879831920, 1156530000, 2626632591, 2907972661, 3692831383, 3990871300, 4438890521, 4990871300, 8147600000, 9585530000, 9879831920, 3990871300	4,125	2,118	FORMERLY POWERSTREAM PO BOX 3700 CONCORD, ON L4K5N
FOX METRO	Water/Sewer	A030775, A990820	7	3	FOX METRO WTR RECLAMATION DIST PO BOX 160 AURORA, IL 60507
FPL	Electricity Non-Service	5956305, 69902237, 99979577, 169281300, 280617341, 438219008, 498620467, 543165302, 599105178, 633728316, 709410351, 834690265, 900554163, 951934215, 1159896354, 1242393310, 1323824571, 1429304205, 1752600054, 2042044244, 2066110426, 2102101512, 2138442542, 2170420125, 2400973323, 2417086002, 2566765455, 2694336583, 2790172403, 2824728428, 3052269309, 3181886163, 3295850345, 3344872142, 3477280196, 3516047168, 3872117407, 4032304182, 4057322218, 4083271272,	31,772	15,917	FPL GENERAL MAIL FACILITY MIAMI, FL 33188

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		4121025094, 4125117467, 4179410032, 4293760171, 4297963391, 4606327023, 4698247436, 4754083113, 4789031400, 4822165900, 4833521547, 4864343506, 4938920479, 5041982017, 5287134067, 5398113570, 5455949429, 5487333147, 5534914543, 5806564463, 5945800109, 6028212204, 6121614009, 6174042900, 6411616599, 6412889088, 6490526248, 6550400342, 6658447179, 7125446539, 7149753043, 7238672195, 7649712226, 7713240088, 7795947535, 7871937558, 7879972268, 7972212331, 8061589100, 8070712024, 8143869322, 8214987458, 8344399301, 8417080465, 8581882324, 8629981120, 8728690481, 8730328146, 8736705180, 8850068597, 8889586163, 9042809518, 9102870079, 9125611153, 9161291266, 9288040265, 9298695363, 9309324391, 9365667568, 9407294454, 9423816579, 9651448210, 9787394312, 9813264083, 9898617544, 4698247436, 6550400342, 8629981120			
FPT LLC	Landlord Solid Waste	GNC2722	14	7	4520 MADISON AVE SUITE 300 KANSAS CITY, MO 64111
FRANKFORT PLANT BOARD	Electricity Water/Sewer	20001, 113413, 113413	485	243	151 FLYNN AVE FRANKFORT, KY 40601
FREEBORN MOWER COOP SERVICES	Electricity	1792400	137	68	2501 E MAIN ST ALBERT LEA, MN 56007
RAMCO GERSHENSON PROPERTIES LP	Landlord Water/Sewer	173891	28	14	FRONT RANGE PO BOX 350018 BOSTON, MA 02241



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
FRUITPORT CHARTER TOWNSHIP	Water/Sewer	SHEM001831000000	22	11	5865 AIRLINE HWY FRUITPORT, MI 49415
G&I VIII HAMMOND LLC	Landlord Water/Sewer	HAMGNC	10	5	PO BOX 206192 DALLAS, TX 75320
GAZIFERE	Gas	20000420400002200000	5	2	706 BOULEVARD GREBER GATINEAU, QUEBEC J8V 3P8
GEENEN DEKOCK PROPERTIES LLC	Landlord Water/Sewer	97100	5	3	12 W 8TH ST SUITE 250 HOLLAND, MI 49423
FLORIDA POWER & LIGHT CO	Electricity	2015019363, 2983878360, 3082279369, 3909918363, 5423472389, 6458969448, 7007503233, 8026158363, 9869629536	3,064	1,532	GENERAL MAIL FACILITY MIAMI, FL 33188
GIBRALTAR MGMT CO INC	Landlord Water/Sewer	TGENNC01	140	70	150 WHITE PLAINS RD SUITE 400 TARRYTOWN, NY 10591
GRACELAND RETAIL 2017 LLC	Landlord Water/Sewer	HO4220	254	127	PO BOX 1450 COLUMBUS, OH 43216
GRAN DEVELOPMENT GP LLC	Landlord Electric Landlord Water/Sewer Non-Service	GNCCO2835	(0)	7	1901 CALLOWHILL STREET PHILDELPHIA, PA 19130
CITY OF GRAND RAPIDS	Water/Sewer	WS2042598	205	102	GRAND RAPIDS CITY TREASURER RM 220 CITY HALL WATER SEWER 300 MONROE AVENUE NW

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					GRAND RAPIDS, MI 49503
GRAND TRAVERSE COUNTY DPW	Water/Sewer	5036311	27	14	2650 LAFRANIER ROAD TRAVERSE CITY, MI 49686
GREENFIELD UTILITIES	Electricity	69360	19	10	10 S STATE ST GREENFIELD, IN 46140
GUARDIAN 004133	Landlord Water/Sewer	99289000	190	95	1650 WATERMARK DR SUITE 170 COLUMBUS, OH 43215
GUARDIAN 008693	Landlord Water/Sewer Non-Service Water/Sewer	214708000	82	41	1650 WATERMARK DR SUITE 170 COLUMBUS, OH 43215
GUARDIAN 010247	Water/Sewer	128756002, 128774000	34	17	1650 WATERMARK DR SUITE 170 COLUMBUS, OH 43215
BRUNSWICK REGIONAL WATER & SWR	Water/Sewer	21179	168	84	H2GO PO BOX 2230 LELAND, NC 28451
HALTON HILLS HYDRO	Electricity Non-Service	76961000017472	278	139	43 ALICE ST ACTON, ON L7J 2A9
HARING TOWNSHIP	Water/Sewer	6034	94	47	515 BELL AVE CADIALLAC, MI 49601
HARRISON TWP WATER AUTHORITY	Water/Sewer	251250	30	15	1705 FREEPORT RD NATRONA HEIGHTS, PA 15065
COLDWATER BOARD OF PUBLIC UTIL	Electricity Water/Sewer	20585602	346	173	HENRY L BROWN MUNCIPAL BLDG

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					ONE GRAND ST COLDWATER, MI 49036
HIGHLAND COMMONS ASSOC LLC	Landlord Water/Sewer	70472	30	15	PO BOX 823201 PHILADELPHIA, PA 191823201
HIGHLANDS PROP MGMT PNC BANK	Landlord Water/Sewer Water/Sewer	128756002, 128774000	30	15	HIGHLANDS PROP MGMT PNC BANK
S&S INVESTMENTS	Landlord Hvac Landlord Water/Sewer Non-Service	SHV572	130	65	HILTON MANAGEMENT LLC 902 CARNEGIE CENTER SUITE 400 PRINCETON, NJ 08540
CITY OF HOBART INDIANA	Water/Sewer	891100900	26	13	HOBART SANITARY DISTRICT 705 E 4TH ST PO BOX 200C HOBART, IN 46342
HOLY CROSS ENERGY	Electricity	445031501, 500187504	138	69	3799 HIGHWAY 82 PO BOX 2150 GLENWOOD SPRINGS, CO 81602
HUNTSVILLE UTILITIES	Electricity Non-Service Gas	211010093455, 211010126914, 211010093455	750	375	HUNTSVILLE UTILITIES HUNTSVILLE, AL 35895
CITY OF INVERNESS	Water/Sewer	1200190000	38	19	IBERIA BANK PO BOX 1989 INVERNESS, FL 34451

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
SAWNEE ELECTRIC MEMBERSHIP	Electricity Non-Service	2070346003, 2070346004, 2070346005, 2070346003, 2070346004	712	378	ID 1204 PO BOX 2252 BIRMINGHAM, AL 35246
CITY OF JACKSON	Electricity Trash Water/Sewer	D160246301	352	176	JACKSON UTILITIES DEPT 199 PORTSMOUTH ST JACKSON, OH 45640
CON EDISON	Electricity Gas Non-Service	212560118900031, 255680000461013, 302103105500042, 302137045800070, 314221189500070, 314811012930013, 325113045500021, 325275047800038, 412011465500030, 424119060500002, 435319071700016, 445015113500038, 446109004400033, 451017219500061, 452109022500070, 453241105400016, 462129027700119, 482003125100017, 482119827802013, 483133281700075, 499028041600023, 511024002800045, 522618026500049, 522708054310070, 555858269500005, 577810060930075, 588028124000028, 588916052600043, 611402046600085, 622260060600051, 655376091542011, 666238053300043, 677100096700125, 677156174800062, 688108012500013, 701245088620037, 302103105500042, 302137045800070, 314221189500070, 325113045500021, 325275047800038, 445015113500038, 451017219500061, 482119827802013, 511024002800045, 522618026500049, 522708054310070, 555858269500005, 577810060930075, 588028124000028, 588916052600043, 314811012930013, 412011465500030, 424119060500002,	6,608	3,355	JAF STATION PO BOX 1702 NEW YORK, NY 10116

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		451017219500061, 453241105400016, 577810060930075, 611402046600085			
JERSEY CENTRAL PWR & LGT	Electricity	100000153955, 100010826202, 100084676749	404	202	300 MADISON AVE MORRISTOWN, NJ 07960
JESSAMINE S ELKHORN WATER DIST	Water/Sewer	106516	240	120	802 S MAIN ST NICHOLASVILLE, KY 40356
KALAMAZOO CITY TREASURER	Water/Sewer	MAK00532602	40	20	241 W SOUTH ST KALAMAZOO, MI 49007
KENERGY CORP	Electricity	1506602400	173	87	6402 OLD CORYDON ROAD PO BOX 18 HENDERSON, KY 42419
KITE REALTY GROUP	Landlord Water/Sewer	202298, 569486, 837911	8	4	PO BOX 743810 ATLANTA, GA 303743810
KRG OLDSMAR PROJECT CO LLC	Landlord Water/Sewer	202298	19	9	30 S MERIDIAN STREET SUITE 1100 INDIANAPOLIS, IN 46204
POLARIS ENERGY SERVICES	Electricity	102A201647	423	212	L 2413 COLUMBUS, OH 43260
EASTON TOWN CENTER II LLC	Landlord Electric Landlord Water/Sewer	N101	356	178	L-3769 COLUMBUS, OH 43260
LUS	Electricity Non-Service Water/Sewer	2101226871, 8744431000, 2101226871, 8318905645, 8744431000	580	292	LAFAYETTE UTILITIES SYSTEM PO BOX 4024-C LAFAYETTE, LA 70502

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
LAKE COUNTY DEPT PUBLIC WORKS	Water/Sewer	65954025010605	70	35	2293 N MAIN ST CROWN POINT, IN 46307
LAKEVIEW SQUARE LLC	Landlord Electric	641	343	172	PO BOX 4671 DES MOINES, IA 50305
FEDERAL REALTY INVESTMNT TRUST	Electricity Landlord Electric Landlord Water/Sewer Water/Sewer	10018, 10004, 10018, 10018STM, FEDER19178, 10004, 10018, 181243001	281	141	LAWRENCE PARK SHOPPING CENTER LOCKBOX #9320 PO BOX 8500 PHILADELPHIA, PA 19178
LAWRENCE UTILITIES	Water/Sewer	280089501001	46	23	PO BOX 1757 LAWRENCE, KS 66044
LCWSA	Water/Sewer	680034	28	14	17218 HWY 72 WESTATHENS, AL35612
LEHI CITY	Electricity Non-Service	4066322	10	5	153 NORTH 100 EST LEHI, UT 84043
LEON HARARY INC	Landlord Water/Sewer	6217	11	5	275 ROUTE 18 SOUTH EAST BRUNSWICK, NJ 8816
LIBERTY UTILITIES MIDSTATES	Gas	7755526077156350	42	21	12725 WEST INDIAN SCHOOL RD SUITE D101 AVONDALE, AZ 85392
LIBERTY WATER CO	Water/Sewer	5503026956	25	13	C/O AMERICAN WATER PO BOX 371852 PITTSBURGH, PA 15250
LIVONIA MARKETPLACE, LLC	Landlord Water/Sewer	F29470	4	2	38500 WOODWARD AVE SUITE 100

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					BLOOMFIELD, MI 48304
LIVONIA PHOENIX PARCEL LLC	Landlord Water/Sewer	F29470	13	7	6755 DALY ROAD WEST BLOOMFIELD, MI 48322
CLEARVIEW MALL ASSOCIATES	Landlord Water/Sewer	5261160	21	11	LOCKBOX #781416 PO BOX 8500 PHILADELPHIA, PA 19178
GUMBERG ASSOCIATES CHAPEL SQ	Landlord Water/Sewer	5081160	329	165	LOCKBOX# 781345 PO BOX 8500 PHILADELPHIA, PA 19178
LYCOMING MALL REALTY HOLDING	Landlord Electric	328	82	41	300 LYCOMING MALL CIRCLE SUITE 3021 PENNSDALE, PA 17756
MUNIC AUTH OF ALLEGHENY TWSP	Non-Service Water/Sewer	3924252163	51	31	MAAT 1001 S LEECHBURG HILL RD LEECHBURG, PA 15656
BRUNSWICK ELEC MEMBERSHIP CORP	Electricity	41013107	313	157	MAIL PROCESSING CENTER PO BOX 580348 CHARLOTTE, NC 28258
MAINE NATURAL GAS	Gas	0102571A, 0509901B	222	111	PO BOX 99 BRUNSWICK, ME 04011
MAINTREE SHOPPING CENTER LP	Landlord Water/Sewer	GNC	17	9	1450 E CHESTNUT AVENUE VINELAND, NJ 8361

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
MANITOWOC PUBLIC UTILITIES	Electricity Water/Sewer	423239118265	234	117	PO BOX 41 MANITOWOC, WI 54221
CITY OF MARCO ISLAND	Water/Sewer	29591	73	36	MARCO ISLAND UTILITIES PO BOX 7219 NAPLES, FL 34101
MARKS SQUARE INCORPORATED	Landlord Water/Sewer	MARKS36616	19	10	PO BOX 160544 MOBILE, AL 36616
MARTINSVILLE MUNIE WTR & SEWER	Water/Sewer	193790000	25	12	390 S MULBERRY ST MARTINSVILLE, IN 46151
MARYLAND AMERICAN WATER	Water/Sewer	1013210024856000	21	11	260 GATEWAY DR #4A BEL AIR, MD 21014
MATANUSKA ELECTRIC ASSOC INC	Electricity	240985004, 690229010	800	400	163 E INDUSTRIAL WAY PALMER, AK 99645
MAYFIELD ELECTRIC & WATER SYS	Electricity Non-Service Water/Sewer	203490103260	268	135	301 E BROADWAY PO BOX 347 MAYFIELD, KY 42066
MB LINCOLN MALL LLC	Landlord Electric	TEMP	92	46	PO BOX 677928 DALLAS, TX 752677928
MID VALLEY METROPOLITAN DIST	Trash Water/Sewer	23850301	1	1	MID VALLEY METROPOLITAN DIST
MIDWAY WATER SYSTEM INC	Non-Service Water/Sewer	11037503	15	8	4971 GULF BREEZE PKWY GULF BREEZE, FL 32563



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
MISSOULA WATER	Non-Service Water/Sewer	80984219339	16	10	PO BOX 5388 MISSOULA, MT 59806
MOHAVE ELECTRIC COOPERATIVE	Electricity	155375001	318	159	928 HANCOCK RD BULLHEAD CITY, AZ 86442
MOORHEAD PUBLIC SERVICE	Electricity Trash	89540030013205	85	42	500 CENTER AVE MOORHEAD, MN 56561
MOUNTAIN VIEW ELECTRIC ASSN	Electricity	17785204	275	138	11140 E WOODMEN RD PEYTON, CO 80831
MTMSA	Water/Sewer	208060, 509289	107	53	1001 STUMP RD MONTGOMERYVILLE, PA 18936
CITY OF OAK RIDGE	Electricity Non-Service	9205012007	352	176	MUNICIPAL BLDG BUS OFFICE PO BOX 1 OAK RIDGE, TN 37831
CITY OF CARO	Trash Water/Sewer	4250000	34	17	MUNICIPAL BUILDING 317 S STATE ST CARO, MI 48723
MUNICIPAL LIGHT & WATER	Electricity Water/Sewer	640002034101, 640002031001	255	128	201 W 3RD ST NORTH PLATTE, NE 69101
CITY OF FT LAUDERDALE	Water/Sewer	2051037	27	14	MUNICIPAL SERVICES P O BOX 31687 TAMPA, FL 33631
CITY OF BURLEY	Electricity Water/Sewer	39481600	213	107	MUNICIPAL UTILITY DEPT PO BOX 1090

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					BURLEY, ID 83318
MUNICIPAL UTILITY DISTRICT 47C	Water/Sewer	7216000	68	34	MUNICIPAL UTILITY DISTRICT 47C
CITY OF RANCHO CUCAMONGA	Electricity	695	308	154	MUNICIPAL UTILITY PO BOX 4499 RANCHO CUCAMO, CA 91729
MURFREESBORO ELECTRIC DEPT	Electricity	71136001, 71136003, 117561001	866	433	205 N WALNUT STMURFREESBORO, TN37130
MURRAY CITY CORP	Electricity	15401758094	172	86	5025 STATE ST MURRAY, UT 84107
VILLAGE OF GERMANTOWN	Water/Sewer	3711150000	24	12	N112 W 17001 MEQUON RD GERMANTOWN, WI 53022
NORTH HANOVER CENTRE REALTY LL	Landlord Electric	52990230	215	108	NAMDAR 150 GREAT NECK RD STE 304 GREAT NECK, NY 11021
MIDDLETOWN I RESOURCES LP	Landlord Water/Sewer	2040901190	43	21	NATIONAL REALTY & DEVMNT CORP 3 MANHATTANVILLE RD SUITE 202 PURCHASE, NY 10577
NORTH HAVEN HOLDINGS LP	Landlord Water/Sewer	204350106	12	6	NATIONAL REALTY & DEVMT CORP 3 MANHATTANVILLE RD PURCHASE, NY 10577

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF NEENAH	Non-Service Water/Sewer	3003645400	(51)	16	NEENAH UTILITIES FINANCE DEPT PO BOX 426 NEENAH, WI 54957
CORP OF THE CITY OF	Electricity Non-Service	968993800	227	114	NEW WESTMINSTER 511 ROYAL AVE NEW WESTMINST, BC V3L1H
NORTHERN ELECTRIC COOP INC	Electricity	85561	365	182	PO BOX 457 BATH, SD 57427
NORTHERN KENTUCKY WATER DIST	Non-Service Water/Sewer	3464351912, 3464351912, 8620866549	38	19	2835 CRESCENT SPRINGS RD ERLANGER, KY 41018
XCEL ENERGY	Electricity Gas	5101378483, 5103097556, 5143811589, 5144738105, 5147698135, 5148242955, 5148816448, 5148884724, 5149743691, 5151384920, 5151483679, 5154193414, 5154783452, 5159324366, 5161939966, 5164117208, 5164968923, 5166762021, 5167447316, 5168332650, 5179081626, 5181589464, 5197139656, 5198039668, 5241910847, 5246164956, 5248007176, 5254188155, 5302509166, 5307647107, 5308652128, 5309245445, 5322999251, 5322999262, 5325408946, 5328719540, 5332517318, 5332517330, 5334416796, 5336306195, 5338191474, 5374161929, 5376116315, 5376249542, 5377219684, 5380715104, 5380972138, 5381029503, 5381050420, 5385461812, 5385836939, 5398331629, 5415992180, 5417717987, 5417720380, 5100104906471, 5100106674883, 5100115768750, 5100117950814, 5100117951611,	17,264	8,632	NORTHERN STATES POWER MINNEAPOLIS, MN 55484

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		5100121584411, 5300102847851, 5300106412127, 5300107024312, 5300110622040, 5300110953857, 5300112511357, 5300121133392, 5300128253460, 5300129329065, 5103097556, 5147698135, 5148242955, 5148884724, 5149743691, 5154193414, 5154783452, 5159324366, 5161939966, 5167447316, 5197139656, 5246164956, 5248007176, 5254188155, 5307647107, 5308652128, 5322999251, 5322999262, 5328719540, 5332517330, 5374161929, 5376249542, 5381029503, 5385461812, 5385836939, 5300102847851, 5300110622040, 5300110953857, 5300112511357, 5300129329065			
OAKLAND PROPERTIES LLC	Landlord Water/Sewer	T0009850	44	22	PO DRAWER 10287 GREENVILLE, SC 29603
OCONEE COUNTY WATER RESOURCES	Water/Sewer	4923, 15222	116	58	PO BOX 88 WATKINSVILLE, GA 30677
OCONOMOWOC UTILITIES	Electricity Water/Sewer	57483003	114	57	808 S WORTHINGTON ST OCONOMOWOC, WI 53066
CONSOLIDATED UTILITY DISTRICT	Non-Service Water/Sewer	8784800	58	29	OF RUTHERFORD COUNTY PO BOX 249 MURFREESBORO, TN 37133
CITY OF BROCKTON	Water/Sewer	39242	12	6	OFFICE OF COLLECTOR OF TAXES 45 SCHOOL ST BROCKTON, MA 02301

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
OWENSBORO MUNICIPAL UTILITIES	Electricity Trash	531188191982	213	106	OMU PO BOX 806 OWENSBORO, KY 42302
ONE ENERGY PLACE	Electricity	2102608946, 2105252809, 2105395087	1,173	586	ONE ENERGY PLACE PENSACOLA, FL 32520
GULF POWER CO	Electricity Non-Service	171017002, 2102241219, 2103015125, 2105158162, 2107085603, 2108089067, 2105158162	2,026	1,013	ONE ENERGY PLACE PENSACOLA, FL 32520
CITY OF MASSILLON	Water/Sewer	15079001	28	14	ONE JAMES DUNCAN PLAZA MASSILLON, OH 44646
BOROUGH OF OAKLAND UTILITY DPT	Water/Sewer	1352500010	13	7	ONE MUNICIPAL PLAZA MUNICIPAL BLDG OAKLAND, NJ 07436
ORLANDO WASTE PAPER CO INC	Trash	608427	68	34	2715 STATEN AVE ORLANDO, FL 32804
OTTUMWA WATER & HYDRO	Water/Sewer	40668003	39	19	230 TURNER DR OTTUMWA, IA 52501
OXFORD DEVELOPMENT COMPANY	Landlord Water/Sewer	252020	19	10	SUITE 4500 ONE OXFORD CENTRE PITTSBURGH, PA 15219
CITY OF TOCCOA	Gas Non-Service Trash Water/Sewer	24557	98	49	P O BOX 1010 TOCCOA, GA 30577
NEW RIVER LIGHT & POWER CO	Electricity	9401455400	341	170	P O BOX 1130 BOONE, NC 28607

<b>Provider</b>	<b>Service</b>	<b>Account Number(s) (if available)</b>	<b>Monthly Average Spend (\$)</b>	<b>Adequate Assurance (\$)</b>	<b>Address</b>
SELMA KINGSBURG FOWLER COUNTY	Water/Sewer	852600A	15	8	P O BOX 158 KINGSBURG, CA 93631
EL DORADO WATER UTILITIES	Water/Sewer	9404680	51	25	P O BOX 1587 EL DORADO, AR 71731
RED LION MUNICIPAL AUTHORITY	Water/Sewer	97191880796	10	5	P O BOX 190 RED LION, PA 17356
MUNICIPAL LIGHT & POWER	Electricity Non-Service	135311002, 135311004, 135311005, 135311004, 135311005	757	380	P O BOX 196094 ANCHORAGE, AK 99519
CITY OF ARDMORE	Non-Service Trash Water/Sewer	4215003	167	83	P O BOX 249 ARDMORE, OK 73402
CITY OF VIDALIA	Trash Water/Sewer	190826001	69	35	P O BOX 280 VIDALIA, GA 30475
BRADLEY PUBLIC SERVICE DIST	Non-Service Water/Sewer	18140000	(39)	56	P O BOX 290 BRADLEY, WV 25818
FLORIDA KEYS ELEC COOP ASSOC	Electricity	3411003514	269	134	P O BOX 377TAVERNIER, FL33070
CITY OF SUGAR LAND	Water/Sewer	3988329196	42	21	P O BOX 5029 SUGAR LAND, TX 77487
COMMISSIONERS OF PUBLIC WORKS	Electricity Water/Sewer	67090004	307	154	P O BOX 549 GREENWOOD, SC 29648
BROAD CREEK PUBLIC SVC DIST	Water/Sewer	9408370	59	29	P O BOX 5897 HILTON HEAD, SC 29938
MCMINNVILLE ELECTRIC SYSTEM	Electricity Non-Service	13114001	318	159	P O BOX 608 MCMINNVILLE, TN 37111

<b>Provider</b>	<b>Service</b>	<b>Account Number(s) (if available)</b>	<b>Monthly Average Spend (\$)</b>	<b>Adequate Assurance (\$)</b>	<b>Address</b>
SAGINAW CHARTER TWP WATER DEPT	Water/Sewer	3510077	55	27	P O BOX 6400 SAGINAW, MI 48608
FRUITLAND MUTUAL WATER CO	Water/Sewer	92472	46	23	P O BOX 73759 PUYALLUP, WA 98373
THE TORRINGTON WATER CO	Water/Sewer	333000600	19	10	P O BOX 867 TORRINGTON, CT 06790
TOWN OF BURLINGTON	Water/Sewer	90100150	23	12	P O BOX 96 BURLINGTON, MA 01803
PIEDMONT ELECTRIC MEMBERSHIP	Electricity	3762704	323	161	P O DRAWER 1469 HILLSBOROUGH, NC 27278
PACIFICORP	Electricity	32489610005, 45582881005	203	101	LLOYD CENTER TOWER 825 NE MULTNOMAH ST PORTLAND, OR 97232
CITY OF PALM BAY	Water/Sewer	329765161634	45	22	PALM BAY UTILITIES PO BOX 30325 TAMPA, FL 33630
PARAGOULD LIGHT WATER & CABLE	Electricity Trash Water/Sewer	30481002	207	103	1901 JONES RD PARAGOULD, AR 72450
PARAMOUNT LMS LLC MOUNT JOY	Landlord Water/Sewer	GNC005	42	21	120 NORTH POINTE BLVD SUITE 301 LANCASTER, PA 17601
VERMONT GAS SYSTEMS	Gas Non-Service	422162	93	47	PAYMENT PROCESSING CENTER

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					ALBANY, NY 12201
CITY OF BANNING UTILITIES	Electricity Water/Sewer	534878990	439	219	PAYMENT PROCESSING CENTER PO BOX 845386 LOS ANGELES, CA 90084
ENSTAR	Gas	2202020000	107	53	PAYMENT PROCESSING PO BOX 34760 SEATTLE, WA 98124
PENN POWER	Electricity	110005599086, 110039535056, 110079660574	177	88	1910 W MARKET ST AKRON, OH 44313
PHILADELPHIA UTILITIES	Electricity Non-Service Water/Sewer	200196100171	338	170	PHILADELPHIA UTILITIES
PIERCE COUNTY SEWER	Water/Sewer	1682369	13	6	9850 64TH ST W UNIVERSITY PLACE, WA 98467
PLATTCON LLC	Landlord Water/Sewer	504	22	11	PO BOX 823201 PHILADELPHIA, PA 191823201
URS OF WA LLC	Water/Sewer	258920	838	419	PO BOX #88369 STEILACOOM, WA 98388
MIAMI DADE WATER SEWER DEPT	Non-Service Water/Sewer	6959177200, 7781658634, 1765343200, 1805477200, 2948095948, 3765343200, 4765343200, 5543045831, 5765343200, 5959177200, 6959177200, 7118595200, 7765343200, 7781658634, 9118595200	594	298	PO BOX 026055 MIAMI, FL 33102
PEDERNALES ELECTRIC COOP INC	Electricity	3000269307, 3001137452, 3001154971	477	239	PO BOX 1 JOHNSON CITY, TX 78636



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
COUNTY OF YORK TREASURER	Water/Sewer	28726	10	5	PO BOX 10 YORKTOWN, VA 23690
JACKSON EMC	Electricity	206504, 206608, 420330, 510860, 730783	2,206	1,103	PO BOX 100 JEFFERSON, GA 30549
JEFFERSON PARISH DEPT OF WATER	Non-Service Water/Sewer	4020230014922	146	73	PO BOX 10007 JEFFERSON, LA 70181
SCANA ENERGY	Gas Non-Service	1310112337278, 2310113693015, 5310113638970, 5310113795461, 6310113985676, 8310112968846, 8310120750109, 8310125877351, 8310126140733, 8310129385461, 8310129435640, 8310133529330, 8310125877351	937	469	PO BOX 100157 COLUMBIA, SC 29202
SCE&G	Electricity Gas Non-Service	1197501894745, 1210050217303, 1210074921329, 1210090567388, 1210091686042, 1210091695293, 1210096255679, 1210107733037, 1210108704305, 9210049249772, 9210049251372, 9210093048258, 9210100329698, 1210050217303, 1210099586048, 1210107733037, 1210108704305, 9210049249772, 9210093048258, 9210100329698, 9210100329698	4,506	2,253	PO BOX 100255 COLUMBIA, SC 29202
PSNC ENERGY	Gas	1210088124156, 1210095973533, 1210099024988, 4210081126193, 4210084991638, 4210088481903, 4210088483927, 4210088498131, 9210072443606, 9210094891910, 9210102080471	269	135	PO BOX 100256 COLUMBIA, SC 29202
DUKE ENERGY PROGRESS	Electricity Non-Service	252281712, 847170461, 944907252, 1544878695, 1752464477, 1809720202, 2021516535, 2130241827, 2501724989,	6,552	3,276	PO BOX 1003 CHARLOTTE, NC 28201

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		2655884886, 3172982195, 3435397942, 3852604549, 3855633339, 4772145886, 5118931376, 5571599462, 6173931335, 6279559295, 6304516633, 6739181094, 7069036924, 6739181094			
CITY OF HIGH POINT	Electricity Trash Water/Sewer	177538C3974, 205712G35111	838	419	PO BOX 10039 HIGH POINT, NC 27261
ORANGE & ROCKLAND	Electricity Gas Non-Service	598304020, 1767067042, 2787087032, 2983881029, 3340881033, 7201727065, 8854433013, 598304020, 7201727065, 8854433013, 598304020	1,663	831	PO BOX 1005 SPRING VALLEY, NY 10977
OLD BRIDGE MUNICIPAL UTIL AUTH	Non-Service Water/Sewer	5064448800	136	68	PO BOX 1006 LAURENCE HARB, NJ 08879
BOROUGH OF CHAMBERSBURG	Electricity Gas Non-Service Water/Sewer	601134502, 621266600, 621266600	699	349	PO BOX 1009 CHAMBERSBURG, PA 17201
CITY OF LANCASTER PA	Water/Sewer	703230521546	14	7	PO BOX 1020 LANCASTER, PA 17608
SNYDER BROTHERS ENERGY MARKTGN	Gas	5168412984012000, 50387200008081600	3,871	1,936	PO BOX 1022 KITTANNING, PA 16201
THE CITY OF NIAGARA FALLS CN	Non-Service Water/Sewer	414248000	25	177	PO BOX 1023 NIAGARA FALLS, ON L2E 6X5
CITY OF LAKEWOOD	Water/Sewer	997600002820919	19	9	PO BOX 1038LAKEWOOD, CA90714
AMS BILLING SERVICE	Non-Service Water/Sewer	12112809211980, 120212001016, 12112809211980, 15121713061646, 17011016204480, 17020611313551	373	187	PO BOX 1047 TALLEVAST, FL 34270

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
BUCKEYE WATER DISTRICT	Water/Sewer	3432001	41	21	PO BOX 105 WELLSVILLE, OH 43968
AT&T	Telecom	83145983042469 81728309852364	313	157	PO BOX 105068 ATLANTA, GA 30348-5068
COBB EMC	Electricity	1743004, 6887002, 23087002, 23087006	1,195	597	PO BOX 105082 ATLANTA, GA 30348
AT&T	Telecom	954V8384128561805, 864M1011252531806, 770U1060170381807, 704M1764100011801, 615M7081262021802, 601M3354520011800, 504M9200740741800, 502M5803881651802, 407M1649014531800, 404M0295530481802, 305W1754581001805, 256M0376926921805, 9990099060690, 0303104958001, 8642610630007, 95447664668531802, 90175547451071875, 90138835760341877, 86428814296521977, 77048711134061881, 60144397103130595	50	25	PO BOX 105414 ATLANTA, GA 30348-5414
GEORGIA NATURAL GAS	Gas	5861040597767, 5866250598287, 5868840598548, 5894440601109, 5909080602573, 5909650602630, 5919450603610, 8380640853476, 13592481381413, 25268052547538, 27841412804122, 29710622990160, 35083393524479, 35444163560371, 36689593684117, 40966134108281, 42163514227062, 43707704379931	1,531	765	PO BOX 105445 ATLANTA, GA 30348
TOWN OF WILKESBORO	Water/Sewer	4030	46	23	PO BOX 1056 WILKESBORO, NC 28697

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
EAST BRUNSWICK TWP WATER SEWER	Water/Sewer	431231	17	9	PO BOX 1081 E BRUNSWICK, NJ 08816
INDIANAPOLIS POWER & LIGHT CO	Electricity	277902, 461747, 528114, 667609, 743252, 743253, 889463, 1505401, 1669264	2,914	1,457	PO BOX 110 INDIANAPOLIS, IN 46206
SNOHOMISH COUNTY PUD	Electricity	201198371, 201206273, 201747250, 201800539, 201882263, 204088199, 4630167023	1,312	656	PO BOX 1100 EVERETT, WA 98206
DEAD RIVER CO	Propane	3712037, 4885164	261	131	PO BOX 11000 LEWISTON, ME 04243
CITY OF TACOMA	Electricity	100547214, 100691287, 100729667, 100902582	523	261	PO BOX 11010 TACOMA, WA 98411
IRVING ENERGY	Non-Service Propane	34901891, 40350091	80	60	PO BOX 11013 LEWISTON, ME 04243
UTILITIES INC OF LOUISIANA	Non-Service Water/Sewer	9691010000	236	137	PO BOX 11025 LEWISTON, ME 04243
CITY OF STATESVILLE	Water/Sewer	64014945002	28	14	PO BOX 1111 STATESVILLE, NC 28687
CITY OF VALDOSTA	Trash Water/Sewer	210235011	119	60	PO BOX 1125 VALDOSTA, GA 31603
CITY OF OSHKOSH	Water/Sewer	304690144513	51	26	PO BOX 1128 OSHKOSH, WI 54903
BANGOR WATER DISTRICT	Water/Sewer	39411A01	31	15	PO BOX 1129 BANGOR, ME 04402
CITY OF MIAMI BEACH	Non-Service Water/Sewer	33837600	70	35	PO BOX 116649 ATLANTA, GA 30368

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
FLOYD COUNTY WATER DEPT	Non-Service Water/Sewer	15393	70	35	PO BOX 1169 ROME, GA 30162
PHILADELPHIA GAS WORKS	Gas	460144192, 515366988, 618388449, 1641322844, 4119816972, 6119565170, 9961717264	591	295	PO BOX 11700 NEWARK, NJ 07101
CITY OF GRIFFIN	Electricity Non-Service Trash Water/Sewer	1927619276	638	337	PO BOX 117162 ATLANTA, GA 30368
NATIONAL GRID	Gas Non-Service	23080931, 106070397, 238083031, 281110260, 466057207, 553612007, 591022241, 615513007, 670559001, 752007965, 866071197, 956656433, 1232010541, 1530094100, 1977392001, 2549086019, 2890466003, 3021599005, 3232076017, 3300029013, 3342662915, 3540109911, 4103816932, 4178665000, 4297017741, 4351815621, 4365811226, 4367418610, 4378345007, 4462220171, 4514019221, 4552010683, 4581410201, 4691612192, 4754026671, 5012225764, 5018028211, 5041274651, 5102811061, 5117020000, 5132210043, 5135410351, 5271626684, 5358263005, 5391411510, 5392623950, 5479503015, 5531420651, 5607355005, 5659361006, 6754293006, 6864474024, 6963516007, 8003418011, 8130409011, 8133428036, 9265798006, 9415474000, 1232010541, 1977392001, 4367418610, 4514019221, 4552010683, 5132210043, 6864474024, 8133428036	5,490	2,833	PO BOX 11741 NEWARK, NJ 07101
NATIONAL GRID	Electricity Gas Non-Service	87511108, 122638028, 351857004, 352437079, 361389022, 533722119, 875084129, 896020018, 998023019, 1195064013, 1257099014, 1333279003, 1470094100, 1580784015, 1805032018,	21,661	10,844	PO BOX 11742 NEWARK, NJ 07101

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		1867980015, 1953287012, 2401334103, 2503272019, 2729287050, 2789833005, 2797506026, 2808145077, 2828987017, 2835960026, 2957622018, 3863453037, 3879879010, 4274322015, 4536305105, 5091476019, 5166853019, 5278009005, 5288153010, 5361847015, 5463067062, 5749818018, 5828456010, 6167769017, 6260501000, 6353957003, 6489790003, 6506405032, 6546470031, 6609193004, 7044854101, 7053439014, 7089661019, 7142553201, 7290027018, 7330006022, 7546199087, 7584315012, 7791406102, 7837360001, 8767805003, 8780256071, 8782141000, 8819454029, 8947644026, 8965884028, 9065982013, 9111443003, 9170400011, 9298791106, 9406624010, 9541929023, 998023019, 1195064013, 1257099014, 1953287012, 2401334103, 2503272019, 2808145077, 5463067062, 6167769017, 7142553201, 7330006022, 7791406102, 9406624010, 9541929023, 87511108, 998023019, 3885433002, 6505510007, 7053439014			
NJ NATURAL GAS CO	Gas Non-Service	21106207426, 72343637221, 133356922042, 141267707034, 220007279243, 220007517811, 220008183147, 220013550466, 220014733168, 220014777700, 220015307427, 220019437667, 22001350774Y, 22001883781Y, 220007242168, 220019437667	1,249	632	PO BOX 11743 NEWARK, NJ 07101
SOUTHERN PIONEER ELECTRIC CO	Electricity	11573103	280	140	PO BOX 1177 LIBERAL, KS 67905

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF ROCKY MOUNT	Electricity	880650064785	305	153	PO BOX 1180 ROCKY MOUNT, NC 27802
ELIZABETHTOWN GAS	Gas	1147065399, 4776634741, 4779301604, 8420579226, 9736327066	281	141	PO BOX 11811 NEWARK, NJ 07101
TIME WARNER CABLE	Telecom	Unknown	68	34	PO BOX 11820 NEWARK, NJ 71018120
NYC WATER BOARD	Water/Sewer	2000748362001	39	19	PO BOX 11863 NEWARK, NJ 07101
EASTON UTILITIES	Electricity	553387003326	262	131	PO BOX 1189 EASTON, MD 21601
YORK COUNTY NATURAL GAS AUTH	Gas	43089001, 119827001	27	13	PO BOX 11907 ROCK HILL, SC 29731
MARSHALL COUNTY GAS DISTRICT	Gas Non-Service	245401158357	17	8	507 BALTIMORE AVE ALBERTVILLE, AL 35950
CITY OF WEST MELBOURNE	Water/Sewer	45715	104	52	PO BOX 120009 WEST MELBOURN, FL 32912
CITY OF CRESTVIEW FL	Non-Service Water/Sewer	6010722346	249	124	PO BOX 1209CRESTVIEW, FL32536
GREEN BAY WATER UTILITY	Water/Sewer	1614703, 3719701	54	27	PO BOX 1210 GREEN BAY, WI 54305
MADISON GAS & ELECTRIC	Electricity Gas Non-Service	22456693, 24071870, 28281228, 29479078, 14724488, 22456693, 28281228, 29479078, 14724488, 28281228	1,265	634	PO BOX 1231 MADISON, WI 53701
BESSEMER UTILITIES	Water/Sewer	56653	102	51	PO BOX 1246 BESSEMER, AL 35021

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
WTMUA	Water/Sewer	133750	42	21	PO BOX 127 GRENLOCH, NJ 08032
CITY OF COCOA	Trash Water/Sewer	227557141232, 227557139864, 227557141232	205	103	PO BOX 1270 COCOA, FL 32923
CITY WATER & LIGHT	Electricity	1710658	237	119	PO BOX 1289 JONESBORO, AR 72403
CITY OF PENSACOLA	Gas	7519363221221	24	12	PO BOX 12910 PENSACOLA, FL 32521
SOUTHEAST GAS	Gas	243490, 308033	30	15	PO BOX 1298 ANDALUSIA, AL 36420
MUNICIPAL UTIL BRD ALBERTVILLE	Electricity	805009373	227	114	PO BOX 130 ALBERTVILLE, AL 35950
NIPSCO	Electricity Gas Non-Service	1043900091, 4916410043, 5273610055, 6709610093, 9417310066, 9598360099, 1043900091, 2151750001, 2722750090, 2920750018, 3200650088, 4449710088, 4832950020, 4916410043, 5273610055, 6000350028, 9155080051, 9361600029, 9417310066, 9598360099, 9361600029	3,891	1,945	PO BOX 13007 MERRILLVILLE, IN 46411
LANSING BOARD OF WATER & LIGHT	Electricity	2823820010, 2823820028	886	443	PO BOX 13007 LANSING, MI 48901
RIDGEWOOD WATER	Water/Sewer	2165772	94	47	PO BOX 1304 BRATTLEBORO, VT 05302
BGE	Electricity Gas Non-Service	957670000, 1639161000, 1709410406, 1792451328, 1896880000, 1946530266, 3072381000, 3823491522, 3866635939, 3896352123, 4884394789, 5064171000, 5381191597, 5919100000, 6424491761,	3,777	1,888	PO BOX 13070 PHILADELPHIA, PA 19101



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		6551351000, 7199871000, 7421421000, 7569580560, 7869278898, 8057300000, 8273701000, 1639161000, 1946530266, 3823491522, 3866635939, 3896352123, 5064171000, 5381191597, 5919100000, 7421421000, 3823491522, 3866635939, 3896352123, 7199871000, 7869278898			
CITY OF BRIDGEPORT	Water/Sewer	1100108001, 1200200000	129	65	PO BOX 1310 BRIDGEPORT, WV 26330
CITY OF GOLDSBORO	Water/Sewer	9567	19	10	PO BOX 1324 CHARLOTTE, NC 28201
MARITIME ELECTRIC	Electricity Non-Service	730360696380001	375	187	PO BOX 1328 STN CENTRAL CHARLOTTETOWN, PE C1A7N
CITY OF PINELLAS PARK	Trash Water/Sewer	236131069739	128	64	PO BOX 1337 PINELLAS PARK, FL 33780
CITY OF NEWARK	Electricity Water/Sewer	40000702904, 40000702800	474	237	PO BOX 13447 PHILADELPHIA, PA 19101
WALTON EMC	Electricity Gas Non-Service	542885001, 542885002, 924627000, 924627001, 924627000, 924627002, 542885004	992	496	PO BOX 1347 MONROE, GA 30655
CITY OF BRISTOL TN FINANCE DPT	Non-Service Water/Sewer	16436001	28	14	PO BOX 1348 BRISTOL, TN 37621
CITY UTILITIES COMMISSION	Non-Service Trash Water/Sewer	2812890009	142	71	PO BOX 1350 CORBIN, KY 40702
PEPCO	Electricity Non-Service	50000523725, 50014659101, 50015189009, 50017187209, 50017726840, 50018623483, 55012881862, 55013479534, 55013953876, 55013967918, 55014726263, 55015070273,	4,484	2,345	PO BOX 13608 PHILADELPHIA, PA 19101

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		55015166378, 55015968864, 55016115739, 55016398863, 55017005210, 55020502583, 55021165364, 55021168053, 55022666105, 55022961589, 55023119849, 55024490140, 50000523725, 50017726840, 55012881862, 55013479534, 55013953876, 55014726263, 55015166378, 55015968864, 55016115739, 55016398863, 55017005210, 55020502583, 55021165364, 55021168053, 55022961589, 55024490140			
DELMARVA POWER	Electricity Gas Non-Service	55000548242, 55008466546, 55008467460, 55008468930, 55008469227, 55008469656, 55008469862, 55008490439, 55008490744, 55008491734, 55008894010, 55008894622, 55011052184, 55011532532, 55008469227, 55008469862, 55008490439, 55008490744, 55008491734, 55008466546, 55008468930, 55008469656, 55008469862, 55011532532	3,173	1,597	PO BOX 13609 PHILADELPHIA, PA 19101
ATLANTIC CITY ELECTRIC	Electricity Non-Service	55006552636, 55008466918, 55008467783, 55008468211, 55008468450, 55008490066, 55008491072, 55008492161, 55008492526, 55008492906, 55008493425, 55010494304	2,532	1,273	PO BOX 13610 PHILADELPHIA, PA 19101
COLTON PUBLIC UTILITIES	Electricity	198132500518076	371	185	PO BOX 1367 COLTON, CA 92324
QUEEN ANNES CO SANITARY DIST	Water/Sewer	KB024700	208	104	PO BOX 138 GRASONVILLE, MD 21638
CITY OF CARTERSVILLE	Electricity Gas Water/Sewer Utilities	Unknown	522	261	PO BOX 1390 CARTERSVILLE, GA 30120
THOMASVILLE UTILITIES	Electricity Gas Trash Water/Sewer	3000316407	500	250	PO BOX 1397 THOMASVILLE, GA 31799

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
NORTH GEORGIA EMC	Electricity	362098001	345	172	PO BOX 1407 DALTON, GA 30722
PSE&G CO	Electricity Gas Non-Service	6517485805, 6518376007, 6534224402, 6598163803, 6609502005, 6611494804, 6624584009, 6628107418, 6649201308, 6654455207, 6665349306, 6677486508, 6691951409, 6704708901, 6707453203, 6727182604, 6730280204, 6730557818, 6736606918, 6738430809, 6763501706, 6937428103, 6939337318, 6953324503, 6959451108, 6982856208, 7016004201, 7037774405, 7056486606, 7173165709, 7207735901, 7209837809, 7256593007, 7341996803, 6517485805, 6518376007, 6537671205, 6598163803, 6609502005, 6611494804, 6624584009, 6628107418, 6648052309, 6649201308, 6665349306, 6667907306, 6691951409, 6704708901, 6730557818, 6763501706, 6937428103, 6953611901, 6959133718, 7016004201, 7057525508, 7173165709, 7210205918, 7341996803, 6648052309, 6953611901, 7489133300	6,448	3,363	PO BOX 14106 NEW BRUNSWICK, NJ 08906
VECTREN ENERGY DELIVERY	Electricity	Unknown	1,697	848	PO BOX 1423 HOUSTON, TX 77251
CITY OF CLEVELAND WATER DEPT	Water/Sewer	6735	27	14	PO BOX 1439 CLEVELAND, MS 38732
PSE&G	Electricity Gas	7181738208, 7193752707	572	286	PO BOX 14444 NEW BRUNSWICK, NJ 08906
PONCA CITY UTILITY AUTHORITY	Electricity Trash Water/Sewer	34290401	473	236	PO BOX 1450 PONCA CITY, OK 74602

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
AUGUSTA UTILITIES DEPT	Non-Service Water/Sewer	112855303	15	33	PO BOX 1457 AUGUSTA, GA 30903
GAINESVILLE REGIONAL UTILITIES	Electricity	200064102015	426	213	PO BOX 147051 GAINESVILLE, FL 32614
CITY OF LAPORTE UTILITIES	Non-Service Water/Sewer	M01062301	50	25	PO BOX 1480SOUTHBEND, IN46624
CITY OF DOVER UTILITY	Electricity Non-Service	5428134892, 12833546298, 5428134892	427	214	PO BOX 15040 WILMINGTON, DE 19886
ARTESIAN	Water/Sewer	7421894427, 9042400000	71	35	PO BOX 15069 WILMINGTON, DE 19886
VINELAND MUNICIPAL UTILITIES	Electricity	217428	447	224	PO BOX 1508 VINELAND, NJ 08362
VERIZON	Telecom	81782365400001, 9147730474813695, 7187393584336175, 6313315601634273, 212X026177332218, 2127211877654746, 00094602378799Y, 00077959842319Y, 00068234794615Y, 955709594000193, 952204637000130, 951332742000181, 851894641000142, 851894641000142, 851684724000121, 850488110000146, 753561967000134, 751776974000149, 654880706000191, 652013885000152, 651420818000152, 552085774000163, 551662759000102, 551660221000130, 551332742000169, 452204639000109, 450582584000147, 450394605000159, 450390918000167, 450209949000121, 251756529000112, 250390911000158, 250390882000187, 250382951000115,	2,984	1,492	PO BOX 15124 ALBANY, NY 12212-5124

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		250382951000115, 150576250000160, 001000000100953			
GREEN VALLEY-GLENWOOD PSD	Water/Sewer	200053000	43	21	PO BOX 1518 BLUEFIELD, WV 24701
DIRECT ENERGY REGULATED SVCS	Gas Non-Service	760000158823, 760000158914, 760000160027, 760000160829, 760002891256, 760003622791, 760003623559, 760500100754, 760501284581, 760502048365, 760502318438, 760000158823, 760000158914, 760000160027, 760002891256, 760003623559, 760500100754, 760501284581, 760502048365, 760502318438	751	404	PO BOX 1520 STN M CALGARY, AB T2P5R
FLORIDA GOVERNMENTAL UTIL AUTH	Water/Sewer	1627146523	62	31	PO BOX 152695 CAPE CORAL, FL 33915
CITY OF COVINGTON	Electricity Gas Water/Sewer Non-Service Trash	14229, 14229, 19566003, 19566003	476	238	PO BOX 1527 COVINGTON, GA 30015
BELLA VISTA VILLAGE POA	Water/Sewer	6390001085001	33	17	PO BOX 1550 LOWELL, AR 72745
UGI CENTRAL	Electricity Gas Non-Service	411001609675, 411000053644, 411000058338, 411000082841, 411000281740, 411000556505, 411000620863, 411001014603, 411001044121, 411001093078, 411002066438, 411002131133, 411002313913, 411002709714, 411002791126, 411003438370, 411003687059, 411004238613, 411004771951, 411004937024,	858	792	PO BOX 15503 WILMINGTON, DE 19886

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		411006910433, 411007087850, 411007898835, 421000245660, 421000591469, 411001609675, 411002313913, 411004238613, 411007087850			
SMUD	Electricity	757339, 1663028, 2978195, 2996015, 3419314, 3659058, 3700213, 3709196, 6517761, 6722897, 6735627	2,886	1,443	PO BOX 15555 SACRAMENTO, CA 95852
CITY OF HOUSTON	Water/Sewer	432705336134	20	10	PO BOX 1560 HOUSTON, TX 77251
SPECTRUM UTILITIES	Water/Sewer	17126, 17200, 227002	144	72	PO BOX 158 BALTIMORE, OH 43105
FORT COLLINS UTILITIES	Electricity	55415325533, 55415396418	574	287	PO BOX 1580 FT COLLINS, CO 80522
CITY OF GALESBURG	Water/Sewer	61588000	11	6	PO BOX 1589 GALESBURG, IL 61402
CITY OF MILFORD	Electricity Water/Sewer	1117960490, 4370160490	474	237	PO BOX 159 MILFORD, DE 19963
ALCORN CO ELECTRIC POWER ASSOC	Electricity Non-Service	8830010475	335	169	PO BOX 1590 CORINTH, MS 38835
HIXSON UTILITY DISTRICT	Non-Service Water/Sewer	2240093000	49	25	PO BOX 1598 HIXSON, TN 37343
CITY OF WALKER	Gas Non-Service	42394574	(8)	10	PO BOX 1599 HAMMOND, LA 70404
CITY OF ALBEMARLE	Electricity Water/Sewer	500050238010	546	273	PO BOX 160 ALBEMARLE, NC 28002

<b>Provider</b>	<b>Service</b>	<b>Account Number(s) (if available)</b>	<b>Monthly Average Spend (\$)</b>	<b>Adequate Assurance (\$)</b>	<b>Address</b>
COLUMBUS WATER WORKS	Water/Sewer	199768, 393469	22	11	PO BOX 1600 COLUMBUS, GA 31902
TOWN OF ENFIELD	Non-Service Water/Sewer	3157221	34	18	PO BOX 16033 LEWISTON, ME 04243
GUARDIAN 005110	Landlord Water/Sewer Non-Service	119482001	14	7	PO BOX 16069 COLUMBUS, OH 43216
CITY OF AIKEN	Water/Sewer	10282560556	94	47	PO BOX 1608 AIKEN, SC 29802
GREEN MOUNTAIN POWER CORP	Electricity	64576000000, 70622300005, 78664000003, 89924200002	1,174	587	PO BOX 1611 BRATTLEBORO, VT 05302
HUMMELS WHARF MUNIC AUTH	Water/Sewer	200197	63	31	PO BOX 165 HUMMELS WHARF, PA 17831
MAUI ELECTRIC CO	Electricity	202010145979	986	493	PO BOX 1670 HONOLULU, HI 96806
CHESAPEAKE UTILITIES	Gas Non-Service	286180220216, 1410954353851, 3331636208744, 14109541518981, 286180220216	204	102	PO BOX 1678 SALISBURY, MD 21802
CITY OF LAKE CITY	Water/Sewer	42670001	65	33	PO BOX 1687 LAKE CITY, FL 32056
GREENEVILLE LIGHT & PWR SYSTEM	Electricity Non-Service	30848	447	223	PO BOX 1690 GREENEVILLE, TN 37744
CITY OF MELBOURNE UTILITIES	Water/Sewer	10401616903, 120390127909, 130738170792	253	127	PO BOX 17 MELBOURNE, FL 32902
UNITED POWER INC	Electricity	13557002, 16658601	631	315	PO BOX 173703 DENVER, CO 80217

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
THINK UTILITY SERVICES INC	Non-Service Water/Sewer	1569055, 2113149, 848400, 1569055, 1768989, 2113149, 2259410	226	119	PO BOX 17389 CLEARWATER, FL 33762
CITY OF ST GEORGE	Electricity	3110065604	497	248	PO BOX 1750 ST GEORGE, UT 84771
CITY OF MOUNT DORA	Water/Sewer	60757023450	48	24	PO BOX 176 MOUNT DORA, FL 32756
PINELLAS COUNTY UTILITIES	Trash Water/Sewer	100125938871	77	38	PO BOX 1780 CLEARWATER, FL 33757
ALBANY UTILITES	Electricity Trash	3652536525	510	255	PO BOX 1788 ALBANY, GA 31702
TOMBIGBEE ELECTRIC POWER ASSN	Electricity	243928143253	276	138	PO BOX 1789TUPELO, MS38802
PADUCAH POWER SYSTEM	Electricity Non-Service	778450001	361	180	PO BOX 180 PADUCAH, KY 42002
CONNEXUS ENERGY	Electricity Non-Service	494656203155, 763804286319, 763804286319	419	209	PO BOX 1808 MINNEAPOLIS, MN 55480
SOUTH CENTRAL POWER COMPANY	Electricity	711245	497	249	PO BOX 182058 COLUMBUS, OH 43218
CITY OF FAIRMONT	Water/Sewer	1018040433000	24	12	PO BOX 182304 COLUMBUS, OH 43218
NATIONWIDE ENERGY PARTNERS	Electricity Water/Sewer	103327	227	113	PO BOX 183009 COLUMBUS, OH 43218
SUBURBAN NATURAL GAS CO	Gas	25009301, 25090501	88	44	PO BOX 183035 COLUMBUS, OH 43218



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
ENERGY UNITED	Electricity	2387173, 2469130, 2523668	723	362	PO BOX 1831 STATESVILLE, NC 28687
TRI COUNTY CONSERVANCY DIST	Water/Sewer	30213032	61	30	PO BOX 183127 COLUMBUS, OH 43218
CITY OF LIMA UTILITIES	Water/Sewer	42215	26	13	PO BOX 183199 COLUMBUS, OH 43218
CITY OF ROSWELL WATER DEPT	Trash Water/Sewer	5916742880	327	164	PO BOX 1838 ROSWELL, NM 88202
GREENVILLE UTILITIES COMMISSN	Electricity Water/Sewer	2022200000	608	304	PO BOX 1847 GREENVILLE, NC 27835
ONEPOINT	Water/Sewer	SGL00140897	41	21	PO BOX 1849 WOODSTOCK, GA 30188
WILLIAMSPORT MUNIC WATER AUTH	Water/Sewer	10547000	19	9	PO BOX 185 WILLIAMSPORT, PA 17703
CITY OF AUBURNDALE	Water/Sewer	825	57	29	PO BOX 186 AUBURNDALE, FL 33823
ASHWAUBENON WATER & SEWER UTIL	Water/Sewer	10056010	20	10	PO BOX 187 GREEN BAY, WI 54305
CITY OF CORINTH GAS & WTR DEPT	Gas Non-Service Trash Water/Sewer	203404103404	61	33	PO BOX 1870 CORINTH, MS 38835
ALPENA POWER CO	Electricity	6458001	230	115	PO BOX 188 ALPENA, MI 49707

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
PRECISION WASTE SOLUTIONS LLC	Landlord Solid Waste Non-Service	45129, 74596, 45129	147	80	PO BOX 18856 SHREVEPORT, LA 71138
EMERALD COAST UTILITIES AUTH	Water/Sewer	32190025300	38	19	PO BOX 18870 PENSACOLA, FL 32523
FORT HILL NATURAL GAS AUTH	Gas	105124001	14	7	PO BOX 189 EASLEY, SC 29641
UNIVERSAL UTILITIES INC	Water/Sewer	1540001800, 2510608900	76	38	PO BOX 190539 BURTON, MI 48519
CITY OF FORT SMITH	Trash Water/Sewer	31124103331	108	54	PO BOX 1907 FT SMITH, AR 72902
RICHLAND COUNTY FINANCE DEPT	Non-Service Water/Sewer	S4002845	64	32	PO BOX 192 COLUMBIA, SC 29202
CITY OF PITTSBURG	Water/Sewer	22127500	40	20	PO BOX 193 PITTSBURG, KS 66762
CITY OF EUSTIS	Water/Sewer	237560	90	45	PO BOX 1946 EUSTIS, FL 32727
ALASKA COMMUNICATIONS SYS	Telecom	1101720, 1909240, 1959207, 1959228, 1960519, 1961332	60	30	PO BOX 196666 ANCHORAGE, AK 99519-6666
CHUGACH ELECTRIC ASSOCIATION	Electricity	112089300328864	320	160	PO BOX 196760 ANCHORAGE, AK 99519
CITY OF WINTER PARK	Electricity Trash Water/Sewer	74812222386, 108917214258, 51609222386, 108917214258	767	384	PO BOX 1986 WINTER PARK, FL 32790
SUWANNEE VALLEY ELECTRIC COOP	Electricity Non-Service	561505	231	115	PO BOX 2000 LAKE CITY, FL 32056

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF PERRY	Gas Non-Service Water/Sewer	7225040002	55	27	PO BOX 2030 PERRY, GA 31069
GKPI RIDGMAR	Landlord Electric	D14	222	111	PO BOX 204559 DALLAS, TX 75320
FAIRFIELD COUNTY UTILITIES	Water/Sewer	17359	40	20	PO BOX 2052 MT VERNON, OH 43050
BRIGHTRIDGE	Electricity	10771003	412	206	PO BOX 2058 JOHNSON CITY, TN 37605
ARKANSAS OKLAHOMA GAS CORP	Gas	2265750	21	10	PO BOX 207539 DALLAS, TX 75320
JACKSON ENERGY AUTHORITY	Electricity Gas Non-Service Water/Sewer	204023104023, 250180150180, 250180150180, 204023104023	697	349	PO BOX 2082 MEMPHIS, TN 38101
CITY OF OLATHE	Water/Sewer	4220040310	43	21	PO BOX 2100 OLATHE, KS 66051
CITY OF TERRE HAUTE SEWER	Water/Sewer	3100180939	31	16	PO BOX 21043 TULSA, OK 74121
FLORIDA PUBLIC UTILITIES	Electricity	4085411	415	208	PO BOX 2137 SALISBURY, MD 21802
NORTH SHORE WTR RECLAMATN DIST	Non-Service Water/Sewer	50333128269258	1	0	PO BOX 2140 BEDFORD PARK, IL 60499
OHIO CO PUBL SERVICE DISTRICT	Water/Sewer	115908	400	200	PO BOX 216TRIADDELPHIA, WV26059

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
OPELIKA POWER SERVICES	Electricity Non-Service	141362001	323	161	PO BOX 2168 OPELIKA, AL 36803
CITY OF NAMPA	Water/Sewer	31504000	43	21	PO BOX 218 CALDWELL, ID 83606
CITY OF BLUE SPRINGS UTIL BILL	Water/Sewer	2283201	138	69	PO BOX 219253 KANSAS CITY, MO 64121
OKLAHOMA NATURAL GAS	Gas	210132502112553000, 210132502116951000, 210390782135731000, 210390782258634000, 210390782259288000, 210521176147612000, 211089015258424000, 211104765179082000, 211122914180755000, 213564419212616000	601	301	PO BOX 219296 KANSAS CITY, MO 64121
KCP&L	Electricity	1097681317, 1171672685, 2491732002, 2519631731, 2571390878, 2610900002, 2806022628, 3714257139, 3730285382, 5636638024, 5789083768, 5978194841, 6407927382, 7602558270, 7745335480, 7863744209, 9340435691, 1772818801471	6,511	3,255	PO BOX 219330 KANSAS CITY, MO 64121
LIBERTY UTILITIES	Gas	300032310022757000	128	64	PO BOX 219501 KANSAS CITY, MO 64121
KANSAS CITY BD OF PUBLIC UTIL	Electricity Water/Sewer	21699194, 22191506, 21699194	490	245	PO BOX 219661 KANSAS CITY, MO 64121
EVERGY	Electricity	2610900002, 1772818801471	314	157	PO BOX 219703 KANSAS CITY, MO 64121

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TEXAS GAS SERVICE	Gas Non-Service	910270967152980000, 910270967165388000, 910270967232606000, 910270967237686000, 910270967237979000, 910270967238983000, 910270967239828000, 910383067158568000, 910797109240222000, 910270967237979000	571	287	PO BOX 219913 KANSAS CITY, MO 64121
CITY OF LAWRENCEVILLE	Gas	109378601	15	7	PO BOX 2200 LAWRENCEVILLE, GA 30046
OZARKS ELECTRIC COOPERATIVE	Electricity	30920001	379	189	PO BOX 22114 TULSA, OK 74121
KANSAS GAS SERVICE	Gas Non-Service	5101117261172610, 5101117262007170, 5103563891188390, 5103563891421620, 5103563891616800, 5103563891651370, 5103563892006300, 5124364111431300, 5101117262007170, 5103563891651370, 5103563892006300, 5124364111431300	290	163	PO BOX 22158 TULSA, OK 74121
CITY OF WASHINGTON	Electricity Trash Water/Sewer	486298000005	578	289	PO BOX 2226 WASHINGTON, NC 27889
ENERGY WEST MONTANA	Gas	200297283	39	20	PO BOX 2229 GREAT FALLS, MT 59403
DECATUR UTILITIES	Electricity Gas Non-Service Water/Sewer	19714002, 19714003, 2270651900, 19714003, 19714002, 19714003, 19714003, 2270651900	298	170	PO BOX 2232 DECATUR, AL 35609
EARTHLINK BUSINESS	Telecom	Unknown	462,223	231,111	PO BOX 2252 BIRMINGHAM, AL 35246-1058

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
TAAS CO	Electricity	10	387	193	PO BOX 2325 ACWORTH, GA 30102
CITY OF BATTLE CREEK TREASURER	Water/Sewer	42012001	53	26	PO BOX 235 BATTLE CREEK, MI 49016
VALLEY ELECTRIC ASSN	Electricity	9019166001	317	158	PO BOX 237 PAHRUMP, NV 89041
JOHNSON CITY UTILITY SYSTEM	Water/Sewer	2560990006, 2561060007	40	20	PO BOX 2386 JOHNSON CITY, TN 37605
BLUEBONNET ELECTRIC COOP INC	Electricity	5000020306	380	190	PO BOX 240 GIDDINGS, TX 78942
CITY OF LYNNWOOD	Water/Sewer	205677104919	109	54	PO BOX 24164 SEATTLE, WA 98124
ALABAMA POWER CO	Electricity Non-Service	33691011, 78063046, 321313008, 689390001, 791375016, 1279937031, 1693000100, 2105262013, 2491476005, 2819024034, 3762364002, 4154235000, 4233313038, 4593357007, 4735425004, 4751301009, 5673389006, 5694389006, 6835937012, 8863680020, 9239298008, 5694389006	9,857	4,928	PO BOX 242 BIRMINGHAM, AL 35292
DIRECT ENERGY REGULATED SVCS	Electricity Gas Non-Service	770001056595, 760501513062, 760501513062, 770001056595	486	243	PO BOX 2427 EDMONTON, AB T5J2R
INDIANA MICHIGAN POWER	Electricity Non-Service	4134212234, 4365805052, 4379046214, 4440550129, 4698964139, 4799070018, 4883733711, 4440550129, 4799070018, 4883733711	2,186	1,113	PO BOX 24407 CANTON, OH 44701
KENTUCKY POWER CO	Electricity	3122598018	274	137	PO BOX 24410 CANTON, OH 44701

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
APPALACHIAN POWER	Electricity Non-Service	1636394098, 2220822429, 2250497142, 2477898015, 2777442712, 2250497142, 2477898015, 2689232128	1,338	673	PO BOX 24414 CANTON, OH 44701
PUBLIC SERVICE CO OF OKLAHOMA	Electricity	95534343413, 95701263600	377	188	PO BOX 24421 CANTON, OH 44701
SOUTHWESTERN ELECTRIC POWER	Electricity	96129944508, 96220433310, 96246539017, 96380405835, 96962645501	1,366	683	PO BOX 24422 CANTON, OH 44701
MISSISSIPPI POWER CO	Electricity	2959179001, 3739163004, 5958144007	1,250	625	PO BOX 245 BIRMINGHAM, AL 35201
THE CITY OF DAYTONA BEACH	Trash Water/Sewer	2938200, 5368104	468	234	PO BOX 2455 DAYTONA BEACH, FL 32115
CAMBRIA TOWNSHIP SEWER AUTH	Water/Sewer	15170	48	24	PO BOX 247 REVLOC, PA 15948
PALM BEACH COUNTY WTR UTIL DPT	Water/Sewer	1000345533, 1000408356, 1000717436	266	133	PO BOX 24740 W PALM BEACH, FL 33416
COX COMMUNICATIONS INC	Telecom	0016610096807302, 5016111029124101	40	20	PO BOX 248851 OKLAHOMA CITY, OK 73124-8851
CITY OF LAURINBURG	Electricity Water/Sewer	106637	317	158	PO BOX 249 LAURINBURG, NC 28353
OGE	Electricity	4505368, 17551441, 1307109841, 1308194909, 1312348566, 1315402220	1,389	694	PO BOX 24990 OKLAHOMA CITY, OK 73124
SPARTANBURG WATER SYSTEM	Water/Sewer	76188370081	232	116	PO BOX 251 SPARTANBURG, SC 29304
SAN DIEGO GAS & ELECTRIC	Electricity Gas Non-Service	574179990, 1608657997, 2525571084, 2654486658, 2764854982, 2976232909, 3641543323, 4658911181, 4702549526,	9,685	4,896	PO BOX 25111 SANTA ANA, CA 92799

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		5139811247, 5844292329, 6151512084, 6226242222, 6461933019, 6559622325, 6748561191, 7052578905, 7772740901, 8246276084, 9844895717, 3641543323, 4702549526, 6748561191, 6226242222, 6461933019			
ROCKY MOUNTAIN POWER	Electricity Non-Service	18479896001, 18479896002, 18479896006, 18479896007, 18479896008, 18479896009, 18479896011, 18479896014, 18479896017, 18479896019, 18479896020, 18479896022, 18479896023, 18479896024, 18479896025, 18479896026, 18479896027, 32489610001, 32489610002, 32489610003, 32489610004, 33638399001, 34844339002, 34844339004, 34844339006, 47901736001, 67413491001, 18479896001, 18479896002, 18479896027, 32489610004, 34844339006, 67413491001	5,770	2,931	PO BOX 25308 SALT LAKE CIT, UT 84125
MANATEE CO UTILITIES DEPT	Water/Sewer	2565757144	39	20	PO BOX 25350BRADENTON, FL34206
OPELIKA UTILITIES	Non-Service Water/Sewer	44248511832	77	39	PO BOX 2587 OPELIKA, AL 36803
ALTUS POWER	Electricity Trash Water/Sewer	10114000	471	236	PO BOX 258875 OKLAHOMA CITY, OK 73125
VIRGINIA POWER	Electricity	6367046106	272	136	PO BOX 26019 RICHMOND, VA 23260
MUNCIE SANITARY DISTRICT	Water/Sewer	530392701	25	13	PO BOX 2605 FORT WAYNE, IN 46801
CITY OF BAXTER	Non-Service Water/Sewer	5464000	102	51	PO BOX 2626 BAXTER, MN 56425



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF ASHEBORO	Non-Service Water/Sewer	90630	38	19	PO BOX 2628 ASHEBORO, NC 27204
DOMINION ENERGY NORTH CAROLINA	Electricity	5217657286, 9200322866	1,336	668	PO BOX 26543 RICHMOND, VA 23290
MONCKS CORNER WATER WORKS	Water/Sewer	7758	35	18	PO BOX 266 MONCKS CORNER, SC 29461
CLARKSVL WSTWTR TREATMENT DEPT	Water/Sewer	103334500	162	81	PO BOX 2668 CLARKSVILLE, IN 47131
MAGIC VALLEY ELEC COOP INC	Electricity Non-Service	183310001, 183310002, 183310003	496	255	PO BOX 267 MERCEDAS, TX 78570
CPS ENERGY	Electricity Gas Non-Service	3000320762, 3000359585, 3000359588, 3000359595, 3000359600, 3001490330, 3001702442, 3002305405, 3003645290, 3003922125, 3004017522, 3004080310, 3000359588, 3000359600, 3004100014, 3000320762	2,946	1,473	PO BOX 2678 SAN ANTONIO, TX 78289
DOMINION ENERGY WEST VIRGINIA	Gas	3100000032782, 3100000032796, 5500000232010, 7100000034525	198	99	PO BOX 26783 RICHMOND, VA 23261
DOMINION ENERGY OHIO	Electricity Gas Non-Service	70261540, 92664309, 106460561, 543961569, 1288346560, 1596395028, 1683473944, 1983896307, 2063922500, 2263997823, 2725018317, 2900191723, 2923266676, 3091308779, 3138104173, 3365424617, 3459028266, 3475431429, 3623501180, 4103877041, 4242025155, 4593545108, 4872143278, 5027504744, 5295332794, 5376388178, 5421545608, 5448869965, 5742198590, 6104526444, 6310579880, 6725072240, 6826010073, 6899931023, 7134494439, 7150262496,	11,230	5,617	PO BOX 26785 RICHMOND, VA 23261

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		7707412305, 7875153509, 8671493131, 8923364916, 9044517507, 9066472599, 9409009926, 9711802083, 9722652501, 441000246174, 1500032798829, 2180008153589, 2441000237436, 2500030458915, 2500038125699, 2500049429867, 2500060731101, 3421000181647, 3421100181622, 4440400235671, 4442000237515, 5440700237473, 5500006758285, 5500035313672, 5500048732455, 6421300181337, 6500037104875, 6500050216910, 6500061808795, 8500034648127, 8500044995299, 8500046208794, 8500049419373, 8500061244332, 9441500237521, 9500035441619, 9500063977121, 1983896307, 5448869965, 6725072240, 9044517507, 2441000237436, 5500006758285, 6197001758438			
CITY OF EDMOND	Electricity Trash Water/Sewer	58670026065	363	182	PO BOX 268927 OKLAHOMA CITY, OK 73126
CITY OF PEMBROKE PINES	Water/Sewer	3302062430029, 3302069110027	94	47	PO BOX 269005 PEMBROKE PINE, FL 33026
CITY OF AURORA	Water/Sewer	7793541071, 26855115581	43	22	PO BOX 2697 AURORA, IL 60507
WATERLOO WATER WORKS	Water/Sewer	126255510711	34	17	PO BOX 27 WATERLOO, IA 50704
UNION OIL & GAS INC	Gas	31031006948001	51	25	PO BOX 27 WINFIELD, WV 25213

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
DOMINION ENERGY	Gas Non-Service	135753422, 327916250, 1192243150, 1927791284, 2001408540, 2560830000, 2708864012, 3323933344, 3438656540, 3978843287, 4196204143, 4345166584, 4441863799, 4659774251, 4881731706, 4907395721, 5136954311, 5487111000, 5674496348, 6096440000, 6325050000, 6894370698, 6989005412, 7849508357, 8028980000, 8331840000, 8716065263, 8757260000, 8883860000, 9441455601, 9567760000, 3907440000, 6325050000, 6989005412, 7265961729, 8716065263	1,315	662	PO BOX 27031 RICHMOND, VA 23261
ABCWUA	Trash Water/Sewer	9859749560	210	105	PO BOX 27226 ALBUQUERQUE, NM 87125
LA PLATA ELECTRIC ASSOCIATION	Electricity	6390004216	272	136	PO BOX 2750 DURANGO, CO 81302
PLYMOUTH UTILITIES	Electricity Water/Sewer	6881361101	250	125	PO BOX 277 PLYMOUTH, WI 53073
WITHLACOOCHEE RIVER ELEC COOP	Electricity Non-Service	1221398, 1221400, 1221402, 1221405, 2078296, 1221405	879	480	PO BOX 278 DADE CITY, FL 33526
ORANGE COUNTY WCID #2	Non-Service Water/Sewer	980000	198	107	PO BOX 278 ORANGE, TX 77631
CITY OF HAMMOND UTILITY DEPT	Non-Service Water/Sewer	11330	23	11	PO BOX 2788 HAMMOND, LA 70404
NEW MEXICO GAS CO	Gas Non-Service	374361001330993, 374361013728453, 374361013778880, 788500101716667, 4389350004743670, 7816190108057440, 7816190109559930, 11543934008265700, 11545171106696200, 11545171112032400,	366	185	PO BOX 27885 ALBUQUERQUE, NM 87125

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		11597420513183600, 374361001330993, 11597420513183600			
PNM	Electricity Non-Service	374361001330993, 788500101716667, 4059020009559930, 4059020013183610, 4389360104743670, 11530305304393500, 11545171112032400, 11545171114469900, 11545171115409000, 4059020013183610, 11530305304393500	2,237	1,118	PO BOX 27900 ALBUQUERQUE, NM 87125
KEYS ENERGY SERVICES	Electricity	658116802	352	176	PO BOX 279038 MIRAMAR, FL 33027
CITY OF TITUSVILLE	Trash Water/Sewer	69460	222	111	PO BOX 2807, 555 S. WASHINGTON AVE TITUSVILLE, FL 32769
INTRADO ENTERPRISE COLLABORATION INC	Telecom	710943	7,963	3,982	PO BOX 281866 ATLANTA, GA 30384-1866
ELECTRICITIES OF NC INC	Electricity Non-Service	20090003201	340	170	PO BOX 2819 HUNTERSVILLE, NC 28070
CITY OF UKIAH	Electricity	409383	251	126	PO BOX 2860 UKIAH, CA 95482
CROWN CASTLE	Telecom	B07062	1,988	994	PO BOX 28730 NEW YORK, NY 10087-8730
TAHLEQUAH PUBLIC WORKS AUTH	Electricity Trash Water/Sewer	18047001	262	131	PO BOX 29 TAHLEQUAH, OK 74465
ENMAX	Electricity Water/Sewer	500154797, 500774897, 501122941, 501302072, 501122941	1,565	783	PO BOX 2900 STN M CALGARY, AB T2P3A
SMYRNA UTILITIES	Gas Water/Sewer	3010757005	52	26	PO BOX 290009 NASHVILLE, TN 37229

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF PHOENIX	Water/Sewer	1492276470	73	37	PO BOX 29100PHOENIX, AZ85038
CITY OF PORT ORANGE	Trash Water/Sewer	7841515772, 7841515772, 14123137811	199	100	PO BOX 291037 PORT ORANGE, FL 32129
CITY OF DELAND	Trash Water/Sewer	11522000	181	90	PO BOX 2919 DELAND, FL 32721
BELOIT UTILITIES	Water/Sewer	615301	80	40	PO BOX 2941 MILWAUKEE, WI 53201
KAUAI ISLAND UTILITY COOP	Electricity	11006001	2,146	1,073	PO BOX 29440 HONOLULU, HI 96820
HAWAII ELECTRIC LIGHT CO	Electricity	202010322172, 202010737080	3,117	1,559	PO BOX 29570 HONOLULU, HI 96820
NORTH SHORE GAS	Gas	61257140200001, 61257140200004, 61257140200005	156	78	PO BOX 2968 MILWAUKEE, WI 53201
CITY OF TAYLOR WATER DEPT	Water/Sewer	30294493	16	8	PO BOX 298 TAYLOR, MI 48180
LINCOLN ELECTRIC SYSTEM	Electricity	2300013, 28239005	467	233	PO BOX 2986 OMAHA, NE 68103
TOWN OF WALPOLE	Water/Sewer	124009254	8	4	PO BOX 30 MEDFORD, MA 02155
SOUTHERN CALIFORNIA EDISON	Electricity Non-Service	2021273149, 2192475218, 2202874913, 2205646656, 2222864175, 2222864274, 2222926867, 2222926917, 2222926941, 2222927204, 2222927246, 2222927345, 2222927451, 2222927527, 2222928624, 2264819400, 2279473631, 2280044710,	25,122	12,640	PO BOX 300 ROSEMEAD, CA 91772

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		2282399526, 2294278858, 2304187024, 2309700839, 2317977932, 2319322665, 2319322889, 2319322996, 2320918485, 2326337185, 2331963553, 2332039239, 2333975142, 2334392750, 2334987567, 2336299334, 2337498349, 2338996010, 2341478667, 2343602975, 2344446745, 2345944482, 2347852949, 2351102108, 2352577340, 2354285165, 2357530856, 2358395085, 2364136028, 2365900943, 2365901255, 2369647300, 2369866314, 2371344714, 2373346410, 2374187128, 2375729571, 2376513230, 2377226493, 2382274942, 2389830795, 2393818539, 2395311947, 2397526997, 2398149385, 2399195767, 2399196054, 2403395619, 2408461028, 2409635489, 2410429567, 2410501555, 2410551121, 2416208411, 2421637943, 2423138742, 2423138817, 3014414318, 3044964264, 2021273149, 2222864274, 2222926867, 2222927204, 2317977932, 2337498349, 2369866314			
NV ENERGY	Electricity Gas Non-Service	1000017454301130000, 1000017454301470000, 1000017454304960000, 1000017454305040000, 1000017454305170000, 1000017454305190000, 3000101129710930000, 3000101129711080000, 3000101129713270000, 3000101129714210000, 3000101129714830000, 3000101129716040000, 3000101129716730000, 3000101129717120000, 3000101129717170000,	5,729	2,869	PO BOX 30073 RENO, NV 89520

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		3000101129718170000, 3000101129718640000, 3000101129719140000, 3000101129719190000, 3000101129719590000, 3000101129721370000, 3000101129721730000, 3000101129721860000, 3000101129722060000, 3000101129722330000, 3000101129722400000, 3000101129722910000, 1000017454301130000, 1000017454301470000, 1000017454304960000, 1000017454305040000, 3000101129721860000			
BRANCH BURNT STORE ASSOC LP	Landlord Water/Sewer	837911	35	17	PO BOX 30139 TAMPA, FL 33630
HAWAIIAN ELECTRIC COMPANY	Electricity	201010574618, 201010716037, 201010801854, 201010845174, 201011395641, 201011506205, 201013730134, 201013988757, 201015788510, 202011791219, 202012444750, 202012599694, 202013040722, 202013041183, 202013272465, 202014256509, 202014311379	15,159	7,580	PO BOX 30260 HONOLULU, HI 96820
INDIANA AMERICAN WATER	Non-Service Water/Sewer	1010210003674170, 1010210003674170, 1010210004117740, 1010210004680010, 1010210004866960, 1010210006893930, 1010210006967390, 1010210007057880, 1010210007149790, 1010220015886710, 1010220016217280	413	390	PO BOX 3027 MILWAUKEE, WI 53201

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
HERNANDO CNTY UTILITIES DEPT	Water/Sewer	C10045100	38	19	PO BOX 30384 TAMPA, FL 33630
BOONE REMC	Electricity	Unknown	2,227	1,113	PO BOX 3047 MARTINSVILLE, IN 46151-3047
NASHVILLE ELECTRIC SERVICE	Electricity	1035430054603, 1035430103364, 1035430162092, 1035430180558, 1035430347780, 1035430395651, 1035430449605, 1035430567756	2,516	1,258	PO BOX 305099 NASHVILLE, TN 37230
METRO WATER SERVICES	Non-Service Water/Sewer	159142301, 150251300, 159142301, 176825300	116	58	PO BOX 305225 NASHVILLE, TN 37230
ALLIANT ENERGY IPL	Electricity Gas Non-Service	128921000, 765311000, 1478153488, 4601711000, 4983101000, 6378951784, 6738736766, 7064231000, 7469780000, 7939351000, 7941711000, 8706290000, 765311000, 1262131000, 1478153488, 3835821000, 3984229021, 7674390000, 7939351000, 3984229021	4,967	2,484	PO BOX 3060 CEDAR RAPIDS, IA 52406
ALLIANT ENERGY WPL	Electricity Gas Non-Service	106200000, 196500000, 521140000, 4134600000, 4179234066, 4280940000, 4810500000, 5676210000, 6122740000, 7951400000, 106200000, 521140000, 4134600000, 4179234066, 4280940000, 7951400000, 521140000	2,709	1,355	PO BOX 3062 CEDAR RAPIDS, IA 52406
HAWAIIAN TELECOM INC	Telecom	107712174100010, 200000000018049	163	81	PO BOX 30770 HONOLULU, HI 96820-0770
BRANTFORD POWER INC	Electricity Non-Service	22548503	299	149	PO BOX 308 BRANTFORD, ON N3T5N
CLAY ELECTRIC COOP INC	Electricity Non-Service	1442797, 3979259, 8798821, 1442797	1,180	591	PO BOX 308 KEYSTONE HEIG, FL 32656



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
LOS ANGELES DEPT OF WTR & PWR	Electricity Water/Sewer	1959290000, 2604390000, 2864790000, 2959290000, 3959290000, 5647461910, 6366020000, 6395500000, 7541600000, 6366020000	5,396	2,698	PO BOX 30808 LOS ANGELES, CA 90030
SEQUACHEE VALLEY ELECTRIC COOP	Electricity	112203002	393	197	PO BOX 31 S PITTSBURG, TN 37380
CITY OF SUMTER	Water/Sewer	192255002	58	29	PO BOX 310 SUMTER, SC 29151
CITY OF FITCHBURG	Water/Sewer	6000018030	23	12	PO BOX 312 MEDFORD, MA 02155
TAMPA ELECTRIC	Electricity	211003545020, 211003545269, 211003545541, 211003545798, 211003545988, 211003546473, 211003546713, 211003546978, 211003547794, 211003548065	3,124	1,562	PO BOX 31318 TAMPA, FL 33631
SARASOTA COUNTY PUBLIC UTILITI	Water/Sewer	62423600924, 62423612098	153	76	PO BOX 31320 TAMPA, FL 33631
CLARKSVILLE GAS & WATER	Non-Service Water/Sewer	48057300	34	17	PO BOX 31329 CLARKSVILLE, TN 37040
MICHIGAN GAS UTILITIES	Electricity Gas	40197289000001, 40197289000003, 40312057600002, 40312057600005, 40312057600006, 40639440600001, 40639440600002, 40639440600003, 40639440600004, 40197289000001, 40197289000003, 40312057600002, 40312057600003, 40312057600004, 40312057600005, 40639440600001, 40639440600002, 40639440600003, 40639440600004, 40804783400002, 50276585400001, 50422502200001, 50463250900001, 61257140200006	3,097	1,548	PO BOX 3140 MILWAUKEE, WI 53201

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF SUNRISE	Water/Sewer	1815473580, 124633111656, 154351105696, 503027166034	909	454	PO BOX 31432 TAMPA, FL 33631
CLARKSVILLE DEPT OF ELECTRICTY	Electricity	34004000	332	166	PO BOX 31449 CLARKSVILLE, TN 37040
ALTOONA WATER AUTHORITY	Water/Sewer	2971431, 3132841	92	46	PO BOX 3150 ALTOONA, PA 16603
CITY OF CAPE CORAL	Water/Sewer	596212233637, 600554239674, 1052150357998	182	91	PO BOX 31526 TAMPA, FL 33631
CITY OF BOYNTON BEACH	Non-Service Water/Sewer	1172859383, 1172859383, 29911544813	117	59	PO BOX 31803 TAMPA, FL 33631
FORT PIERCE UTILITIES AUTH	Electricity Non-Service Trash Water/Sewer	54090000232979	573	287	PO BOX 3191 FT PIERCE, FL 34948
PEABODY MUNICIPAL LIGHT PLANT	Electricity	960397002	236	118	PO BOX 3199 PEABODY, MA 01961
LAKELAND ELECTRIC	Electricity Non-Service Water/Sewer	3174451	388	195	PO BOX 32006 LAKELAND, FL 33802
NORTH BAY HYDRO	Electricity	15892121628	468	234	PO BOX 3240 NORTH BAY, ON P1B8Y
LOUISVILLE WATER CO	Water/Sewer	118110000, 4738720000	153	76	PO BOX 32460 LOUISVILLE, KY 40232
CEDAR RAPIDS MUNICIPAL UTIL	Water/Sewer	8254671208	60	30	PO BOX 3255 CEDAR RAPIDS, IA 52406

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
LEVIN MANAGEMENT CORP	Landlord Water/Sewer	1M054, GENER9637	201	100	PO BOX 326 PLAINFIELD, NJ 07061
FLEMING MASON ENERGY	Electricity	90191001	255	128	PO BOX 328 FLEMINGSBURG, KY 41041
MIDDLE TENNESSEE EMC	Electricity	2049952442, 2052119380	452	226	PO BOX 330008 MURFREESBORO, TN 37133
GETTYSBURG MUNICIPAL AUTHORITY	Water/Sewer	128930	74	37	PO BOX 3307 GETTYSBURG, PA 17325
READING AREA WATER AUTHORITY	Water/Sewer	3758901	25	13	PO BOX 3315 LANCASTER, PA 17604
FOREST HILLS MUNICIPAL AUTH	Water/Sewer	330054160146	42	21	PO BOX 337 ST MICHAEL, PA 15951
CITY OF GALLIPOLIS	Non-Service Water/Sewer	1689955	57	28	PO BOX 339 GALLIPOLIS, OH 45631
WYOMING VALLEY	Landlord Electric Water/Sewer	202, 2402780560	174	87	PO BOX 33A WILKES-BARRE, PA 18703
COLORADO SPRINGS UTILITIES	Electricity Gas	579142811, 4030391510, 6047849077, 6791070237, 8646291084	1,436	718	PO BOX 340 COLORADO SPRI, CO 80901
LEXINGTON FAYETTE URBAN CO GOV	Water/Sewer	112336300, 114419300	46	23	PO BOX 34090 LEXINGTON, KY 40588
CITY OF MORGANTON	Electricity Water/Sewer	1909001	319	160	PO BOX 3448 MORGANTON, NC 28680
CITY OF ELIZABETH CITY	Electricity Water/Sewer	41141000000, 41141000096	255	128	PO BOX 347 ELIZABETH CIT, NC 27907

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
RAPPAHANNOCK ELECTRIC COOP	Electricity	225074001, 225074002, 225074003, 225074004, 225074005	1,304	652	PO BOX 34757 ALEXANDRIA, VA 22334
NORTHERN VIRGINIA ELEC COOP	Electricity	2275657001, 2275657002, 2746510001	908	454	PO BOX 34795 ALEXANDRIA, VA 22334
CITY OF RICHLAND	Electricity	28970201010305	251	125	PO BOX 34811 SEATTLE, WA 98124
LAKEHAVEN WTR & SWR DISTRICT	Water/Sewer	457503	31	15	PO BOX 34882 SEATTLE, WA 98124
JUNALUSKA SANITARY DIST	Water/Sewer	400004401	54	27	PO BOX 35 LAKE JUNALUSK, NC 28745
CITY OF LOVELAND	Electricity	1208076089, 11072240074, 13642830682	802	401	PO BOX 3500 LOVELAND, CO 80539
CITY OF SEATTLE	Electricity	4779388920, 5339600000, 7071500000, 7988900000, 8613910000	782	391	PO BOX 35178 SEATTLE, WA 98124
CITY OF VANCOUVER UTILITIES	Water/Sewer	11104814002	123	61	PO BOX 35195 SEATTLE, WA 98124
METROPOLITAN UTILITIES DIST	Gas Water/Sewer	112000282543	208	104	PO BOX 3600 OMAHA, NE 68103
MON POWER	Electricity Non-Service	110082548014, 110084945473, 110085761283, 110086518716, 110090359594, 110094516538, 110121932641, 110130646539, 110121932641, 110130646539	1,307	661	PO BOX 3615 AKRON, OH 44309
MISHAWAKA UTILITIES	Electricity Water/Sewer	74707	913	457	PO BOX 363 MISHAWAKA, IN 46546

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
AUTORIDAD DE ENERGIA ELECTRICA	Electricity Non-Service	1498460000, 1994105456, 2839151000, 3426293827, 4306446811, 4858902000, 5270015490, 7222021000, 7707978720, 8166691000, 8404222000, 8506631000, 9187871000, 9192793288, 66046095098, 1498460000, 1994105456, 3426293827, 4306446811, 5270015490, 7707978720, 8166691000, 9192793288, 66046095098	5,651	3,503	PO BOX 363508 SAN JUAN, PR 00936
OHIO EDISON	Electricity Non-Service	110010298450, 110010590310, 110011304141, 110011788418, 110013282246, 110013465650, 110016172378, 110030733940, 110050101580, 110052829154, 110053635303, 110057697093, 110071691668, 110071942913, 110076595757, 110078404388, 110078419782, 110079213879, 110103499247, 110128293583, 110131634880, 110030733940, 110050101580, 110071942913, 110103499247, 110128293583	3,099	1,704	PO BOX 3637 AKRON, OH 44309
THE ILLUMINATING CO	Electricity Non-Service	110022281528, 110023898015, 110024632108, 110026977311, 110027941100, 110028011085, 110045508410, 110060213243, 110074160935, 110095158496, 110102219547, 110108808509, 110115511146, 110026977311, 110028011085, 110095158496	2,406	1,220	PO BOX 3638 AKRON, OH 44309
PUERTO RICO ELECTRIC PWR AUTH	Electricity Non-Service	1496381000, 2226358518, 2518722000, 3308212000, 3764521000, 4058302000, 4315102000, 4463612000, 4858902000, 5686890000, 6666661485, 6954212000, 7222021000, 8033891000, 8467722000, 8506631000, 8777032000, 8971612000, 9187871000, 9242202000, 9466331000, 1496381000, 2226358518, 2518722000,	16,547	8,274	PO BOX 364267 SAN JUAN, PR 00936-4267

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		3308212000, 4058302000, 4315102000, 4463612000, 4858902000, 5686890000, 6666661485, 6954212000, 8033891000, 8467722000, 8777032000, 8971612000, 9187871000, 9242202000, 9466331000			
OXFORD WATER WORKS	Water/Sewer	51200	39	19	PO BOX 3663 OXFORD, AL 36203
GREENEVILLE WATER COMMISSION	Water/Sewer	40659001	41	20	PO BOX 368 GREENVILLE, TN 37744
JCP&L	ElectricityNon-ServiceTrashWater/Sewer	671610001, 4263210001, 6188200001, 100002348850, 100002349015, 100002794525, 100003936844, 100003989538, 100005175540, 100005558646, 100005675325, 100006684870, 100012319149, 100016667915, 100018431740, 100018507663, 100019782224, 100020713424, 100024414003, 100038861496, 100038950851, 100039812662, 100042015675, 100048153744, 100048286056, 100049291352, 100050760899, 100064514803, 100065907089, 100068526415, 100068796257, 100069074886, 100070833585, 100084939493, 100085718565, 100087028732, 100088789829, 100098485186, 100099380220, 100100413598, 100101248167, 100102482609, 100113033342, 100116734391, 100127937900, 100133179158, 100137458129, 110020343775, 110055888173, 110073487198, 110102204317, 35198316755ZR13224,	8,652	4,428	PO BOX 3687AKRON, OH44309

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		35198316755ZR17341, 100018507663, 100039812662, 100050760899, 100088789829, 100102482609, 100113033342, 100127937900, 100133179158, 100137458129, 1017210010493170, 1017210013086670, 4263210001, 6188200001, 35198316755ZR17341, 2786100001, 4263210001, 6901581649, 8327400001, 1017210010493170, 1017210011652650, 1017210013086670, 1017210014131700, 1017210014627750, 1017210015047060, 1017220003543020, 1017220004821280, 1017220011391500, 1017220018502330, 1017220023926600, 35198316755ZR17341			
CITY OF CAMARILLO	Water/Sewer	56285103912	67	33	PO BOX 37 CAMARILLO, CA 93011
SIKESTON BMU	Electricity Water/Sewer	24223	314	157	PO BOX 370 SIKESTON, MO 63801
HRSD	Non-Service Water/Sewer	2130230005, 2130230005, 5921340006, 6679040002, 7688495135	(876)	20	PO BOX 37097 BOONE, IA 50037
VILLAGE OF BIRCH RUN	Water/Sewer	101192000	93	47	PO BOX 371 BIRCH RUN, MI 48415
NEW YORK AMERICAN WATER	Water/Sewer	1038210026450080, 1038210028856180, 1038210029547380	78	39	PO BOX 371332 PITTSBURGH, PA 15250
PENNSYLVANIA AMERICAN WATER	Water/Sewer	1024210028190610, 1024210028491030, 1024210029481080, 1024210029835700, 1024210030684680, 1024210031095880, 1024210033423950, 1024210033586230, 1024210034347410, 1024210034417970,	748	374	PO BOX 371412 PITTSBURGH, PA 15250

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		1024210035644970, 1024220028894670, 1024220028894680			
AMERIGAS	Non-Service Propane	200718385, 203117058, 200488079, 200524413, 200718385, 203222989	151	115	PO BOX 371473 PITTSBURGH, PA 15250
AMERICAN ELECTRIC POWER	Electricity Non-Service	2113018820, 2320087618, 2608545204, 2730727100, 2842720001, 3074066402, 3896551540, 4260128519, 4757593209, 6102216113, 6902001913, 7029064800, 7135141005, 7167171805, 7274372916, 7351786327, 7368799727, 7405602116, 7577418036, 7704849806, 7841916302, 7875658507, 7887373145, 7911851009, 10046698246, 10121379027, 10155775025, 10292537742, 10298251116, 10415242931, 10432864006, 10454808816, 10584914229, 10626917206, 10641618029, 10643695348, 10883023169, 10885181734, 10951894103, 95033196007, 95202981304, 95545503005, 95839077401, 96428807109, 96986505103, 2320087618, 2730727100, 4757593209, 7577418036, 7911851009, 10155775025, 10292537742	9,565	4,848	PO BOX 371496 PITTSBURGH, PA 15250
NATIONAL FUEL	Gas Non-Service	325605705, 432293807, 444406707, 467165408, 486243409, 489748809, 498863603, 499391311, 518630104, 564070902, 565933804, 608589704, 618376404, 626470803, 628248909, 680791608, 703679910, 714100508, 716958805, 862365701, 498863603, 542700910, 564070902, 565933804, 628248909, 862365701	1,248	626	PO BOX 371835 PITTSBURGH, PA 15250
BLUE MOUNTAIN WATER COOP	Water/Sewer	28	38	19	PO BOX 373 MYERSTOWN, PA 17067



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
PR WOODLAND LP	Landlord Electric	1011	549	275	PO BOX 373858 CLEVELAND, OH 44193
PECO PAYMENT PROCESSING	Electricity Gas Non-Service	292065055, 612053040, 1411401003, 2080000402, 2203201176, 2459401207, 3404422012, 4583014040, 4749322098, 4888001511, 4960723053, 5097601503, 5790500603, 7288177012, 7769100707, 8343800703, 8368099127, 8713801500, 8880400806, 9210400306, 9385600509, 9908900907, 612053040, 2080000402, 2383048111, 3404422021, 4583014040, 4888001511, 4960723053, 5097601503, 5790500603, 7288177012, 8343800703, 8368099127, 8880400806, 9210400306, 9908900907, 1411401003, 2080000402, 2203201176, 2383048111, 2459401207, 3404422012, 3404422021, 4888001511, 5097601503, 5790500603, 8368099127, 8713801500, 8880400806	(3,834)	1,911	PO BOX 37629 PHILADELPHIA, PA 19101
WASHINGTON GAS	Gas Non-Service	210001210538, 210001930721, 210002136922, 210002797004, 220000465264, 220001591357, 220001778855, 220002365249, 220002994170, 220003043332, 220003270471, 220004013995, 220004045112, 220004060715, 220004277095, 220004468355, 310003262923, 320000220683, 320000347288, 320000603953, 320001416769, 320001992983, 320002056085, 320002435461, 320002628495, 320003726777, 320004087054, 320004321396, 320004333714, 320004400471, 320004470763, 320005077377, 320005411071, 320005446259,	1,861	945	PO BOX 37747 PHILADELPHIA, PA 19101

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		210001930721, 210002136922, 220000465264, 220003270471, 320003726777, 320005411071, 320005638210			
CRANBERRY TOWNSHIP	Non-Service Water/Sewer	601441620, 60144162, 601441620	70	38	PO BOX 378 SENECA, PA 16346
EASTON SUBURBAN WATER AUTH	Water/Sewer	150150, 156370	29	15	PO BOX 3819 EASTON, PA 18043
CITY OF PINEVILLE	Non-Service Water/Sewer	80182000	43	22	PO BOX 3820 PINEVILLE, LA 71361
HOT SPRINGS MUNICIPAL UTILITIES	Water/Sewer	909003	117	59	PO BOX 3830 HOT SPRINGS, AR 71914
CRWWD	Water/Sewer	33099000	43	21	PO BOX 3855 SEATTLE, WA 98124
MEMPHIS LIGHT GAS & WATER DIV	Electricity Gas Non-Service Water/Sewer	2242781238732, 2242781321084, 2242781376604, 2242781428590, 2242781486188, 2242781321084, 2242781376604, 2242781486188, 2242781321084, 2242781428590	1,844	922	PO BOX 388 MEMPHIS, TN 38145
BCWSA	Water/Sewer	202009400, 380161600	595	298	PO BOX 3895 LANCASTER, PA 17604
HAZLETON CITY AUTHORITY	Water/Sewer	1750110000	16	8	PO BOX 3898 SCRANTON, PA 18505
PR CAPITAL CITY LTD PARTNERSHP	Landlord Electric Non-Service	291040232	240	122	PO BOX 392406 CLEVELAND, OH 44193
UNION RURAL ELEC COOP INC	Electricity Gas Non-Service	1448901, 1480901	317	161	PO BOX 393 MARYSVILLE, OH 43040

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
LIVINGSTON COUNTY WTR SWR AUTH	Water/Sewer	13773	56	28	PO BOX 396 LAKEVILLE, NY 14480
MERCED IRRIGATION DISTRICT	Electricity	50000956203	342	171	PO BOX 398018 SAN FRANCISCO, CA 94139
CAPREF LLOYD II LLC	Landlord Electric	10F20930	181	90	PO BOX 398428 SAN FRANCISCO, CA 94139
WATER WORKS & LIGHTING COMM	Electricity Water/Sewer	208603005	269	135	PO BOX 399 WISC RAPIDS, WI 54495
OMAHA PUBLIC POWER DIST	Electricity	2912861024, 4294616546	340	170	PO BOX 3995 OMAHA, NE 68103
CITY OF YORKTON	Non-Service Water/Sewer	4003120	50	25	PO BOX 400 YORKTON, SK S3N2W
CARROLL ELECTRIC COOP CORP	Electricity	9421320001	195	97	PO BOX 4000 BERRYVILLE, AR 72616
ENBRIDGE GAS UNION GAS	GasNon-Service	13727421024659, 13727421068180, 13727422435081, 13727422611137, 13727422637241, 13727422669271, 13727422771943, 13727422773762, 18361511698756, 18361512518210, 21124911930311, 21124911944806, 21124912609834, 21124912738425, 21124912907334, 21350791949670, 21714251257656, 21714251980150, 21714252810326, 25950242237147, 25950242339449, 25950242728952, 25950242745180, 25950242890482, 28203561971872, 29322572827062, 29518052459110, 36637112552891, 40318862164534, 45327152743914,	1,623	827	PO BOX 4001 STN ATORONTO, ONM5W0G

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		13727422435081, 13727422669271, 18361511698756, 21124912907334, 21350791949670, 21714251257656, 28203561971872, 45327152743914			
LAFAYETTE UTILITIES SYSTEM	Electricity Water/Sewer	2101226871, 8744431000	62	31	PO BOX 4024 - C LAYFAYETTE, LA 70502
JACKSON PURCHASE ENERGY CORP	Electricity	1153901	408	204	PO BOX 4030 PADUCAH, KY 42002
CAMDEN-WYOMING SWR & WTR AUTH	Water/Sewer	582310	64	32	PO BOX 405 CAMDEN WYOMIN, DE 19934
HYDRO ONE NETWORKS INC	Electricity Non-Service	200003372537, 200007177563, 200012221361, 200030348439, 200044858730, 200065574189, 200071006795, 200106637222, 200160080683, 200196518735, 200003372537, 200007177563, 200044858730, 200106637222	3,601	1,801	PO BOX 4102 STN A TORONTO, ON M5W3L
PARACO GAS CORPORATION	Non-Service Propane	195137G, 195137G, 220404N	468	234	PO BOX 412227 BOSTON, MA 02241
UPPER MERION SEWER REVENUE	Non-Service Water/Sewer	60020443, 60002308	60	30	PO BOX 41408 PHILADELPHIA, PA 19101
CITY OF FALL RIVER	Water/Sewer	2163	18	9	PO BOX 4141 WOBURN, MA 01888
ERIE WATER WORKS	Water/Sewer	371590372090, 513510514010, 523300528140, 525080531740	183	92	PO BOX 4170 WOBURN, MA 01888
TOWN OF MONTVILLE WPCA	Water/Sewer	768874613	15	8	PO BOX 4177 WOBURN, MA 01888

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
OAK RIDGE UTILITY DISTRICT	Gas	38386001	15	7	PO BOX 4189 OAK RIDGE, TN 37831
COLUMBIANA CO WATER & SEWER	Non-Service Water/Sewer	7200165	9	5	PO BOX 423 LISBON, OH 44432
CITY OF NAPERVILLE	Electricity	448635116754	260	130	PO BOX 4231 CAROL STREAM, IL 60197
TOWNSHIP OF ROXBURY SEWER DEPT	Water/Sewer	6982229	47	23	PO BOX 4248 LANCASTER, PA 17604
ELK RIVER MUNICIPAL UTILITIES	Electricity	8662	309	155	PO BOX 430 ELK RIVER, MN 55330
CENTURYLINK CENTURYTEL	Telecom	426456386, 00300696175, 475283620, 445459243	338	169	PO BOX 4300 CAROL STREAM, IL 60197-4300
UAJSA	Water/Sewer	H40250125000	30	15	PO BOX 431 TARENTUM, PA 15084
TOWN OF RAYNHAM	Water/Sewer	66	42	21	PO BOX 4321 WOBURN, MA 01888
METROPOLITAN ST LOUIS SWR DIST	Non-Service Water/Sewer	4411898, 4068979, 4411898, 6836712, 7568330, 7597743, 9440959, 10511285, 11563103	407	204	PO BOX 437 ST LOUIS, MO 63166
CITY OF LAGRANGE	Non-Service Water/Sewer	4090655308	9	5	PO BOX 4410 LAGRANGE, GA 30241
PGE	Electricity Non-Service	2649290000, 2764080000, 5108100000, 5920130000, 6080210000, 6409380000, 7449070000, 8792901000, 6384707005518, 6384707289823, 6384707305975, 6384709249486, 6384709469811, 6384709874259, 2649290000	3,172	1,586	PO BOX 4438 PORTLAND, OR 97208

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
INDUSTRIAL WASTE & SALVAGE	Trash	331400001	74	37	PO BOX 446 FRESNO, CA 93709
LENOIR CITY UTILITIES BOARD	Electricity Gas Water/Sewer	217667124962, 224910124962, 217667124962	675	338	PO BOX 449 LENOIR CITY, TN 37771
TORONTO HYDRO ELEC SYSTEM LTD	Electricity Non-Service	130383119, 414840677, 466260000, 1372285860, 2057445614, 2486560000, 3531400000, 4056240000, 4958330000, 6276116800, 7072830000, 9216230000, 9477692500, 9590889551, 414840677, 2057445614	5,090	2,545	PO BOX 4490 STATION A TORONTO, ON M5W4H
JEA	Electricity Water/Sewer	18171592, 20337861, 22491854, 22492393, 22717562, 22954503, 22955765, 23404128, 35797687, 64735115, 66899559, 68957112, 69783552, 73271008, 81074189, 83965443	3,311	1,655	PO BOX 45047 JACKSONVILLE, FL 32232
BELMONT CO WATER & SEWER DIST	Water/Sewer	1014950000	72	36	PO BOX 457 ST CLAIRSVILL, OH 43950
CITY OF GLENWOOD SPRINGS	Electricity	8005102996	344	172	PO BOX 458 GLENWOOD SPGS, CO 81602
VILLAGE OF OAK PARK WTR BILLNG	Water/Sewer	66700008503	28	14	PO BOX 4583 CAROL STREAM, IL 60197
BOARD OF PUBLIC UTILITIES	Electricity Water/Sewer Non-Service Trash	104232001, 41020000, 104232001	394	197	PO BOX 460 PARIS, TN 38242
COMPLETE SOLUTIONS & SOURCING	Trash	GNC1378	139	70	PO BOX 461 MONTROSE, NY 10548
CONSTELLATION NEWENERGY INC	Electricity Non-Service	6104000, 6104002, 6104007, 6104008, 6104010, 6104019, 6104022, 6117781, 6117782, 6117785, 6118164, 6118891, 6118892, 6119437, 6121851, 6121852,	51,174	29,575	PO BOX 4640 CAROL STREAM, IL 60197

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		6480405, 6480406, 6480407, 6480408, 6482753, 6482754, 6482755, 6482756, 6485055, 6485057, 6485058, 6485059, 6485060, 6485061, 6485063, 6487316, 6487317, 6487318, 6489634, 6489635, 6489636, 6489637, 6489638, 6489639, 6489640, 6491883, 6491884, 6491885, 6494211, 6494213, 6494214, 6494216, 6496471, 6496473, 6496474, 6496475, 6496476, 6496477, 6496478, 6498735, 6498736, 6498737, 6498739, 6501073, 6501074, 6501075, 6501076, 6503471, 6503473, 6503474, 6503475, 6503476, 6503477, 6503478, 6505806, 6505807, 6505808, 6508099, 6508100, 6508101, 6508102, 6508104, 6510386, 6510387, 6510388, 6510390, 6510391, 6512614, 6512615, 6512616, 6512617, 6512618, 6512619, 6512620, 6514981, 6514982, 6514983, 6514984, 6514985, 6514986, 6514987, 6514988, 7352942, 7352943, 7352944, 7352946, 7352947, 7352948, 7352950, 7352951, 7352953, 7352955, 7352956, 7352958, 7352959, 7352961, 7352962, 7352980, 7352983, 7352984, 7352985, 7352986, 7352989, 7352990, 7352991, 7352992, 7352996, 7352997, 7352998, 7353000, 7353004, 7353005, 7353006, 7353007, 7353008, 7353009, 7353011, 7353012, 7353013, 7353014, 7353015, 7353016, 7353017, 7353018, 7353019, 7353020, 7353021, 7353022, 7353023, 7353024, 7353025, 7353026, 7353027, 7353028, 7353029, 7353030, 7353031, 7353033, 7353035, 7353036, 7353037, 7353040, 7353041, 7353042, 7353043, 7353045, 7353046, 7353060,			

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		7353061, 7353062, 7353063, 7353064, 7353067, 7353071, 7353072, 7353073, 7353074, 7434357, 8054086, 8054088, 8054090, 8054091, 8054093, 8054099, 8054100, 8054101, 8054103, 8054107, 8054108, 8054109, 8054111, 8054112, 8054113, 8054114, 8054115, 8054116, 8054119, 8054120, 8054122, 8054123, 8054124, 8054125, 8054126, 8054127, 8054128, 8054129, 8054170, 8054174, 8054175, 8054176, 8054177, 8054180, 8054181, 8054182, 8054184, 8054185, 8054186, 8054188, 8054189, 8054190, 8054194, 8054195, 8054196, 8054197, 8054200, 8054201, 8054203, 8054204, 8054205, 8054206, 8054209, 8054212, 8054213, 8054214, 8054215, 8054216, 8054217, 8054220, 8054223, 8193523, 8193524, 8831780, 8895763, 8895802, 8895803, 6117785, 6480405, 6482753, 6482754, 6482756, 6485055, 6485058, 6485060, 6485061, 6487317, 6487318, 6489634, 6489638, 6489640, 6494211, 6494213, 6494216, 6496471, 6496475, 6496476, 6498736, 6498737, 6501073, 6501076, 6501077, 6503471, 6503474, 6503475, 6503476, 6503477, 6505806, 6505807, 6505808, 6508099, 6508101, 6508102, 6510386, 6510387, 6512614, 6512616, 6512618, 6514982, 6514983, 6514985, 7352984, 7352985, 7352986, 7352989, 7353009, 7434357, 8054086, 8054201			
COLUMBIA GAS OF KENTUCKY	Gas	138875950030000, 138875950040009, 155391820010004, 159471210050004	411	206	PO BOX 4660 CAROL STREAM, IL 60197



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CENTERPOINT ENERGY	GasNon-Service	1452655, 2332047, 3423340, 3549540, 3977949, 5193651, 5244926, 7861784, 14300131, 14555858, 14561591, 27447929, 27834605, 36876332, 45507621, 54100359, 54696760, 55694764, 56054422, 56174899, 56917768, 57050197, 58679507, 59666925, 59874966, 60046208, 62431390, 68914092, 69361020, 74281734, 86809621, 88806120, 96565601, 104895719, 64001917018, 64002509459, 64007953256, 64011503022, 64011552169, 64012295339, 64013913864, 7861784, 56054422, 68914092, 64013913864	1,845	1,085	PO BOX 4671HOUSTON, TX77210
CONSERVICE	Electricity Gas Landlord Water/Sewer Non-Service Water/Sewer	17773899, 17511463, 17502802, 17511413, 17512642, 18703682, 15929806, 15932152, 16133690, 17502802, 17511413, 17511463, 17524866, 17751541, 17773899, 19266903, 19965100, 22253993, 23983383, 23983384, 14651597, 15443146, 15929806, 15932152, 15999412, 16133690, 17039217, 17511463, 17524403, 17751541, 19085516, 19266903, 19965100, 22253993, 23182411, 23983383, 23983384	1,412	780	PO BOX 4718 LOGAN, UT 84323
SENECA LIGHT & WATER PLANT	Non-Service Water/Sewer	251033905	56	28	PO BOX 4773 SENECA, SC 29679
PEOPLES WATER SVC CO OF FLORID	Water/Sewer	221824000097	11	6	PO BOX 4815 PENSACOLA, FL 32507
CITY OF HAYS	Water/Sewer	1421715230	49	25	PO BOX 490 HAYS, KS 67601
SHENANDOAH VALLEY ELEC COOP	Electricity	1034075001	418	209	PO BOX 49001 BALTIMORE, MD 21297

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF SANTA CLARA	Electricity	6804904	448	224	PO BOX 49067 SAN JOSE, CA 95161
THE CITY OF LEESBURG	Electricity Non-Service Trash Water/Sewer	424955119070	692	348	PO BOX 491286 LEESBURG, FL 34749
CITY OF NEWPORT BEACH	Water/Sewer	2404500521956	51	25	PO BOX 4923 WHITTIER, CA 90607
CITY OF COMMERCE	Non-Service Water/Sewer	461472005	9	5	PO BOX 499 COMMERCE, GA 30529
SOUTHWEST MS ELEC POWER ASSN	Electricity Non-Service	1501187702	311	156	PO BOX 5 LORMAN, MS 39096
EPCOR	Electricity Water/Sewer	10200863, 28992618, 29044518, 29385432, 30321392, 30414411, 31177595, 31436637, 10200863, 28992618, 30321392, 31436637	2,894	1,447	PO BOX 500 EDMONTON, AB T5J3Y
COACHELLA VALLEY WATER DIST	Non-Service Water/Sewer	647843845940, 534451455894, 647843845940	89	45	PO BOX 5000 COACHELLA, CA 92236
AT&T	Telecom	95658378440169, 81656162803697, 6362390080409, 561792395437370455, 56179239543730455, 512A1361014005, 314A456003446, 96055113645559, 92023235304294, 71453157797049, 70844501959803, 66179904576330, 62657815999257, 55999853657226, 41442170772900, 31028715176818	240	120	PO BOX 5001 CAROL STREAM, IL 60197-5001
CITY OF HAMILTON OHIO	Water/Sewer	2053946	435	217	PO BOX 5003 HAMILTON, OH 45012
DIRECT TV INC	Telecom	Unknown	22	11	PO BOX 5006 CAROL STREAM, IL 60197-5006

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
AT&T	Telecom	8310007252816, 8310001030899, 61483487899555, 94976026777514, 91692893892038, 7603855056642, 71473072883831, 71473025154371, 8310001785464, 1717885468133, 1717885349176, 1717885243348, 1717885111046	3,511	1,756	PO BOX 5019 CAROL STREAM, IL 60197-5019
MUNICIPAL AUTH OF HAZLE TWP	Water/Sewer	1330	27	13	PO BOX 502 HARLEIGH, PA 18225
CITY OF REGINA	Non-Service Water/Sewer	674509398616	76	38	PO BOX 5022 REGINA, SK S4P4J
CITY OF AUBURN	Electricity Non-Service Water/Sewer	474590001	242	121	PO BOX 506 AUBURN, IN 46706
VILLAGE OF OSSINING WATER FUND	Water/Sewer	100916000	757	378	PO BOX 5084 WHITE PLAINS, NY 10602
EL PASO WATER UTILITIES	Water/Sewer	506777303, 1416071301, 2615737301, 2813701301	476	238	PO BOX 511 EL PASO, TX 79961
ALAMEDA MUNICIPAL POWER	Electricity	3514402, 4050700	742	371	PO BOX 511427 LOS ANGELES, CA 90051
CITY OF GRASS VALLEY	Non-Service Water/Sewer	30005574, 691915001420924	65	33	PO BOX 51159 LOS ANGELES, CA 90051
OATES ENERGY INC	Water/Sewer	1047696	186	93	PO BOX 51268 JACKSONVILLE, FL 32240
BIRCH COMMUNICATIONS INC	Telecom	Unknown	22,499	11,249	PO BOX 51341 LOS ANGELES, CA 90051-5641

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
BEACHES ENERGY SERVICES	Electricity	1316520431480, 1316520518270	233	143	PO BOX 51389 JACKSONVILLE, FL 32240
SUMMERSVILLE WATER WORKS	Water/Sewer	22900001	58	29	PO BOX 525 SUMMERSVILLE, WV 26651
CITY OF TUCSON	Water/Sewer	125106579340	41	21	PO BOX 52771 PHOENIX, AZ 85072
ELECTRICAL DISTRICT #2	Electricity	58045	428	214	PO BOX 52790 PHOENIX, AZ 85072
OHIO GAS CO	Gas Non-Service	44462	17	8	PO BOX 528 BRYAN, OH 43506
FLORIDA KEYS AQUEDUCT AUTH	Water/Sewer	510316037509, 537212043868	111	55	PO BOX 5293 KEY WEST, FL 33045
CITY OF TIFTON	Non-Service Water/Sewer	4404780	28	16	PO BOX 530220 ATLANTA, GA 30353
GAS SOUTH	Gas	1495941000, 4810601008, 5307226594, 6026551000, 7359191693	290	145	PO BOX 530552 ATLANTA, GA 30353
BLUE RIDGE ELEC COOP INC	Electricity Non-Service	157753002, 171212001, 171212002, 171212001, 171212002	810	405	PO BOX 530812 ATLANTA, GA 30353
BOSSIER CITY UTILITIES DEPT	Trash Water/Sewer	155843152250	109	54	PO BOX 5337 BOSSIER CITY, LA 71171
DDRTC TURKEY CREEK LLC	Landlord Water/Sewer Non-Service	1026423046700020000	(43)	17	PO BOX 534414 ATLANTA, GA 30353
DDRTC EISENHOWER CROSSING LLC	Landlord Water/Sewer	1026423040300020000	26	13	PO BOX 534420 ATLANTA, GA 30353

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
DDRM CLAYTON CORNERS LLC	Landlord Water/Sewer Non-Service	3192472124000030000	(69)	18	PO BOX 534626 ATLANTA, GA 30353
RCG LANSING LLC	Landlord ElectricLandlord Water/Sewer	B110	479	239	PO BOX 53483ATLANTA, GA30355
MODESTO IRRIGATION DISTRICT	Electricity Non-Service	433318551, 5535411456, 8201815287, 9942321811, 9942321811	1,470	738	PO BOX 5355 MODESTO, CA 95352
CITY OF MISSOULA	Water/Sewer	35206054528, 80984219339	19	9	PO BOX 5388 MISSOULA, MT 59806
NICOR GAS	Gas Non-Service	1805535448, 3489910004, 3920420001, 6151966105, 12169441081, 15892098961, 21967699030, 22202400002, 27616310002, 28131541618, 30161610008, 33328640199, 34540168746, 38342310000, 41104400001, 41191150303, 42982410005, 46363978902, 47360410006, 48983400002, 56393006913, 57535410005, 61925564843, 65925137039, 73184400007, 75205531702, 75224020000, 76856910286, 77456410008, 77805400007, 78602170470, 78866383595, 82765301385, 83430794137, 90995045045, 93442296096, 93660410007, 98401487883, 99027340621, 3489910004, 3920420001, 21967699030, 48983400002, 57535410005, 78602170470, 98401487883, 99027340621	2,209	1,270	PO BOX 5407 CAROL STREAM, IL 60197
CITY OF THIBODAU	Non-Service Water/Sewer	310384800	8	4	PO BOX 5418 THIBODAU, LA 70302
CONSTELLATION NEWENERGY GAS DV	Gas Non-Service	7856034, 7860670, 7903293, 7909540, 7913046, 7860670	317	160	PO BOX 5472 CAROL STREAM, IL 60197

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF TROY	Electricity	390215504	335	167	PO BOX 549 TROY, AL 36081
CITY OF WEST JORDAN	Electricity Water/Sewer	2871143052567	89	45	PO BOX 550 WEST JORDAN, UT 84084
CITY OF TROY WATER	Water/Sewer	3100190	279	140	PO BOX 554743 DETROIT, MI 48255
CITY OF WARSAW WSTEWTR PAYMENT	Non-Service Water/Sewer	270640020	22	11	PO BOX 557 WARSAW, IN 46581
INTERMOUNTAIN GAS COMPANY	Electricity Gas	2073310001, 17568865251, 47005310009, 96380138865, 529330003, 11716534133, 17568865251, 25804030002, 37639330002, 42986326439, 45414110002, 47005310009, 47544773238, 52792310006, 55948030006, 56722010008, 69093660723	1,172	586	PO BOX 5600 BISMARCK, ND 58506
CASCADE NATURAL GAS	Gas Non-Service	5330443341, 12653804919, 22651912051, 30685100007, 40432024137, 46044100009, 54820231816, 84659100006, 92025200004, 93386000009, 12653804919, 93386000009	250	202	PO BOX 5600 BISMARCK, ND 58506
EVERSOURCE	Electricity Gas Non-Service	12219200057, 12245550061, 13063880051, 22902131014, 25644521046, 25785461010, 25894811030, 26140831061, 26140931036, 26142391023, 26195411025, 26339471026, 26376131012, 26376141003, 26378091024, 26611041026, 26673301037, 26706321028, 27050340028, 27188500063, 27188620051, 27440750068, 28260920021, 28284720019, 28490780013, 28813900025, 28816750021, 29066210047, 29455190016, 29643130023, 51020812095, 51024804007, 51035508043, 51036993012, 51098714074, 51232942045, 51240222075, 51285442018, 51337634067, 51388883092, 51431352012, 51456734045,	33,825	16,954	PO BOX 56007 BOSTON, MA 02205

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		51486693096, 51499405041, 51523542017, 51569152010, 51635224090, 51648243053, 51680297090, 51694092099, 51786896092, 51788652089, 51870355005, 51906292008, 51919053058, 51933092058, 51935282079, 51935833087, 54000045039, 54054497037, 54094687043, 54312435019, 56011211000, 56070236021, 56381101070, 56415041060, 56576206015, 56604411033, 56646906032, 56861431054, 56965401045, 56981990021, 56991801036, 12219200065, 12245550087, 16137220022, 27502280020, 28219580025, 28648920024, 28724400040, 29061030044, 29257600022, 29424230026, 57182500025, 57188660070, 57209155050, 57242070035, 57398900076, 57409060092, 57437260094, 57458500063, 57467460069, 57573996089, 57618970057, 57640597076, 57687080002, 57904860038, 57916666001, 22902131014, 29424230026, 51523542017, 56381101070, 56415041060			
VILLAGE OF LOMBARD	Water/Sewer	31390001	37	19	PO BOX 5610 CAROL STREAM, IL 60197
CHARLESTON WATER SYSTEM	Water/Sewer	32829087, 96319017, 129046025	447	223	PO BOX 568 CHARLESTON, SC 29402
CITY OF GARFIELD WATER COLLECT	Water/Sewer	241251174930	53	27	PO BOX 57016 NEWARK, NJ 07101
RIVER REALTY DEVELOPMNT 1976	Landlord Water/Sewer	GENERCCN004195	23	12	PO BOX 576 NIAGARA FALLS, ON L2E6V
WATER WORKS DISTRICT 3	Non-Service Water/Sewer	61157002	43	21	PO BOX 580 TIOGA, LA 71477

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF GASTONIA	Electricity	20028270	291	145	PO BOX 580068 CHARLOTTE, NC 28258
CITY OF HICKORY	Trash Water/Sewer	12529217725	61	31	PO BOX 580069 CHARLOTTE, NC 28258
BERKELEY COUNTY WTR & SANITATN	Water/Sewer	572504120342	48	24	PO BOX 580139 CHARLOTTE, NC 28258
CITY OF CLINTON	Non-Service Trash Water/Sewer	9275	120	60	PO BOX 580189 CHARLOTTE, NC 28258
MOUNTAINEER GAS CO	Gas Non-Service	121233126959, 299811604022, 352382417980, 362084430837, 377913604022, 381830430837, 508662430837, 520822524911, 121233126959, 362084430837, 377913604022	485	264	PO BOX 580211 CHARLOTTE, NC 28258
TOWN OF APEX	Electricity Non-Service Water/Sewer	1006002, 30104003, 1006002, 30104003	438	234	PO BOX 580398 CHARLOTTE, NC 28258
SSI	Non-Service Water/Sewer	289662	10	6	PO BOX 580500 CHARLOTTE, NC 28258
CHATTANOOGA GAS	Gas	3594791459	42	21	PO BOX 59004 KNOXVILLE, TN 37950
KUB	Gas	1751552498	73	37	PO BOX 59017 KNOXVILLE, TN 37950
KUB	Electricity Gas Water/Sewer	1757600000, 4267399133, 5229455769, 6490336621, 5229455769, 5229455769, 6490336621	1,424	712	PO BOX 59029 KNOXVILLE, TN 37950
DELTA NATURAL GAS CO INC	Gas	661769, 1696004	97	48	PO BOX 593 CORBIN, KY 40702



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF SWAINSBORO	Trash Water/Sewer	16204	155	77	PO BOX 600 SWAINSBORO, GA 30401
OTTER TAIL POWER CO	Electricity	3102123, 3102126, 100041284	615	307	PO BOX 6000 WAHPETON, ND 58074
BLACK HILLS ENERGY	Electricity Gas Non-Service	4012WNORTHERNAVE, 5937NELIZABETHST, 1965025985, 1999255581, 2031823980, 2347394985, 2940091742, 3431286502, 3680609039, 4200244723, 4659756093, 4750398000, 5884451263, 6048361134, 6265906118, 6418269114, 6428765709, 6695796532, 6854908132, 7282836479, 7481822882, 2031823980, 6428765709	1,515	758	PO BOX 6001 RAPID CITY, SD 57709
APS	Electricity	35240000, 240520000, 432621000, 1103800000, 1647801000, 1918701000, 1987520000, 2394901000, 2840900000, 3870190000, 4257290000, 4492751000, 5140851000, 6110670000, 7003141000, 7722241000, 8072950000, 8479241000, 9287140000, 9684521000, 9955421000	9,291	4,645	PO BOX 60015 PRESCOTT, AZ 86304
LEE COUNTY UTILITIES	Non-Service Water/Sewer	11188224, 11188224, 11218401	87	43	PO BOX 60045 PRESCOTT, AZ 86304
LIBERTY UTILITIES	Water/Sewer	126670226342	28	14	PO BOX 6005 ARTESIA, CA 90702
NW NATURAL	GasNon-Service	1204023, 1374818, 2389385, 3803699, 7039019, 9243015, 9594383, 15856495, 15950587, 16932725, 19669894, 25675943, 26504878, 28894434, 29264959, 29363298, 34334391, 15856495, 15950587, 29264959	639	320	PO BOX 6017PORTLAND, OR97228
TOWN OF MOORESVILLE	Water/Sewer	107943	51	26	PO BOX 602113 CHARLOTTE, NC 28260

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
MOUNT PLEASANT WATERWORKS	Water/Sewer	45761200149150	38	19	PO BOX 602832 CHARLOTTE, NC 28260
ILLINOIS AMERICAN WATER	Water/Sewer	1025210000237700, 1025210000784520, 1025210001171300, 1025210002729930, 1025210003231980	158	79	PO BOX 6029 CAROL STREAM, IL 60197
ASHEVILLE OUTLETS	Water/Sewer	748484	2	1	PO BOX 603145 CHARLOTTE, NC 28260
MINNESOTA ENERGY RESOURCES	Gas Non-Service	50308249900001, 50381448700001, 50455357400001, 50465865100001, 50708133900001, 50724659400001, 50733803100001, 50761703300001, 50381448700001, 50455357400001, 50465865100001, 50708133900001, 50724659400001, 50733803100001, 50761703300001	413	214	PO BOX 6040 CAROL STREAM, IL 60197
PEOPLES GAS	Gas Non-Service	40639440600005, 40639440600006, 60126027600001, 60126027600002, 61065410100001, 61065410100002, 61155959700001, 61155959700003, 61155959700005, 40639440600005, 40639440600006, 60126027600001, 60126027600002, 61065410100002, 61155959700003, 61155959700005	833	417	PO BOX 6050 CAROL STREAM, IL 60197
CRANBERRY TWP PYMNT PROCESSING	Water/Sewer	15619	33	17	PO BOX 6075 HERMITAGE, PA 16148
CASS COUNTY ELECTRIC COOP	Electricity	862714	345	172	PO BOX 6088 FARGO, ND 58108
FULTONDALE GAS DEPT	Gas Non-Service	10527902	37	18	PO BOX 609 FULTONDALE, AL 35068

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
SOUTH JERSEY GAS	Gas Non-Service	677040000, 736810000, 1296520000, 1991110000, 2853030000, 3214620000, 3839799651, 5850600000, 6180500000, 6456020000, 7286620000, 8682230000, 9426220000, 677040000, 736810000, 1296520000, 1991110000, 2853030000, 3214620000, 3839799651, 5850600000, 6180500000, 6456020000, 7286620000, 8682230000	(3,779)	559	PO BOX 6091 BELLMAWR, NJ 08099
CITY OF KENNEWICK	Water/Sewer	3000155704	83	41	PO BOX 6108 KENNEWICK, WA 99336
COMED	Electricity Non-Service	84090040, 86003054, 107395004, 123388090, 129042208, 139031217, 255072381, 296095031, 299171056, 303036179, 459157227, 583037076, 598656029, 637009075, 795258007, 859151081, 909076044, 959077055, 959339032, 1062594013, 1089151021, 1099093045, 1207138020, 1277001001, 1383519007, 1539035170, 1545845002, 1587038098, 1695144114, 1695636000, 1731507002, 1773023074, 1935078202, 2232808009, 2287049014, 2379151098, 2529137033, 2624066022, 3043170077, 3204523001, 3206261111, 3279107115, 3408138002, 3410237001, 3462336002, 3519138029, 3796814011, 4645514007, 5052091045, 5152301020, 5328353032, 5673118052, 6400604066, 6480090093, 6752844005, 6852495004, 7425362024, 7551107019, 8003195004, 8251493006, 8463055010, 8598136002, 8738190020, 9418745006, 9423083013, 9510004028, 129042208, 139031217	9,506	4,753	PO BOX 6111 CAROL STREAM, IL 60197

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COMMERCIAL WATER & ENERGY	Water/Sewer	1020619	399	199	PO BOX 612860 SAN JOSE, CA 95161
MONROEVILLE MUNICIPAL AUTH	Water/Sewer	900351	70	35	PO BOX 6163 HERMITAGE, PA 16148
CITY OF CAPE GIRARDEAU	Water/Sewer	3596040061238	28	14	PO BOX 617 CAPE GIRARDEAU, MO 63702
CITY OF NORTON	Water/Sewer	174767	57	29	PO BOX 618 NORTON, VA 24273
DV III LLC	Landlord Water/Sewer	GENER3607	18	9	PO BOX 6187 WARWICK, RI 02887
CITY OF ROSEVILLE	Electricity	2030824, 2030825	468	234	PO BOX 619136 ROSEVILLE, CA 95661
ENERGYWORKS LANCASTER LLC	Electricity Hvac	P0703E581	1,019	510	PO BOX 6203 HERMITAGE, PA 16148
YOUNGSTOWN WATER DEPT	Water/Sewer	160597001	35	17	PO BOX 6219 YOUNGSTOWN, OH 44501
SOUTHERN MARYLAND ELEC COOP	Electricity	4875065747, 5839327971, 6776923896	953	476	PO BOX 62261 BALTIMORE, MD 21264
VECTREN ENERGY DELIVERY	Electricity Gas Non-Service	130034715611341000, 130034715614758000, 130034715614921000, 130034715611341000, 130034715611399000, 130034715613194000, 130034715614758000, 260001617850278000, 260001617851819000,	2,169	1,084	PO BOX 6250 INDIANAPOLIS, IN 46206

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		260001617852517000, 260017475150944000, 260017475151181000, 260017475151685000, 260017475152337000, 260017475154323000, 260017475154561000, 260017475155187000, 260017475157684000, 260017475157823000, 260017475158329000, 260017475158753000, 260034059253991000, 260052725150807000, 260052725157620000, 260056524854411000, 262135135353097000, 262135135353562000, 262135135354214000, 262135135354385000, 340010471521044000, 340010471521386000, 340010471522713000, 340010471523576000, 340010471525314000, 260001617850278000			
YES ENERGY MANAGEMENT	Landlord Water/Sewer	T0010415	74	37	PO BOX 6255 HICKSVILLE, NY 11802
DICKSON ELECTRIC SYSTEM	Electricity Non-Service Trash	230818126904, 630818126904	290	145	PO BOX 627 DICKSON, TN 37056
BENTON PUD	Electricity	21198000, 53171000, 89761000	378	189	PO BOX 6270 KENNEWICK, WA 99336

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CONSOLIDATED WATERWORKS DIST 1	Non-Service Trash Water/Sewer	2100111933	40	20	PO BOX 630 HOUMA, LA 70361
VERA WATER & POWER	Electricity Non-Service	44773000	89	45	PO BOX 630 SPOKANE VALLE, WA 99037
SASK POWER	Electricity	510002173084, 510004231534	658	329	PO BOX 6300 STATION MAIN REGINA, SK S4P4J
CITY OF NEW BERN PAYMENTS	Electricity Water/Sewer	12838387078	629	315	PO BOX 63005 CHARLOTTE, NC 28263
TOWN OF SMITHFIELD	Electricity Non-Service Water/Sewer	2403939000	411	205	PO BOX 63027 CHARLOTTE, NC 28263
CITY OF ROCK HILL	Electricity Water/Sewer Non-Service Trash	1127160, 2229490, 1127160, 2229490	1,080	546	PO BOX 63039 CHARLOTTE, NC 28263
UNION POWER COOPERATIVE	Electricity	5432733001	422	211	PO BOX 63047 CHARLOTTE, NC 28263
SUMMERSVILLE CPW	Non-Service Water/Sewer	48771, 48771, 54548, 66977	138	70	PO BOX 63070 CHARLOTTE, NC 28263
BURBANK WATER & POWER	Electricity Non-Service Trash	6507228093	129	65	PO BOX 631 BURBANK, CA 91503
PROFILE ENERGY SERVICES LLC	Electricity	A2A28958692	302	151	PO BOX 635356 CINCINNATI, OH 45263
F I STEELYARD COMMONS LLC	Landlord Water/Sewer	A2AW17902793	41	21	PO BOX 635401 CINCINNATI, OH45263

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MCMINNVILLE WATER & LIGHT	Electricity	96183	114	57	PO BOX 638 MCMINNVILLE, OR 97128
CITY OF NORTH AUGUSTA	Trash Water/Sewer	128504, 165298	197	98	PO BOX 6400 N AUGUSTA, SC 29861
MCCANDLESS TWP SANITARY AUTH	Water/Sewer	10116271	64	32	PO BOX 640803 PITTSBURGH, PA 15264
DDR OHIO OPPORTUNITY II LLC	Landlord Water/Sewer Non-Service	1026422009300040000	(20)	10	PO BOX 643474 PITTSBURGH, PA 15264
INTERMOUNTAIN RURAL ELEC ASSOC	Electricity	21757705, 40271901	620	310	PO BOX 6437 CAROL STREAM, IL 60197
ENBRIDGE	Gas Non-Service	16587191314, 33560201265, 33560208424, 40102974030, 42158979813, 54580010813, 57653208003, 82151652520, 94512767924, 104505898153, 106520687026, 110181098415, 153501010702, 163535402043, 183587622521, 910004730295, 910005246201, 910015374355, 910015381934, 910015510702, 910015786292, 910017065930, 910018668434, 910018911302, 910021805700, 910021935741, 910021937262, 910022335861, 910022548521, 910023684672, 910025288875, 910025816732, 910027296850, 16587191314, 104505898153, 153501010702, 183587622521, 910015374355, 910018668434, 910021805700, 910021937262, 910022548521, 910025288875	4,645	2,365	PO BOX 644 SCARBOROUGH, ON M1K5H

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DAKOTA ELECTRIC ASSOC	Electricity	200001986363, 200002052009, 200002428456	842	421	PO BOX 64427 ST PAUL, MN 55164
PEOPLES	Gas Non-Service	200000298139, 200000858387, 200004278756, 200004279234, 200004279366, 200004616468, 200004616526, 200007970417, 200008081602, 200008558690, 200008558922, 200008599439, 200008875896, 200009293537, 210000477534, 210001007751, 210006875269, 210006875277, 200008081602, 200008558922	3,069	1,551	PO BOX 644760 PITTSBURGH, PA 15264
PEOPLES WV	Gas	200009510062	26	13	PO BOX 645345 PITTSBURGH, PA 15264
BRIXMOR/IA SOUTHFIELD MI SC LL	Landlord Water/Sewer	29850	29	15	PO BOX 645346 CINCINNATI, OH 45264
CITY OF PORTSMOUTH	Non-Service Water/Sewer	5964542	15	8	PO BOX 645709 CINCINNATI, OH 45264
SPEEDWAY WATERWORKS	Water/Sewer	141567000	151	75	PO BOX 6485 INDIANAPOLIS, IN 46206
TXU ENERGY	Electricity Non-Service	10032789400412500, 10032789402273200, 10032789403869800, 10032789406001400, 10032789414429800, 10032789416369800, 10032789422026400, 10032789423990000, 10032789431242700, 10032789440598500, 10032789453740300, 10032789454208100, 10032789457487000, 10032789460374800, 10032789464780200, 10032789466503300, 10032789471405100, 10032789476800000, 10032789478380100, 10032789489368200, 10032789499596300, 10204049727179000,	14,973	7,486	PO BOX 650638 DALLAS, TX 75265



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		10400513743240000, 10400513785170000, 10400518546300000, 10443720000480200, 10443720000744900, 10443720002088200, 10443720003236500, 10443720003618900, 10443720004314400, 10443720004330700, 10443720007662600, 10443720008069700, 10443720008102800, 10443720008152500, 10443720008725300, 10443720009791100, 10089010011836600, 10089010061260100, 10089010111847900, 100890101511839E00, 10089010173199800, 10089010191934900, 10089010191935300, 10089010207829500, 10089010209004300, 10089010238002500, 10089010238003700, 10089010238017500, 10089010238031200, 10089010238042100, 1008901023805500, 10089010238087200, 10089010238093600, 10089010238108900, 1008901023811800, 10089010238128900, 10032789400412500, 10032789402273200, 10032789403869800, 10032789406001400, 10032789414429800, 10032789416369800, 10032789422026400, 10032789423990000, 10032789431242700, 10032789440598500, 10032789453740300, 10032789454208100, 10032789457487000, 10032789460374800, 10032789464780200, 10032789466503300, 10032789471405100, 10032789476800000, 10032789478380100, 10032789489368200, 10032789499596300, 10204049727179000, 10400513743240000, 10400513785170000, 10400518546300000, 10443720000480200, 10443720000744900, 10443720003236500, 10443720003618900, 10443720004314400, 10443720004330700, 10443720007662600, 10443720008069700, 10443720008102800, 10443720008152500, 10443720008725300,			

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		10443720009791100, 10089010011836600, 10089010061260100, 10089010111847900, 10089010151183900, 10089010173199800, 10089010191934900, 10089010191935300, 10089010207829500, 10089010209004300, 10089010238002500, 10089010238003700, 10089010238017500, 10089010238031200, 10089010238042100, 1008901023805500, 10089010238087200, 10089010238093600, 10089010238108900, 1008901023811800, 10089010238128900			
LIBERTY UTILITIES EMPIRE DISTR	Electricity	78744117, 500407283, 718624786	1,135	567	PO BOX 650689 DALLAS, TX 75265
EL PASO ELECTRIC	Electricity Non-Service	562920000, 1080490235, 1159500000, 2672203249, 3864439914, 7498520000, 8870926076, 9610643946, 9804630000, 9814549758, 3864439914, 7498520000	2,888	1,466	PO BOX 650801 DALLAS, TX 75265
BULLSEYE TELECOM	Telecom	0010D76	304	152	PO BOX 6558 CAROL STREAM, IL 60197-6558
CITY OF BROOKSVILLE	Trash Water/Sewer	1250005473	101	51	PO BOX 656 BROOKSVILLE, FL 34605
CITY OF CLEBURNE	Non-Service Trash Water/Sewer	27127003	130	65	PO BOX 657 CLEBURNE, TX 76033
CITY OF CORPUS CHRISTI	Water/Sewer	20456160	95	47	PO BOX 659880 SAN ANTONIO, TX 78265
NEW BRAUNFELS UTILITIES	Electricity Trash	4984050	359	179	PO BOX 660 SAN ANTONIO, TX 78293
FRONTIER UTILITIES	Electricity	257073	537	269	PO BOX 660094 DALLAS, TX 75266

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CLECO POWER LLC	Electricity Non-Service	200000838363, 200000838587, 200002734040, 200002907323, 200003373822, 200002734040	1,486	743	PO BOX 660228 DALLAS, TX 75266
GVTCCOMMUNICATIONS	Telecom	Unknown	14	7	PO BOX 660608 DALLAS, TX 75266-0608
PIEDMONT NATURAL GAS	Gas Non-Service	173735001, 747699002, 747699003, 1001188082004, 1002459789001, 1002524872001, 1003527452001, 1004084240001, 1004084240002, 1004084240003, 2001746210001, 3002045236001, 3003276346001, 3003276346003, 3003276346005, 4001304861001, 4003502926001, 4003502926002, 4003502926003, 4003518992001, 5000766255001, 5001334629001, 5003703522001, 6000174174001, 6000174174002, 6000174174003, 7002045237001, 8000985978001, 8001092268002, 8001092268003, 8001092268005, 8001092268006, 8003272802001, 9001116799001, 1002459789001	1,475	738	PO BOX 660920 DALLAS, TX 75266
DYERSBURG ELECTRIC SYSTEM	Electricity Non-Service	12892001	281	140	PO BOX 664 DYERSBURG, TN 38025
FORTIS BC NATURAL GAS	Gas Non-Service	448694, 470928, 1784752, 1854280, 3698543, 3752889, 3938436, 470928, 1784752, 1854280	345	173	PO BOX 6666 STN TERMINAL VANCOUVER, BC V6B6M
NORTH PENN WATER AUTHORITY	Water/Sewer	525672126338	4	2	PO BOX 667 SOUDERTON, PA 18964
MID CAROLINA ELECTRIC COOP	Electricity	6801351272	332	166	PO BOX 669 LEXINGTON, SC 29071

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
WWS	Non-Service Water/Sewer	3032411	62	31	PO BOX 669400 POMPANO BEACH, FL 33066
CITY OF DANVILLE	Water/Sewer	1481376	24	12	PO BOX 670 DANVILLE, KY 40423
DOTHAN UTILITIES	ElectricityNon-ServiceWater/Sewer	216656453, 2166512913, 2166593427, 2166593427, 2166512913, 2166593427	1,082	552	PO BOX 6728DOTHAN, AL36302
DEKALB CHEROKEE CO GAS DIST	Gas Non-Service	13554892	25	13	PO BOX 680376 FORT PAYNE, AL 35968
FORT PAYNE IMPROVEMENT AUTH	Electricity	6479001	320	160	PO BOX 680617 FT PAYNE, AL 35968
GREENVILLE WATER	Water/Sewer	58431130	67	34	PO BOX 687 GREENVILLE, SC 29602
ATHENS UTILITIES BOARD	Electricity Gas Water/Sewer	4620640005, 50021937649, 4620640005	452	226	PO BOX 689 ATHENS, TN 37371
CITY OF MONROE	Electricity Gas Water/Sewer	204239009820, 1472871009882, 1472871009882	977	489	PO BOX 69 MONROE, NC 28111
CITY OF DUBLIN	Non-Service Trash Water/Sewer	2301213531	130	68	PO BOX 690 DUBLIN, GA 31040
NU TELECOM	Telecom	Unknown	10	5	PO BOX 697 NEW ULM, MN 56073-0697
CITY OF MARSHALL	Non-Service Trash Water/Sewer	350000750008	122	61	PO BOX 698 MARSHALL, TX 75671
ENTEGRUS POWERLINES INC	Electricity Non-Service Water/Sewer	600619100, 600619100, 603001208700, 603001208700	116	58	PO BOX 70 CHATHAM, ON N7M5K

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF EDEN	Non-Service Water/Sewer	5001800098	42	21	PO BOX 70 EDEN, NC 27289
CITY OF CAMDEN	Electricity Non-Service Trash Water/Sewer	56113500	498	249	PO BOX 7002 CAMDEN, SC 29021
COMCAST	Telecom	8772105220078782, 8772105040200616, 8772105010225643, 8529101740228102	58	29	PO BOX 70219 PHILEDELPHIA, PA 19176-0219
DIRECT ENERGY BUSINESS	Electricity Non-Service	22920, 22948, 24597, 916284, 916288, 916289, 916290, 916291, 916293, 916294, 916295, 916298, 916299, 916300, 916301, 1184391, 1184392, 1184393, 1184395, 1184396, 1184397, 1184398, 1184399, 1184400, 1184401, 1184402, 1184403, 1184404, 1184406, 1184407, 1184408, 1184410, 1184411, 1184413, 1184418, 1184419, 1184420, 1184421, 1184422, 1184423, 1184424, 1184425, 1184428, 1209392, 1209394, 1209395, 1209396, 1209397, 1209398, 1209399, 1209400, 1209401, 1209403, 1209404, 1209405, 1209407, 1209408, 1209409, 1209411, 1209412, 1254967, 1254969, 1254970, 1254971, 1254973, 1254977, 1254978, 1254979, 1254980, 1254982, 1254985, 1254986, 1254987, 1254988, 1254990, 1254991, 1254992, 1254993, 1254995, 1285394, 1352157, 1352164, 1352198, 1352201, 1352203, 1352204, 1352205, 1439870, 1439871, 1439872, 1439877, 1439878, 1439879, 1439880, 1439881, 1451674, 1451677, 1451678, 1451679, 1487954, 1578302, 1578303, 1578304, 1578305, 1578306, 1578307, 1578308, 1578309, 1578310, 1581578, 1581579,	43,231	21,843	PO BOX 70220 PHILADELPHIA, PA 19176

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		1581580, 1581921, 1621537, 1621538, 1621539, 1621540, 1621541, 1621542, 22905, 22909, 22911, 22912, 22913, 22915, 22916, 22919, 22920, 22931, 22937, 22939, 22940, 22942, 22948, 22950, 25926, 25936, 25937, 25939, 25940, 25943, 25944, 25945, 25949, 25955, 25956, 25958, 25959, 25960, 25961, 25964, 25967, 25968, 25970, 25973, 25974, 25978, 25979, 25980, 25981, 25984, 25985, 25986, 25988, 25993, 25994, 25996, 25997, 26000, 26001, 26002, 26005, 26006, 26007, 26010, 26011, 26012, 26014, 1184393, 1184395, 1184396, 1184398, 1184400, 1184401, 1184402, 1184403, 1184406, 1184407, 1184408, 1184411, 1184413, 1184419, 1184420, 1184421, 1184422, 1184423, 1184424, 1184425, 1209403, 1254973, 1285394, 1451674, 1621538, 1621541, 1621542			
CITY OF PALO ALTO UTILITIES	Gas	30051968	480	240	PO BOX 7026 SAN FRANCISCO, CA 94120
AQUA ILLINOIS INC	Non-Service Water/Sewer	3658751359799, 2430790243079, 2431600243160, 3658750247262, 3658750947780, 3658751359799, 4236660385951, 4309220343364, 5275360183665, 13082430973750, 16741511133171, 19260571290961, 19314521296331	497	249	PO BOX 70279 PHILADELPHIA, PA 19176
COLUMBIA GAS OF PENNSYLVANIA	Gas Non-Service	12984012001, 12984012002, 100264670020009, 100264670030008, 100264670040007, 101912980030007, 101912980070003, 101912980180000, 105053250010000, 105053250020009, 105053250030008, 116986980040004, 128783960010007, 129840120030008, 148420150010001, 157555350020002,	2,244	1,123	PO BOX 70285 PHILADELPHIA, PA 19176

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		175955260020001, 12984012001, 12984012002, 101912980030007			
COLUMBIA GAS OF MA	Gas Non-Service	669270023, 678370014, 1524120067, 1770220083, 2372470039, 4625070041, 5552340031, 5721640011, 5865020016, 6192770025, 6937020076, 7888640034, 8141470032, 8487670064, 8867070063, 2372470039, 5721640011	1,500	757	PO BOX 70315 PHILADELPHIA, PA 19176
COLUMBIA GAS OF VIRGINIA	Gas Non-Service	128374400030009, 128374400040008, 128374400050007, 143604350040001, 148987090020003, 148987090030002, 128374400030009, 128374400050007, 148987090030002	238	121	PO BOX 70319 PHILADELPHIA, PA 19176
DUKE ENERGY	Electricity Gas Non-Service	205435, 419346, 419348, 419350, 419351, 419352, 419353, 1674057, 2526002, 2825232, 3230507, 3306332, 3365923, 3458513, 3606140, 3673378, 587452060, 759789449, 902692559, 1014493498, 1090157293, 1094788784, 1140169367, 1144366308, 1151254082, 1162800062, 1208558039, 1209772560, 1260886582, 1261598835, 1277297304, 1294498694, 1309238700, 1332325316, 1336725359, 1337111586, 1405466870, 1417437240, 1423027430, 1461841315, 1511806836, 1530222040, 1544108696, 1546838774, 1629573153, 1640369649, 1717754883, 1724247314, 1750954085, 1803031952, 1806022620, 1808591557, 1875775813, 1905233734, 2041596028, 2043722964, 2093432263, 2095918806, 2114941571, 2119159001, 2135654937, 2145644285, 2364266215, 2395915574, 2570038221, 2631878014, 2812080490, 2856620116, 2928619543, 3006642283, 3193759495, 3461662469, 3545914353, 4241544458, 4431744020, 4795846118, 5200254249,	55,474	27,862	PO BOX 70516 CHARLOTTE, NC 28272

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		5719913037, 5908867000, 6163456368, 6271570155, 6301955202, 6357656552, 6521248364, 6711535256, 6906131277, 6979050458, 7199714510, 7475304545, 7746313474, 8142809272, 8493126139, 8523125035, 8703677023, 8752114139, 8890340331, 9276717446, 9391963375, 9503716559, 11400422267, 14203693029, 28102956011, 32102739050, 33002029028, 33903695051, 36903683010, 39602976029, 41403582059, 46902904026, 48803212018, 50203637028, 52103683017, 59602690010, 62102073016, 62203767027, 63903718015, 66303099019, 69703206026, 69903656018, 71603796025, 72703606050, 72802573023, 73703855021, 76302807040, 77802588030, 82803287054, 88303193019, 92703567020, 93903186028, 95803824020, 11400422267, 33002029028, 41702069023, 50203637028, 62203767027, 71603796025, 72703606050, 73302065044, 73703855021, 92703567020, 95803824020, 1014493498, 1140169367, 1151254082, 1724247314, 1875775813, 2570038221, 4241544458, 5719913037, 5908867000, 6711535256, 8523125035, 9503716559, 33903695051, 93903186028			
CITIZENS ENERGY GROUP	Gas Non-Service Water/Sewer	181230159729, 181230286064, 181230419420, 229194196017, 229194237734, 1812301144725, 181230286064, 181230159729, 181230286064, 181230419420, 1812301144725, 11190591124657, 11415031106774, 11488321059896, 11948011063984	1,567	794	PO BOX 7056 INDIANAPOLIS, IN 46207
VIRGINIA NATURAL GAS	Gas	2588979160, 4260250300, 5789855406, 8046091701	139	70	PO BOX 70840 CHARLOTTE, NC 28272



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF ROBSTOWN UTILITY SYS	Electricity Non-Service Water/Sewer	8034500	238	119	PO BOX 71 ROBSTOWN, TX 78380
MADISONVILLE MUNICIPAL UTIL	Electricity Trash Water/Sewer	1348008	506	253	PO BOX 710 MADISONVILLE, KY 42431
FAIRFAX WATER	Non-Service Water/Sewer	304219082, 306608324, 300268299, 301134268, 301798401, 302481072, 302969191, 306608324	195	106	PO BOX 71076 CHARLOTTE, NC 28272
CITY OF RALEIGH	Water/Sewer	155772305, 1725900000, 2364960137, 7851895308	175	87	PO BOX 71081 CHARLOTTE, NC 28272
TOWN OF CARY	Water/Sewer	11291273260	19	9	PO BOX 71090 CHARLOTTE, NC 28272
DEKALB COUNTY FINANCE	Water/Sewer	1023602	15	8	PO BOX 71224 CHARLOTTE, NC 28272
GOLDEN VALLEY ELECTRIC ASSN	Electricity Non-Service	364677	281	141	PO BOX 71249 FAIRBANKS, AK 99707
CHESTER WATER AUTHORITY	Water/Sewer	1125050029	32	16	PO BOX 71346 PHILADELPHIA, PA 19176
HALLSDALE POWELL UTILITY DIST	Non-Service Water/Sewer	53392	38	20	PO BOX 71449 KNOXVILLE, TN37938
SOUTH HUNTINGTON WATER DIST	Water/Sewer	45134670	3	1	PO BOX 71458 PHILADELPHIA, PA 19176
CALIFORNIA AMERICAN WATER	Water/Sewer	1015210021433200	117	59	PO BOX 7150 PASADENA, CA 91109
MARION MUNICIPAL UTILITIES	Water/Sewer	75401	55	27	PO BOX 718 MARION, IN 46952

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
AURORA WATER	Water/Sewer	3042724372	34	17	PO BOX 719117 DENVER, CO 80271
CP COMMERCIAL DELAWARE LLC	Water/Sewer	414612	16	8	PO BOX 72585 CLEVELAND, OH 44192
COLLIER TWP MUNICIPAL AUTH	Non-Service Water/Sewer	C1324	15	8	PO BOX 728 BLOOMSBURG, PA 17815
SNAPPING SHOALS EMC	Electricity	3629441, 3629466, 3629482, 3629490, 4534206	1,562	781	PO BOX 73 COVINGTON, GA 30015
HYANNIS WATER SYSTEM	Water/Sewer	6041721	51	26	PO BOX 731 READING, MA 01867
CITY OF ASHEVILLE	Water/Sewer	21028691127148	169	84	PO BOX 733 ASHEVILLE, NC 28802
CHARLES TOWN UTILITY BOARD	Water/Sewer	10500143000	64	32	PO BOX 7338 CHARLESTON, WV 25356
NORTHEAST OH NATURAL GAS CORP	Gas	210255436	17	8	PO BOX 74008596 CHICAGO, IL 60674
CONSOLIDATED COOPERATIVE	Electricity	4777601	289	145	PO BOX 740108 CINCINNATI, OH 45274
FRONTIER	Telecom	98973163630714975, 95169359460614185, 94137906140130165, 86087088170303005, 86040892520630035, 86034792240630035, 84534469180319194, 84327214491102095, 81399166770605175, 81364287000222155, 56259455771219115, 54118904420523995, 26215900790504015, 23918815850109975, 22415903630504015, 21918911521118095, 21615909730430015, 20918833560409015,	652	326	PO BOX 740407 CINCINNATI, OH 45274-0407

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		20618823251024965, 20379046620224005, 20348801410302005, 20307835530109975			
THE ENERGY COOPERATIVE	Gas	9913257101, 9914974200	77	38	PO BOX 740467 CINCINNATI, OH 45274
DAYTON POWER & LIGHT CO	Electricity	99074609, 865557074, 1378011362, 3929242784, 4931220509, 5742054561, 5962614059, 7572781047	1,059	529	PO BOX 740598 CINCINNATI, OH 45274
GREATER CINCINNATI WATER WORKS	Water/Sewer	4648510000, 5174410000	173	87	PO BOX 740689 CINCINNATI, OH 45274
DTE ENERGY	Electricity Gas Non-Service	719979902, 719979908, 910000167197, 910000380915, 910000381046, 910000381194, 910009250788, 910009250911, 910009251174, 910009251273, 910009251554, 910009251695, 910009264821, 910011892759, 910015086150, 910015086275, 910020566386, 910020566493, 910020566634, 910020599734, 910022517221, 920013652804, 402126349608, 910000380915, 910000381194, 910008879801, 910008879934, 910008892085, 910009250663, 910009251042, 910009251174, 910009251414, 910009251695, 910015086390, 910020566022, 910020566170, 910020566386, 910020598314, 910020598421, 910020599890, 910020612586, 910022517221, 920005759963, 719979902, 719979908, 402126349608, 910000381194, 910008879934	8,806	4,453	PO BOX 740786 CINCINNATI, OH 45274
SEMCO ENERGY GAS COMPANY	Gas Non-Service	47854500, 108328501, 203933502, 255149500, 291871500, 345315501, 108328501	307	155	PO BOX 740812 CINCINNATI, OH 45274

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
COLUMBIA GAS OF OHIO	Gas	101912980050005, 101912980060004, 101912980080002, 101912980120006, 101912980140004, 101912980150003, 101912980200006, 101912980210005, 114995270020008, 114995270040006, 115783610030003, 115783610040002, 115783610050001, 122190440010009, 122190440050005, 122190440110007, 124077960020007, 124077960030006, 124077960040005, 136650320010002, 137032920010005, 137032920020004, 138875950050008, 142520580030003, 143757140010005, 148956160020003, 149091660010002, 149091660020001, 187577810010004, 187577810030002, 187577810040001	1,674	837	PO BOX 742510 CINCINNATI, OH 45274
COLUMBIA GAS OF MARYLAND	Gas	175955260030000	97	48	PO BOX 742519 CINCINNATI, OH 45274
BRENTWOOD LAND PARTNERS LLC	Landlord Water/Sewer	569486	66	33	PO BOX 743810 ATLANTA, GA 30374
DALTON UTILITIES	Electricity Non-Service	4787700	642	321	PO BOX 745147 ATLANTA, GA 30374
PWSA	Water/Sewer	50009791005759	10,421	5,211	PO BOX 747055 PITTSBURGH, PA 15274
PEOPLES GAS COMPANY LLC	Gas Non-Service	200005748708, 210006094077, 210006094077	118	60	PO BOX 747105 PITTSBURGH, PA 15274
WEST VIEW WATER AUTHORITY	Water/Sewer	146001107500004	50	25	PO BOX 747107 PITTSBURGH, PA 15274

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
VILLAGE OF ORLAND PARK	Water/Sewer	212325	13	6	PO BOX 74713 CHICAGO, IL 60694
WASHINGTONIAN ASSOC LC	Landlord Water/Sewer	896204000	16	8	PO BOX 751263 CHARLOTTE, NC 28275
PUEBLO BOARD OF WATERWORKS	Water/Sewer	183901131322	109	54	PO BOX 755 PUEBLO, CO 81002
EAST CENTRAL ENERGY	Electricity	7084205	429	214	PO BOX 75530 CHICAGO, IL 60675
WOODLANDS WATER MUD# 47C	Non-Service Water/Sewer	7216000	14	8	PO BOX 7580 SPRING, TX 77387
WESTAR ENERGY	Electricity Non-Service	36189769, 2366040148, 3974677241, 4067950765, 4493736506, 9182716104	1,751	880	PO BOX 758500 TOPEKA, KS 66675
ROLLA MUNICIPAL UTILITIES	Electricity Non-Service	2425140796	(31)	67	PO BOX 767 ROLLA, MO 65402
MINNESOTA VALLEY ELEC COOP	Electricity	778161801	251	126	PO BOX 77024 MINNEAPOLIS, MN 55480
WHCEA	Electricity	13213109201	322	161	PO BOX 77027 MINNEAPOLIS, MN 55480
ROCHESTER PUBLIC UTILITIES	Electricity Water/Sewer	2045936, 2049335, 2049335	512	256	PO BOX 77074 MINNEAPOLIS, MN 55480
NEW CENTER LLC	Landlord Electric	24217817, T0000837	260	130	PO BOX 780044 PHILADELPHIA, PA 19174
GARRISON WEST PALM RETAIL LLC	Landlord Water/Sewer Water/Sewer	GNCGNC000519	73	36	PO BOX 782445 PHILADELPHIA, PA 19178

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF CORNELIA	Non-Service Water/Sewer	391800	41	20	PO BOX 785 CORNELIA, GA30531
CHAMPION ENERGY	Electricity Non-Service	77561, 77583, 77594, 77714, 104283, 104485, 104623, 106812, 106813, 106814, 106873, 106874, 107419, 107420, 107511, 107512, 108065, 108165, 108166, 108167, 108454, 108874, 108877, 109232, 109233, 109513, 109549, 109988, 110134, 110300, 110301, 77583, 77594, 77714	515	258	PO BOX 787626 PHILADELPHIA, PA 19178
CITY OF NOBLESVILLE UTILITIES	Water/Sewer	110195000	18	9	PO BOX 78864 DETROIT, MI 48278
CHARTER COMMUNICATIONS	Telecom	8345780290077070	18	9	PO BOX 790086 SAINT LOUIS, MO 63179-0086
DUCKETT CREEK SANITARY DIST	Water/Sewer	75270600	24	12	PO BOX 790169 ST LOUIS, MO 63179
KENTUCKY AMERICAN WATER	Water/Sewer	1012210007671480, 1012210009510490, 1028210015126160, 1028210017531600	128	64	PO BOX 790247 ST LOUIS, MO 63179
ATMOS ENERGY	Gas Non-Service	3001177316, 3001177521, 3001853871, 3005468567, 3005617413, 3009586539, 3011893210, 3011893443, 3014386674, 3015041123, 3015808064, 3017783257, 3017783382, 3018915004, 3019321082, 3019321322, 3019589106, 3019589740, 3019759566, 3019759780, 3019857665, 3022814178, 3035605316, 4009451816, 4009886286, 4014398786, 4019602116, 4020395044, 4020975177, 4025216657, 4025424486, 4026264693, 4033445144, 4034611499, 3019589106, 4025424486, 4034611499	1,919	1,008	PO BOX 790311 ST LOUIS, MO 63179

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
CITY OF COCONUT CREEK	Non-Service Water/Sewer	7314102, 988103, 7314102	145	75	PO BOX 79101 BALTIMORE, MD 21279
CITY OF UVALDE TX	Trash	55400023	179	90	PO BOX 799 UVALDE, TX 78802
CITY OF COLUMBIA	Water/Sewer	1926753510911470, 1926753520487530	89	45	PO BOX 7997 COLUMBIA, SC 29202
MAWC	Non-Service Water/Sewer	G24611000, V25216300, G24611000, J07110200, M14210418, V25216300	171	85	PO BOX 800 GREENSBURG, PA 15601
WASHINGTON MUNICIPAL UTILITIES	Electricity	537242	200	100	PO BOX 800 WASHINGTON, IN 47501
LAKE COUNTY DEPT OF UTILITIES	Water/Sewer	D300073400	27	13	PO BOX 8005 PAINESVILLE, OH 44077
SRP	Electricity	112643007, 119555002, 153760005, 179030007, 195890002, 239306006, 262313005, 371532002, 473222000, 579722007, 596500004, 665081004, 800710000, 864611006, 877742007, 921764006, 944944005, 994955006	18,634	9,317	PO BOX 80062 PRESCOTT, AZ 86304
TUCSON ELECTRIC POWER CO	Electricity Non-Service	312417097, 1080632254, 1955575291, 3189607601, 3364707073, 3589381764, 6271892763, 6326881663, 6328222222, 7551811632, 8338480371, 9746964008, 9874587015, 312417097, 1955575291, 3589381764, 8338480371	4,108	2,449	PO BOX 80077 PRESCOTT, AZ 86304
UNS GAS INC	Gas	647550000, 8452142578	62	31	PO BOX 80078 PRESCOTT, AZ 86304
MIDAMERICAN ENERGY CO	Electricity Gas Non-Service	75050179, 406157003, 416006076, 1640003037, 2420035040, 2743102045, 5694067014, 6461068036, 7129064016,	2,918	1,459	PO BOX 8020 DAVENPORT, IA 52808

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		7723107005, 9609085049, 9921084010, 75050179, 139118065, 406157003, 2357112041, 2743102045, 2837077079, 2907124074, 3823143019, 5694067014, 6071012047, 6461068036, 7129064016, 9218128010, 9921084010, 6071012047			
KC WATER	Water/Sewer	1951101249552	42	21	PO BOX 807045 KANSAS CITY, MO 64180
ENTERGY	Electricity Gas Non-Service	751578, 3688736, 3939899, 6767966, 8622920, 9220518, 9463753, 9911058, 15577455, 15577653, 15758766, 18898189, 20661534, 24304156, 24304925, 24652893, 25468760, 26763011, 29181807, 32839284, 33496779, 33496910, 34299081, 35665694, 35665884, 49940307, 66680927, 68552926, 91324053, 110947124, 115250979, 116930488, 119103760, 120043336, 121246623, 121339352, 125511600, 132809856, 133441584, 135463305, 136436185, 138503107, 139189005, 140922956, 140926585, 144685385, 145326617, 147527501, 149014664, 161446133, 165673773, 149014664, 8622920, 32839284, 138503107, 161446133	15,069	7,542	PO BOX 8106 BATON ROUGE, LA 70891
AMES MUNICIPAL UTILITIES	Electricity Water/Sewer	2868728974	281	141	PO BOX 811 AMES, IA 50010
TURLOCK IRRIGATION DIST	Electricity	259310133020001, 259311020710001	466	233	PO BOX 819007 TURLOCK, CA 95381
PALMETTO ELECTRIC COOP INC	Electricity	216968001	311	155	PO BOX 820 RIDGELAND, SC 29936



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
93 NYRPT LLC	Landlord Water/Sewer	62038	23	11	PO BOX 823201 PHILADELPHIA, PA 19182
MIDDLESEX WATER CO	Water/Sewer	260200000	22	11	PO BOX 826538 PHILADELPHIA, PA 19182
LSI LINE SYSTEMS INC	Telecom	Unknown	54	27	PO BOX 826590 PHILADELPHIA, PA 19182-6590
CITY OF FOND DU LAC	Water/Sewer	7434739256	38	19	PO BOX 830 FOND DU LAC, WI 54936
MOBILE AREA WATER & SWR SYSTEM	Water/Sewer	206601300	37	18	PO BOX 830130 BIRMINGHAM, AL 35283
GULF POWER	Electricity	2104004904, 2104498874, 2105205807, 2105336644, 2106310382, 2106900612, 2107574572, 2107797405, 2108220191	3,860	1,930	PO BOX 830660 BIRMINGHAM, AL 35283
TRUSSVILLE GAS AND WATER	Gas	87334	52	26	PO BOX 836 TRUSSVILLE, AL 35173
CITY OF IRVING MUNICIPAL SVCS	Non-Service Trash Water/Sewer	126500300	196	99	PO BOX 840898 DALLAS, TX 75284
CITY OF GARDEN CITY	Electricity Trash Water/Sewer	71238001	408	204	PO BOX 843938 KANSAS CITY, MO 64184
CENTRAL MAINE POWER	Electricity	35011476203, 35011867526, 35013085044, 35013303751, 35014892307, 35015669472, 35016093789	2,469	1,234	PO BOX 847810 BOSTON, MA 02284
NYSEG	Electricity Gas Non-Service	10040912544, 10044179314, 10047079180, 10040499518, 10040912544, 10044179314, 10044179314	714	359	PO BOX 847812 BOSTON, MA 02284
RG&E	Electricity Gas Non-Service	20011693940, 20023861121, 20025799568, 20030279069, 20011693940, 20012886139,	735	369	PO BOX 847813 BOSTON, MA 02284

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		20014010332, 20023861121, 20025799543, 20030279069, 20012886139			
THE UNITED ILLUMINATING CO	Electricity Non-Service	1000002285988, 1000003763074, 1000008102849, 1000009351379, 1000010037413, 1000012003256, 1000002285988, 1000003763074, 1000008102849	3,034	1,518	PO BOX 847818 BOSTON, MA 02284
SOUTHERN CONNECTICUT GAS CO	Gas Non-Service	5000107964913, 5000107964962, 5000107985751, 5000108010518, 5000108140448, 5000109592787, 5000107964962, 5000108140448, 5000109592787	599	321	PO BOX 847819 BOSTON, MA 02284
CONNECTICUT NATURAL GAS CORP	Gas	4000103706962, 4000104820556, 4000105550129, 4000106476258, 4000106866672, 4000109314035	773	386	PO BOX 847820 BOSTON, MA 02284
NOVA SCOTIA POWER INC	Electricity Non-Service	8519043, 8622128, 9552183, 9727009, 9727249, 10068765, 15534266, 15835499, 20315057, 8622128, 15835499	2,633	1,339	PO BOX 848 HALIFAX, NS B3J2V
BRAINTREE ELECTRIC LIGHT DEPT	Electricity	49000829303	368	184	PO BOX 859180BRAINTREE, MA02185
PEA RIDGE PUBLIC SERVICE DIST	Non-Service Water/Sewer	301522	11	6	PO BOX 86 BARBOURSVILLE, WV 25504
SEQUOIA WASTE MANAGEMENT SOLUTIONS	Waste Removal	Unknown	1,329	665	PO BOX 8625 CAROL STREAM, IL 60197-8625
IKEHU UTILITY SOLUTIONS	Water/Sewer	1907629	103	52	PO BOX 86379 SAN DIEGO, CA 92138
CITY OF DEERFIELD BEACH	Non-Service Water/Sewer	19868719245	33	18	PO BOX 865631 ORLANDO, FL 32886
GREENWOOD UTILITIES	Electricity Non-Service Trash	2427301	337	168	PO BOX 866 GREENWOOD, MS 38935

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
TMLP	Electricity	20112112	550	275	PO BOX 870 TAUNTON, MA 02780
METRO SERVICE GROUP INC	Trash	543300	200	100	PO BOX 872967 NEW ORLEANS, LA 70187
FLORENCE UTILITIES	Electricity Non-Service Trash	26435003	489	245	PO BOX 877 FLORENCE, AL 35631
TOWN OF CLAYTON	Electricity	6567001	432	216	PO BOX 879 CLAYTON, NC 27528
LATROBE MUNICIPAL AUTHORITY	Water/Sewer	C814200, C814210	27	14	PO BOX 88 LATROBE, PA 15650
CITY OF KINGSPORT	Non-Service Water/Sewer	5522211055	28	14	PO BOX 880 KINGSPORT, TN 37662
AMEREN ILLINOIS	Electricity Gas Non-Service	155060081, 275145022, 367146053, 876478738, 1972925298, 2323114025, 2401406892, 2403031089, 3481638027, 3663148032, 3703607691, 4368218112, 4831354024, 6223239023, 7142003910, 7155900658, 7665234412, 7676828171, 7823003513, 8026516013, 8235003216, 8848601212, 9816001919, 275145022, 367146053, 984754003, 2069635006, 2323114025, 2403031089, 3663148032, 4831354033, 5530812036, 7184711005, 7672646009, 8235003225, 8851414008, 2401406892	4,515	2,257	PO BOX 88034 CHICAGO, IL 60680
AMEREN MISSOURI	Electricity Gas Non-Service	56217207, 288206156, 487157037, 611217110, 639099123, 1633007019, 1947092000, 1988507110, 2247417119, 3162809204, 3549113052, 3990305136, 4311078031, 4918607131, 5251022017,	5,507	2,754	PO BOX 88068 CHICAGO, IL 60680

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		7356211111, 7639803114, 7999107179, 8518305112, 8537601113, 8669104116, 8874804115, 9544512161, 9956216200, 366075023, 487157037, 868096023, 9506316131, 288206156			
EARTHLINK BUSINESS	Telecom	Unknown	189	94	PO BOX 88104 CHICAGO, IL 60680-1104
TOWN OF MOCKSVILLE	Water/Sewer	1118700	66	33	PO BOX 890773 CHARLOTTE, NC 28289
MURFREESBORO WTR RESOURCES DPT	Non-Service Trash Water/Sewer	3109400018857	85	42	PO BOX 897 MURFREESBORO, TN 37133
FORTISBC ELECTRICITY	Electricity	98955524271	179	89	PO BOX 8970 STATION MAIN VANCOUVER, BC V6B4E
MIDWEST ENERGY INC	Electricity Gas	19101955	383	191	PO BOX 898 HAYS, KS 67601
CLARK PUBLIC UTILITIES	Electricity	71779482, 72006778, 72018674, 72047061, 72060676, 72062995	1,005	503	PO BOX 8989 VANCOUVER, WA 98668
EUGENE WATER & ELECTRIC BOARD	Electricity	238952544	250	125	PO BOX 8990 VANCOUVER, WA 98668
LAKE MEAD PARTNERS LLC	Landlord Water/Sewer	215	166	83	PO BOX 9 BARRINGTON, IL 60011
MARTIN COUNTY UTILITIES	Water/Sewer	1530516351	55	27	PO BOX 9000 STUART, FL 34995
WE ENERGIES	Electricity Gas	16634898, 474294098, 1240451915, 1429587129, 1622866943, 1879457245, 2040749686, 4007953615, 5018660775,	7,978	3,989	PO BOX 90001 MILWAUKEE, WI 53290

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		5627288005, 6258057284, 6264066931, 6275203431, 6642365004, 6653849717, 6882386965, 7832375217, 8019158553, 8031153650, 8075811379, 8628425710, 8881354210, 9093417870, 16634898, 417499097, 474294098, 1240451915, 1429587129, 1622866943, 1879457245, 2040749686, 4007953615, 5018660775, 5627288005, 6001984841, 6258057284, 6264066931, 6275203431, 6430423373, 6642365004, 6653849717, 6882386965, 7602899460, 7832375217, 8019158553, 8031153650, 8075811379, 8628425710, 8881354210			
WINDSTREAM	Telecom	7056404, 210073848, 207614958, 207611269, 205812589, 205786538, 205726213, 160751214, 160718999, 160284813, 091461076, 071290359, 063092655	365	183	PO BOX 9001013 LOUISVILLE, KY 40290-1013
ENGIE RESOURCES	Electricity Non-Service	1089966004, 1109950004, 1115762001, 1187273008, 1195568007, 1447632001, 1533586007, 1625780002, 1653587002, 1745890001, 1767219000, 1810987002, 1860156002, 1954182007, 1954585008, 1981671006, 2128300007, 2186990001, 2187916009, 2211160004, 2283772003, 2333176008, 2415964002, 2467156003, 2496527007, 2502110010, 2571924002, 2640674006, 2892338002, 2934622001, 2988383000, 3107166006, 3151880002, 3161340006, 3224935007, 3298127002, 3379165002, 3389457008, 3448621004, 3589356000, 3597743008, 3626597003, 3662483000, 3768782004, 3785793001, 3896724005, 3996195006, 4000661007, 4021400004, 4025916003, 4044689003, 4056934004, 4270705009, 4404991004,	27,376	13,821	PO BOX 9001025 LOUISVILLE, KY 40290

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		4500906001, 4575714004, 4586734003, 4649155004, 4708375002, 4726567008, 4731519005, 5036517008, 5072748009, 5083306008, 5090679007, 5103606001, 5126900002, 5194777006, 5226446005, 5284632001, 5300346002, 5438318001, 5452602000, 5466754008, 5564975001, 5595651009, 5737320003, 5746573003, 5807983003, 5816100003, 5897185004, 5897680004, 5919050002, 5999136001, 6078659002, 6110126000, 6168546009, 6293641000, 6320956005, 6378946006, 6434166002, 6617557003, 6664973000, 6691925001, 6696641000, 6746116009, 6835706008, 6875744000, 6931183001, 6948937000, 7309987001, 7325144006, 7333834000, 7568174002, 7628683006, 7716576007, 7749598004, 7874290004, 7899040000, 7910660004, 7965752002, 8014622003, 8056551009, 8069509000, 8069950007, 8081965002, 8124955002, 8155977001, 8294914004, 8390614005, 8446194009, 8606944001, 8612660007, 8660954001, 8676547003, 8825990018, 8838907009, 8943196001, 8972439006, 9039629009, 9044549009, 9122567005, 9124639004, 9133681007, 9172508001, 9201106004, 9231977002, 9285874007, 9289326002, 9352518005, 9383560002, 9456700001, 9641147005, 9644651006, 9739547006, 9786670003, 9811985000, 9946525005, 9967106000, 1745890001, 1981671006, 2186990001, 2283772003, 2415964002, 2892338002, 3785793001, 3896724005, 4000661007, 5090679007, 5737320003, 5816100003, 5897680004, 6293641000, 6696641000, 6835706008,			

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		6875744000, 7910660004, 8014622003, 8390614005, 9133681007, 9644651006, 9739547006, 9786670003			
ODP	Electricity	300028913733	242	121	PO BOX 9001954 LOUISVILLE, KY 40290
LGE	Electricity Gas Non-Service	1937127, 19193069, 20318655, 21204870, 30021836, 35139070, 35449420, 300008722286, 300008904405, 300008904769, 300008915138, 300008915310, 300008915534, 300008915732, 1937127, 20318655, 21204870, 25238411, 27423086, 29610086, 35449420, 300008722286, 300008904405, 300008904769, 300008904983, 300008915310, 300008915732, 300008915732	5,174	2,591	PO BOX 9001960 LOUISVILLE, KY 40290
CITY OF HOMESTEAD	Electricity Water/Sewer	616985000057615	545	273	PO BOX 900430 HOMESTEAD, FL 33090
GOLDEN STATE WATER CO	Water/Sewer	91562934074	31	16	PO BOX 9016 SAN DIMAS, CA 91773
NATIONAL EXEMPTION SERVICE	Water/Sewer	56183012666001	55	27	PO BOX 9020 CLEARWATER, FL 33758
PSEGLI	Electricity Non-Service	67007666, 333011278, 457029536, 749002259, 1664006192, 1672001649, 1672001656, 2087015711, 2153001306, 2254004449, 3183007362, 3587006275, 3870000688, 3951009061, 4249001209, 4341006940, 4483009835, 4488001720, 4929006825, 5115013590, 6482011613, 6752006228, 6828018561, 457029536, 1664006192, 2087015711, 2153001306,	12,042	6,100	15 PARK DRIVE MELVILLE, NY 11747

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		3870000688, 3951009061, 4929006825, 6752006228			
SUFFOLK COUNTY WATER AUTHORITY	Water/Sewer	3000504179, 3000513600	27	14	PO BOX 9044 HICKSVILLE, NY 11802
BOURNES ENERGY	Propane	162857	7	4	PO BOX 906 MONTPELIER, VT 05601
COUNTY OF HENRICO	Water/Sewer	9287300496867	29	14	PO BOX 90799 HENRICO, VA 23228
CITY OF WYOMING	Water/Sewer	503237001	19	10	PO BOX 908 WYOMING, MI 49509
LEVEL 3 COMMUNICATIONS LLC	Telecom	Unknown	10,025	5,012	PO BOX 910182 DENVER, CO 80291-0182
PUGET SOUND ENERGY	Electricity Gas Non-Service	200006175000, 200006175182, 200007352525, 200010142665, 200011597479, 200011900590, 200012401044, 200014433664, 200015853498, 200018401352, 200025148822, 220000141709, 220001799026, 220003655275, 220005422294, 220006637684, 220007915501, 200004317984, 200004318784, 200006175182, 200006448563, 200010397590, 200012401044, 200014433664, 200015853498, 200015877729, 200018401352, 220005422294, 220006637684, 220007915501, 220010376782, 200014433664, 220001799026	4,106	2,065	PO BOX 91269 BELLEVUE, WA 98009



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
MANSFIELD ELECTRIC	Electricity Non-Service	50129401	349	176	PO BOX 9192 CHELSEA, MA 02150
CITY OF VENICE	Water/Sewer	3295257540	70	35	PO BOX 919207 ORLANDO, FL 32891
COX BUSINESS	Telecom	0017410044189101	30	15	PO BOX 919292 DALLAS, TX 75391-9292
GEORGIA POWER CO	Electricity	440776009, 1769568015, 3368555009, 4131735007, 4333778004, 4426842000, 5089668007, 7037852008, 7432722003, 8045624000, 8249796010, 8286688004, 8884971017, 9132620000, 9488629008, 9558780009	5,934	2,967	PO BOX 922117 NORCROSS, GA 30010
BERKSHIRE GAS CO	Gas Non-Service	7000100787301, 7000100801235, 7000100801235	126	64	PO BOX 9241 CHELSEA, MA 02150
CITY OF WESTFIELD	Water/Sewer	139	38	19	PO BOX 9249 CHELSEA, MA 02150
TOWN OF WEYMOUTH	Water/Sewer	515175	17	9	PO BOX 9257 CHELSEA, MA 02150
SELCO	Electricity	37071621006	192	96	PO BOX 9258 CHELSEA, MA 02150
SAN FELIPE SHOPPING CTR TX LP	Landlord Water/Sewer	1735	33	17	PO BOX 93070 ROCHESTER, NY 14692
PR SPRINGFIELD TOWN CENTER LLC	Landlord Electric	11052	248	124	PO BOX 932831 CLEVELAND, OH 44193
DOTRS LLC	Landlord Water/Sewer	36	36	18	PO BOX 933152 CLEVELAND, OH 44193

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
NORTH LITTLE ROCK ELECTRIC	Electricity Non-Service	13897915	257	128	PO BOX 936 N LITTLE ROCK, AR 72115
CALIFORNIA WATER SERVICE CO	Water/Sewer	643177777, 1036588888	64	32	PO BOX 940001 SAN JOSE, CA 95194
ROATS WATER SYSTEM INC	Water/Sewer	358701	43	21	PO BOX 94303 SEATTLE, WA 98124
TDS TELECOM	Telecom	3177693574, 3177696814	887	443	PO BOX 94510 PALATINE, IL 60094-4510
CITY OF ROCHESTER HILLS WT&SWR	Water/Sewer	408002307	17	9	PO BOX 94593 CLEVELAND, OH 44101
CITY OF ELYRIA	Water/Sewer	995808259001	48	24	PO BOX 94594 CLEVELAND, OH 44101
CITY OF TWINSBURG	Water/Sewer	8758001	25	13	PO BOX 94596 CLEVELAND, OH 44101
APPALACHIAN NATURAL GAS DIS CO	Gas Non-Service	76100512003	31	21	PO BOX 94608 CLEVELAND, OH 44101
NORTHEAST OK PUBL FACIL AUTH	Gas	5018047001	87	43	PO BOX 947 TAHLEQUAH, OK 74465
LANCASTER CO NATURAL GAS AUTH	Gas Non-Service	118880001	22	11	PO BOX 949 LANCASTER, SC 29721
NORTH WALES WATER AUTHORITY	Water/Sewer	14362, 3012690509422	29	15	PO BOX 95000-1138 PHILADELPHIA, PA 19195
BC HYDRO	Electricity Non-Service	101974, 593215, 652135, 769957, 1321246, 1610354, 1931961, 6023897, 6386876, 6437749, 7099285, 7267939, 8334379,	4,177	2,182	PO BOX 9501 STN TERMINAL

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
		8930055, 9016439, 9065576, 9113545, 9476384, 9930877, 9938386, 12308702884, 79259583397, 769957, 6023897, 6386876, 7099285, 9016439, 9065576, 9476384, 9930877, 12308702884			VANCOUVER, BC V6B4N
DDRA COMMUNITY CENTERS EIGHT	Landlord Water/Sewer	3784212015500060000	34	17	PO BOX 951049 CLEVELAND, OH 44193
WYSE METER SOLUTIONS INC	Electricity Gas Non-Service	16011684	481	240	PO BOX 95530 RPO NEWMARKET CTR NEWMARKET, ON L3Y8J
POWERSTREAM ENERGY SERVICES	Non-Service Water/Sewer	1883700, 1911501	59	29	PO Box 95600 RPO NEWMARKET CTR NEWMARKET, ON L3Y 8J8
CITY OF LENOIR	Water/Sewer	799344	21	11	PO BOX 958 LENOIR, NC 28645
CITY OF LAWRENCE	Water/Sewer	240587	25	13	PO BOX 958078 ST LOUIS, MO 63195
CITY OF SOMERSWORTH	Water/Sewer	88118	2	1	PO BOX 9599 MANCHESTER, NH 03108
COLUMBIA COUNTY WATER	Non-Service Water/Sewer	050215124A	96	48	PO BOX 960 GROVETOWN, GA 30813
PARISH WATER CO INC	Non-Service Trash Water/Sewer	20207008059303	57	28	PO BOX 96003 BATON ROUGE, LA 70896
NEW HAMPSHIRE ELECTRIC COOP	Electricity	6007124101	446	223	PO BOX 9612 MANCHESTER, NH 03108

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
PALATKA GAS AUTHORITY	Trash Water/Sewer	EZ0A19404	142	71	PO BOX 978 PALATKA, FL 32178
NEWPORT NEWS WATERWORKS	Water/Sewer	200000032322, 200000089388, 200000094709, 200000202137	84	42	PO BOX 979NEWPORT NEWS, VA23607
SLEMCO	Electricity	1010693700	263	131	PO BOX 98055 LAFAYETTE, LA 70509
UNITIL	Electricity Gas Non-Service	1142111001, 2033859000, 2073334001, 2090238000, 4030140500, 4042179501, 4070154500, 4121162500, 4133091500, 4150887500, 5062485500, 2090238000, 4070154500	2,302	1,151	PO BOX 981077 BOSTON, MA 02298
GRANITE TELECOMMUNICATION S LLC	Telecom	01524523, 04301933	2,838	1,419	PO BOX 983119 BOSTON, MA 2298-3119
SOUTHWEST GAS CORP	Gas Non-Service	1210534426021, 1211503371002, 1211505057003, 1211520381002, 2110294702027, 2113313806002, 2114906343004, 2115561612003, 2115825268003, 2117564246003, 2117818468003, 2117941173003, 2411280605004, 3610532409024, 4217480848002, 2113440864022	513	257	PO BOX 98890 LAS VEGAS, NV 89193
SOMERSET UTILITIES	Gas Water/Sewer	19089203	4	2	PO BOX 989 SOMERSET, KY 42502
CONWAY CORP	Electricity Trash Water/Sewer	1305638	408	204	PO BOX 99 CONWAY, AR 72033
BLUE GRASS ENERGY	Electricity Non-Service	1008297002	223	112	PO BOX 990 NICHOLASVILLE, KY 40340
CASCADE NATURAL GAS CORP	Gas	1577120520, 1577120522, 1577120548, 5576650245	214	107	PO BOX 990065 BOISE, ID 83799

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
GCI	Telecom	1120684715	15	7	PO BOX 99016 ANCHORAGE, AK 99509-9016
SOCALGAS	Gas	1691269813, 11637235752	43	21	PO BOX C MONTEREY PARK, CA 91756
HENRY COUNTY REMC	Electricity	112627001	412	206	PO BOX D NEW CASTLE, IN 47362
CITY OF MOUNDSVILLE	Trash	3865, 1041001610004	88	44	PO BOX E MOUNDSVILLE, WV 26041
CITY OF GOOSE CREEK	Non-Service Water/Sewer	92207505	13	7	PO DRAWER 1768 GOOSE CREEK, SC 29445
CITY OF LINCOLNTON	Non-Service Water/Sewer	110094402	52	27	PO DRAWER 617 LINCOLNTON, NC 28093
CITY OF MARION WATER & SEWER	Non-Service Water/Sewer	219023000096	36	18	PO DRAWER 700 MARION, NC 28752
CITY OF WAYCROSS	Water/Sewer	5458	51	26	PO DRAWER 99 WAYCROSS, GA 31502
PORT RICHMOND LLCI	Landlord Water/Sewer	1128329001	90	45	44 S BAYLES AVE SUITE 304 PORT WASHINGTON, NY 11050
WEST EDMONTON MALL	Landlord Electric	013532T226	175	88	POST OFFICE BOX 1417 STATION M CALGARY, AB T2P2L
POST ROAD PLAZA LEASEHOLD LLC	Landlord Water/Sewer	5083000002	5	3	PO BOX 326 PLAINFIELD, NJ 07061

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
POWELL VALLEY ELECTRIC COOP	Electricity	52936001	147	73	420 STRAIGHT CREEK RD NEW TAZEWELL, TN 37825
PECO ENERGY	Electricity Gas	2203201176, 3404422012, 5097601503, 8713801500, 2383048111, 5097601503	186	93	POX BOX 37629 PHILADELPHIA, PA 19101
PR EXTON SQUARE PROPERTY LP	Landlord Electric Landlord Water/Sewer	303742760	367	183	PR EXTON SQUARE PROPERTY LP
PR PLYMOUTH MEETING LP	Landlord Electric Landlord Water/Sewer	303882035	155	78	PO BOX 73312 CLEVELAND, OH 44193
PR WYOMING VALLEY LP	Landlord Electric	202	156	78	PO BOX 951776 CLEVELAND, OH 44193
PREP POSNER REAL ESTATE LLC	Landlord Water/Sewer	12POW215075	18	9	PO BOX 706375 CINCINNATI, OH 452706375
PRICE CITY PYMT PROCESSING CTR	Electricity Water/Sewer	10962003	356	178	185 EAST MAIN ST PRICE, UT 84501
IDAHO POWER	Electricity Non-Service	30402303, 2200810667, 2206193431, 2206488435, 2221883867, 2221884006, 2222863330, 2224829917, 2224829917	1,698	849	PROCESSING CENTER PO BOX 34966 SEATTLE, WA 98124
PROMENADE ASSOCIATES LP	Landlord Water/Sewer	70049	46	23	PO BOX 823201 PHILADELPHIA, PA 191823201
URBANCAL OAKLAND MALL LLC	Landlord Electric	422	214	107	PROPERTY 623510 PO BOX 310300 DES MOINES, IA 50331
PRU HAMMOCK COVE LLC	Landlord Water/Sewer	GNC7387	159	80	301 EAST LOS OLAS BLVD

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					FT LAUDERDALE, FL 33301
CITY OF LUMBERTON	Electricity	24336	343	172	PUBLIC SERVICES DEPT 500 N CEDAR ST PO BOX 1388 LUMBERTON, NC 28359
XCEL ENERGY	Electricity Gas Non-Service	5300127321325, 304122570, 5148487212, 5156008538, 5157046854, 5321878173, 5332354877, 5383463912, 5383465141, 5387322523, 5388378678, 5389169542, 5300100223091, 5300100619931, 5300101888507, 5300105994742, 5300107185827, 5300121046874, 5300125975729, 5300127179321, 5300127321325, 5156008538, 5300101888507, 5300125975729, 5300127179321	1,226	653	PUBLIC SVC COMPANY OF COLORADO MINNEAPOLIS, MN 55484
PARIS HENRY COUNTY	Gas Non-Service	2124700001	46	23	PUBLIC UTILITY DIST PO BOX 309 PARIS, TN 38242
RACINE WATER & WASTEWTR UTIL	Water/Sewer	10641920	283	141	RACINE WATER UTILITY PO BOX 080948 RACINE, WI 53408
READING MUNICIPAL LIGHT DEPT	Electricity Non-Service	529550150548	119	59	230 ASH ST READING, MA 01867
RED RIVER SANITORS INC	Non-Service Trash	0746AAW	280	140	1522 CORPORATE DR SHREVEPORT, LA 71107

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REGENCY BLUE BELL LP	Landlord Water/Sewer	SKBB00070	15	8	PO BOX 29894 NEW YORK, NY 100879894
FIRST ELECTRIC COOPERATIVE	Electricity	1007099200	389	194	REMITANCE CENTERPO BOX 1555LOWELL, AR72745
CITY OF SAVANNAH	Water/Sewer	51474, 69820, 78403	83	41	REVENUE DEPARTMENT PO BOX 1968 SAVANNAH, GA 31402
CITY OF WINSTON SALEM	Water/Sewer	2256130, 2385293	296	148	REVENUE DIVISION PO BOX 580055 CHARLOTTE, NC 28258
CITY OF LAWTON	Trash Water/Sewer	15967	77	39	REVENUE SERVICES DIVISION 212 SW 9TH ST LAWTON, OK 73501
CUIVRE RIVER ELECTRIC COOP	Electricity Gas Non-Service Water/Sewer	145312001, 43879774842, 111456, 251250, 3347126803	308	154	1112 E CHERRY ST TROY, MO 63379
RICHMOND POWER & LIGHT	Electricity	4832755310	288	144	PO BOX 908 RICHMOND, IN 47375
RICHMOND SANITARY DISTRICT	Water/Sewer	6140005941000	24	12	2380 LIBERTY AVE RICHMOND, IN 47374
RIVER LANDING DEVELOPMENT LLC	Landlord Water/Sewer	6383480G	0	0	RIVER LANDING DEVELOPMENT LLC
ROANOKE GAS CO	Gas Non-Service	1155266, 7453467, 1155266	80	40	519 KIMBALL AVE NE ROANOKE, VA 24016



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ROCKLAND ELECTRIC CO	Electricity	3171840022, 3620219037, 9089647011	421	210	1 LETHBRIDGE PLAZA DUITE 32 MAHWAH, NJ 07430
TOWN OF HEMPSTEAD DEPT OF WTR	Water/Sewer	51116301	4	2	ROOSEVELT FIELD WD 1995 PROSPECT AVE EAST MEADOW, NY 11554
REGIONAL WATER AUTHORITY	Non-Service Water/Sewer	210162632	51	42	S CENTRAL CT REGIONAL WTR AUTH 90 SARGENT DR NEW HAVEN, CT 06511
SANDY TOWNSHIP MUNICIPAL AUTH	Water/Sewer	04171S	24	12	1094 CHESTNUT AVE DUBOIS, PA 15801
DEPARTMENT OF WATER WORKS	Water/Sewer	F160982503	38	19	SANITARY DISTRICT PO BOX 888 MICHIGAN CITY, IN 46361
SANTA CLARITA WATER DIVISION	Non-Service Water/Sewer	1303900	12	8	27234 BOUQUET CANYON RD SANTA CLARITA, CA 91350
SANTEE COOPER	Electricity	4753851278, 9739836970	425	213	PO BOX 188 MONCKS CORNER, SC 29461
SD1	Non-Service Water/Sewer	3486113000001, 1356178910000, 3486113000001	80	40	1045 EATON DR FORT WRIGHT, KY 41017
BERKELEY ELECTRIC COOP INC	Electricity	6447083001, 6447083002	806	403	SEDC PO BOX 530812 ATLANTA, GA 30353

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
SELMA WATER WORKS	Water/Sewer	89387503	13	6	1600 SELMA AVE SELMA, AL 36703
COLUMBUS CITY TREASURER	Water/Sewer	25669941028335	60	30	SEWER AND WATER SVCS PO BOX 182882 COLUMBUS, OH 43218
CITY OF GARFIELD	Non-Service Water/Sewer	100201508	52	26	SEWER DEPARTMENT 111 OUTWATER LANE GARFIELD, NJ 07026
CITY OF WILKES-BARRE	Water/Sewer	2402780560	10	5	SEWER MAINTENANCE FEE PO BOX 1324 WILKES-BARRE, PA 18703
TOWN OF ABINGDON	Non-Service Water/Sewer	616320	33	16	SEWER/SOLID WASTE DEPT P O BOX 1776 ABINGDON, VA 24212
SHELBYVILLE POWER SYSTEM	Electricity Water/Sewer	207340011988	175	87	308 S MAIN ST SHELBYVILLE, TN 37160
SHOREGATE TOWN CENTER	Water/Sewer	17300112	5	3	SHOREGATE TOWN CENTER
BRIGHT HOUSE NETWORKS	Telecom	5029299501	58	29	SPECTRUM BUSINESS PO BOX 798450 SAINT LOUIS, MO 63179-0450
CHARTER COMMUNICATIONS	Telecom	8313200170620970	25	12	SPECTRUM PO BOX 742614 CINCINNATI, OH 45274-2614

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
RAMCO/WEST OAKS II	Landlord Electric	D108	233	116	SPRING MEADOWS PLACE PO BOX 643351 PITTSBURGH, PA 15264
SPRINGVILLE PLAZA	Landlord Water/Sewer	GNCWATER	54	27	SPRINGVILLE PLAZA
ST JOHN PARISH UTILITIES	Non-Service Trash Water/Sewer	310000319	81	49	1801 WEST AIRLINE HWY LAPLACE, LA 70068
ST JOHNS COUNTY UTILITY DEPT	Water/Sewer	713334203174	3	2	1205 SR 16 ST AUGUSTINE, FL 32084
MANITOBA HYDRO	Electricity Non-Service Gas	79092026339496, 74542896268191, 79092026339496	231	116	STN MAIN PO BOX 7900 WINNIPEG, MB R3C5R
TOWN OF HADLEY	Water/Sewer	2796	16	8	SUSAN GLOWATSKY COLL OF TAXES 100 MIDDLE ST HADLEY, MA 01035
T SOUTHLAND CROSSING OH LLC	Landlord Electric	16	75	38	PO BOX 209277 AUSTIN, TX 787209277
CITY OF MIDDLETOWN	Water/Sewer	85909	19	10	PO BOX 740402 CINCINNATI, OH 45274
TECO	Electricity	221005936663	260	130	1400 CHANNELSIDE DR TAMPA, FL 33605
TENNESSEE AMERICAN WATER	Water/Sewer	1026220000118530	24	12	109 WIEHL STCHATTANOOGA, TA37403

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
THE CITY OF CLAREMORE	Electricity Trash	1182005	30	15	104 S MUSKOGEE AVE CLAREMORE, OK 74017
MUNICIPAL WATER AUTHORITY OF	Water/Sewer	30361246002	16	8	THE CITY OF NEW KENSINGTON PO BOX 577 NEW KENSINGTN, PA 15068
THE GAS CO	Gas Non-Service	761447457, 2002639397, 2711974150, 4233522731, 5072698037, 6117295953, 7077155120, 7911232747, 9792051303, 12721581143, 12901520994, 13129766930, 15946700281, 18022085932, 7911232747, 18022085932	232	116	THE GAS CO
THE SHOPS AT IVERSON	Landlord Water/Sewer	SHOPS20748	212	106	THE SHOPS AT IVERSON
ACC WATER BUSINESS	Water/Sewer	147276135016	23	12	THE UNIFIED GOV ATHENS CLARKE PUBLIC UTILITIES WATER BUS OFF PO BOX 16869 ATLANTA, GA 30321
THOMPSON THRIFT PROPERTIES LLC	Landlord Water/Sewer	GENER006967	14	7	901 WABASH AVENUE TERRE HAUTE, IN 47807
TIDEWATER UTILITIES INC	Water/Sewer	2827043161	12	6	1100 S LITTLE CREEK RD DOVER, DE 19901
TIP RURAL ELEC COOP	Electricity	750102	249	124	613 W DES MOINES ST BROOKLYN, IA 52211
TM FAIRLANE CENTER LP	Landlord Electric	K128	730	365	75 REMITTANCE DRIVE

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					CHICAGO, IL 606751350
TM PARTRIDGE CREEK MALL LP	Landlord Electric	104A	477	238	75 REMITTANCE DRIVE CHICAGO, IL 60654
TOWN OF ALLEGANY	Water/Sewer	5101020300	23	12	TOWN HALL 52 W MAIN ST ALLEGANY, NY 14706
TOWN OF BRATTLEBORO	Water/Sewer	705270002	34	17	211 FAIRGROUND RD BRATTLEBORO, VT 05301
TOWN OF BROOKLINE	Water/Sewer	4049	28	14	333 WASHINGTON ST BROOKLINE, MA 02445
TOWN OF ELKTON	Water/Sewer	1180054801	21	10	100 RAILROAD AVE ELKTON, MD 21921
TOWN OF FOREST CITY	Non-Service Trash Water/Sewer	631318	39	19	128 N POWELL ST FOREST CITY, NC 28043
TOWN OF FRANKLIN	Water/Sewer	2200060501	76	38	TOWN OF FRANKLIN
TOWN OF HANOVER WATER	Water/Sewer	2918	3	2	TOWN OF HANOVER WATER
TOWN OF SOUTHERN PINES	Trash Water/Sewer	14181000	32	16	180 SW BROAD ST SOUTHERN PINES, NC 28387
TOWN OF VIENNA VIRGINIA	Water/Sewer	400047360	55	28	127 CENTER ST S VIENNA, VA 22180
TOWN OF VINTON	Water/Sewer	81209140003	109	54	311 S POLLARD ST VINTON, VA 24179

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TOWN OF WEST WARWICK	Water/Sewer	WG501300SW	12	6	1170 MAIN ST WEST WARWICK, RI 02893
TOWN OF WESTBOROUGH	Water/Sewer	30043182	32	16	34 WEST MAIN STREET WESTBOROUGH, MA 1581
TOWNSHIP OF FREEHOLD	Water/Sewer	2299160156	50	25	1 MUNICIPAL PLAZA FREEHOLD, NJ 07728
TOWNSHIP OF OCEAN	Water/Sewer	410036018	57	28	50 RAILROAD AVENUE WARETOWN, NJ 8758
TOWNSHIP OF WEST CALDWELL	Water/Sewer	36436	83	42	30 CLINTON RD WEST CALDWELL, NJ 07006
CITY OF ADRIAN	Non-Service Water/Sewer	10700262171	24	15	TREASURERS OFFICE 135 E MAUMEE ST ADRIAN, MI 49221
TRI COUNTY ELECTRIC COOP	Electricity	71003381025	1,235	618	3906 W BROADWAY MT VERNON, IL 62864
TRMUA	Water/Sewer	4211529	28	14	340 W WATER ST TOMS RIVER, NJ 08753
PP&L	Electricity	549043012	73	37	TWO NORTH NINTH ST ALLENTOWN, PA 18101
TWP OF PARSIPPANY TROY HILLS	Water/Sewer	47066210	3	1	1001 PARSIPPANY BLVD PARSIPPANY, NJ 07054
UNITY TWP MUNICIPAL AUTHORITY	Non-Service Water/Sewer	19240, 19240, 63260	71	35	154 BEATTY COUNTY RD

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					LATROBE, PA 15650
CITY OF FRESNO	Non-Service Trash Water/Sewer	21600125954	54	27	UTILITIES BILLING & COLLECTION PO BOX 2069 FRESNO, CA 93718
CITY OF PUYALLUP	Water/Sewer	955432001	23	11	UTILITIES BILLING & CUST SRVC PO BOX 35160 SEATTLE, WA 98124
CITY OF DEFIANCE	Non-Service Water/Sewer	4868761700	73	36	UTILITIES BILLING OFFICE 631 PERRY ST PO BOX 425 DEFIANCE, OH 43512
CITY OF NEW SMYRNA BEACH	Electricity Non-Service Trash Water/Sewer	115661514840	482	241	UTILITIES COMMISSION PO BOX 100 NEW SMYRNA BE, FL 32170
CITY OF PLANTATION	Non-Service Water/Sewer	3517610, 3517610, 3813210	138	71	UTILITIES DEPT PO BOX 31132 TAMPA, FL 33631
CITY OF ST ALBERT	Non-Service Water/Sewer	10029378	94	47	UTILITIES SERVICES ST ALBERT PLACE 5 ST ANNE ST ST ALBERT, AB T8N3Z
OWOSSO TWP CALEDONIA TWP	Water/Sewer	1085	28	14	UTILITY AUTHORITYPO BOX 127135 N STATE RDCORUNNA, MI48817

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TOWN OF BOONE	Water/Sewer	13910	56	28	UTILITY BILLING & COLLECTIONS PO DRAWER 192 BOONE, NC 28607
CHARTER TOWNSHIP OF MERIDIAN	Water/Sewer	MALL000257000001	197	99	UTILITY BILLING DEPT 5151 MARSH RD OKEMOS, MI 48864
CITY OF DUBUQUE	Water/Sewer	1884102, 2155000	119	60	UTILITY BILLING OFFICE 50 W 13TH ST PO BOX 1063 DUBUQUE, IA 52004
CITY OF ASHLAND DIV OF FINANCE	Water/Sewer	12528001	25	12	UTILITY BILLING 206 CLAREMONT AVE ASHLAND, OH 44805
CITY OF PIKEVILLE	Non-Service Water/Sewer	5316001010098	72	36	UTILITY DEPARTMENT PO BOX 2728 PIKEVILLE, KY 41502
CITY OF ALTAMONTE SPRINGS	Sewer Water Water/Sewer	556665089660, 599100008720	292	146	UTILITY DEPT 225 NEWBURYPORT AVE ALTAMONTE SPR, FL 32701
CITY OF IDAHO FALLS	Electricity Water/Sewer Trash	2012313, 2014686, 2012313	619	309	UTILITY DIVISION PO BOX 50220 IDAHO FALLS, ID 83405
CITY OF FLORENCE	Trash Water/Sewer	42156000464791, 37000304455916, 42156000464791	139	69	UTILITY FINANCE DIVISION



Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
					PO BOX 63010 CHARLOTTE, NC 28263
TOWN OF VESTAL	Water/Sewer	603044706C	41	21	UTILITY FUND 701 VESTAL PARKWAY W VESTAL, NY 13850
CITY OF CLAREMORE OK UTILITIES	Electricity Trash	1182005	278	139	UTILITY OFFICE 104 S MUSKOGEE AVE PO BOX 249 CLAREMORE, OK 74018
CEDAR FALLS UTILITIES	Electricity Gas Water/Sewer	101235, 125441, 490735810, 125441, 490735810	329	165	UTILITY PARKWAY PO BOX 769 CEDAR FALLS, IA 50613
PADUCAH WATER	Non-Service Water/Sewer	44559000	36	18	UTILITY PAYMENT CENTER PO BOX 2477 PADUCAH, KY 42002
LOUISIANA WATER CO	Water/Sewer	61519245014003, 64716451018402	68	34	UTILITY PAYMENT PROCESSING PO BOX 96025 BATON ROUGE, LA 70896
TREASURER SPOTSYLVANIA COUNTY	Water/Sewer	15427579468, 15845509160	57	28	UTILITY PAYMENTS PO BOX 9000 SPOTSYLVANIA, VA 22553
CITY OF LANCASTER	Trash Water/Sewer	192128001	282	141	UTILITY SERVICES DEPT PO BOX 1149 LANCASTER, SC 29721

Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
VILLAGE COMMONS PHASE 1	Landlord Solid Waste Landlord Water/Sewer	2600A03CU	34	17	610 E MOREHEAD ST SUITE 100 CHARLOTTE, NC 27607
VILLAGE OF MONROE WATER DEPT	Water/Sewer	216	4	2	VILLAGE OF MONROE WATER DEPT
VILLAGE OF SPRINGVILLE	Electricity	12683003	84	42	30 NASON BLVD PO BOX 17 SPRINGVILLE, NY 14141
CITY OF CHATTANOOGA	Water/Sewer	400218301	26	13	WASTE RESOURCES DIVISION PO BOX 591 CHATTANOOGA, TN 37401
CITY OF DEL RIO	Non-Service Water/Sewer	4310515000	32	18	WATER & GAS DEPT 109 W BROADWAY ST DEL RIO, TX 78840
TOWNSHIP OF GREENWICH	Water/Sewer	17830022	35	18	WATER & SEWER CLERK 420 WASHINGTON ST GIBBSTOWN, NJ 08027
CITY OF FREEPORT	Non-Service Water/Sewer	76378802001	85	43	WATER & SEWER COMMISSION 314 WEST STEPHENSON ST SUITE 010 FREEPORT, IL 61032
CITY OF SOUTHFIELD	Water/Sewer	8493001	90	45	WATER & SEWER DEPT PO BOX 33835 DETROIT, MI 48232

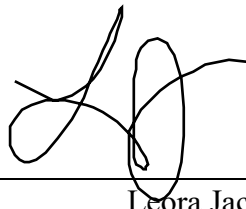
Provider	Service	Account Number(s) (if available)	Monthly Average Spend (\$)	Adequate Assurance (\$)	Address
SEMINOLE COUNTY	Water/Sewer	115031333042	68	34	WATER & SEWER UTILITY PO BOX 958443 LAKE MARY, FL 32795
CITY OF LEBANON AUTHORITY	Water/Sewer	1491037623	8	4	WATER AND SEWER BILLING 2311 RIDGEVIEW RD LEBANON, PA 17042
TOWN OF ELKIN	Water/Sewer	17901	42	21	WATER AND SEWER DEPARTMENT 226 N BRIDGE ST P O BOX 857 ELKIN, NC 28621
CITY OF JANESVILLE	Water/Sewer	8342531354	32	16	WATER AND WASTEWATER UTILITY 18 N JACKSON ST PO BOX 5005 JANESVILLE, WI 53547
CITY OF FORT DODGE	Water/Sewer	10701770001	65	33	WATER BILLING & COLLECTION DPT 819 FIRST AVE SOUTH FORT DODGE, IA 50501
CITY OF DEARBORN HEIGHTS	Water/Sewer	4052135	116	58	WATER DEPARTMENT 6045 FENTON DEARBORN HTS, MI 48127
VILLAGE OF MILFORD	Non-Service Water/Sewer	HIGH000560000000	44	22	WATER DEPT MILFORD, MI 48381

<b>Provider</b>	<b>Service</b>	<b>Account Number(s) (if available)</b>	<b>Monthly Average Spend (\$)</b>	<b>Adequate Assurance (\$)</b>	<b>Address</b>
CITY OF GREENVILLE	Water/Sewer	10112	29	15	WATER DEPT PO BOX 897 GREENVILLE, MS 38702
CITY OF BUENA PARK	Water/Sewer	41417803	45	22	WATER DIV PO BOX 5009 6650 BEACH BLVD BUENA PARK, CA 90622
CITY OF NEWBURYPORT	Water/Sewer	8008408	45	22	WATER SEWER PAYMENTS PO BOX 892 READING, MA 01867
WEST HOLLYWOOD GATEWAY	Landlord Water/Sewer	1693150	0	0	WEST HOLLYWOOD GATEWAY
WEWJA	Water/Sewer	117557201	5	2	2 WILSON AVE WASHINGTON, PA 15301
FEDERAL REALTY INVST TRUST	Landlord Water/Sewer Water/Sewer	1841	28	14	WYNNEWOOD SHOPPING CENTER LOCKBOX #9320 PO BOX 8500 PHILADELPHIA, PA 19178



TAB RR

THIS IS **EXHIBIT “RR”** REFERRED TO IN THE  
AFFIDAVIT OF TRICIA TOLIVAR,  
SWORN BEFORE ME *BY VIDEO CONFERENCE*,  
THIS 24<sup>TH</sup> DAY OF JUNE, 2020.

A handwritten signature in black ink, appearing to be 'LJ', written over a horizontal line.

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Leora Jackson  
Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**MOTION OF DEBTORS FOR ORDERS  
(A) AUTHORIZING PAYMENT OF CERTAIN  
PREPETITION WORKFORCE OBLIGATIONS,  
(B) AUTHORIZING CONTINUANCE OF WORKFORCE  
PROGRAMS, (C) AUTHORIZING PAYMENT OF WITHHOLDING  
AND PAYROLL-RELATED TAXES, AND (D) AUTHORIZING PAYMENT OF  
PREPETITION CLAIMS OWING TO WORKFORCE PROGRAM ADMINISTRATORS**

The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Interim Order*”) and **Exhibit B** (the “*Proposed Final Order*,” and together with the Proposed Interim Order, the “*Proposed Orders*”), respectively: (a) authorizing, but not directing, the Debtors, in their discretion, to pay, continue, or otherwise honor various prepetition labor-related obligations to their Workforce (as defined

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

below); (b) confirming the Debtors' authority to continue each of the Workforce Programs (as defined below) in the ordinary course of business during the pendency of these Chapter 11 Cases (as defined below); (c) authorizing the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes and other Workforce Deductions (as defined below) relating to the Workforce Obligations (as defined below); and (d) authorizing the Debtors, in their discretion, to pay any prepetition claims owing to the Administrators (as defined below) in the ordinary course of business to ensure the uninterrupted delivery of payments or other benefits to the Workforce.

### **JURISDICTION**

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), 541, 553, 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “*Bankruptcy Code*”) and rule 6003 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).



## **BACKGROUND**

3. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these cases, and no committees have been appointed.

4. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies’ Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the “*First Day Declaration*”)<sup>2</sup> filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.<sup>3</sup>

## **THE DEBTORS’ WORKFORCE AND WORKFORCE OBLIGATIONS**

### **I. THE WORKFORCE**

6. As of the Petition Date, inclusive of the Furloughed Employees (as defined below) the Debtors employ 10,833 employees, of which 3,944 are full-time employees and 6,889 are part-time employees. 10,220 of the Debtors’ employees are employed in the United States (including

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

<sup>3</sup> The First Day Declaration and other relevant case information is available from (a) the Court’s website, [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (b) the website maintained by the Debtors’ proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/GNC>.

Puerto Rico) (the “*U.S. Employees*”), and 613 are employed in Canada (the “*Canadian Employees*” and together with the U.S. Employees, the “*Employees*”). Approximately 845 of the Debtors’ Employees are salaried employees and 9,988 are hourly employees. Of the Debtors’ Employees, 995 perform functions at the corporate level related to the management of the Debtors’ omni-channel enterprise as a whole, including those employed in the Debtors’ distribution centers (the “*Corporate Employees*”) and 9,838 are employed in roles dedicated the management of the infrastructure and ongoing operations of the Debtors’ company-owned and franchised retail locations (the “*Field Employees*”). The U.S. Corporate Employees are employed by Debtor General Nutrition Centers, Inc., the U.S. Field Employees are employed by Debtor General Nutrition Corporation, and the Canadian Employees are employed by Debtor General Nutrition Centres Company. The Debtors have ten Employees who, the Debtors believe, may constitute “insiders” as the term is defined in section 101(31) of the Bankruptcy Code (each, an “*Insider*” and collectively, the “*Insiders*”).<sup>4</sup> All of the Insiders are U.S. Corporate Employees. Approximately 24 Employees have the title of Vice President (such Employees, the “*Senior Employees*”). The Debtors submit that not all of the Senior Employees are Insiders.

7. Due to store closures and other stresses to the Debtors’ business caused by the COVID-19 pandemic, the Debtors have furloughed a total of approximately 4,000 Employees in both the U.S. and Canada (the “*Furloughed Employees*”) in recent months, approximately 1,700 of whom remain furloughed as of the Petition Date. While furloughed, the Furloughed Employees are no longer receiving their wages or salaries, however, the Debtors are covering the full costs of

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<sup>4</sup> The following ten executives are considered to be potential “insiders” as defined by the Bankruptcy Code: (1) Ken Martindale, Chief Executive Officer; (2) Tricia Tolivar, Executive Vice President; (3) Josh Burris, Chief U.S. Officer; (4) Ryan Ostrom, Chief Brand Officer; (5) Carl Seletz, Chief Global Officer; (6) Susan Canning, General Counsel; (7) Nathan Frazier, Senior Vice President, U.S. Field Operations; (8) Steve Piano, Chief Human Resources Officer; (9) Cam Lawrence, Chief Accounting Officer; and (10) John Learish, Senior Vice President, Marketing.

U.S. Medical Plans, Canadian Health Benefits, U.S. Dental Plans, and U.S. Vision Plans (as defined below) relating to the Furloughed Employees while they remain on furlough, including certain obligations that would otherwise be deducted from such Employees' paychecks. The Debtors seek authority to, in their sole discretion, continue this practice postpetition.

8. In addition to the Employees, the Debtors also utilize independent contractors and temporary employees in the jurisdictions in which they operate (the "*ICs*" and "*Temporary Employees*," respectively, and together with the Employees, collectively the "*Workforce*"). The Debtors source ICs and Temporary Employees through several agencies, including, but not limited to IT Delivery Consulting, Computer Enterprises, Raeder Landree, RDX, Beacon Hill Staffing, Envista, K-Force, Precision Recruiting, Robert Half, Asentech and Snider-Blake Personnel (each a "*Staffing Agency*" and collectively the "*Staffing Agencies*"). The Debtors' Workforce is not subject to a collective bargaining agreement or similar labor agreement.

9. The Workforce provides a variety of critical functions relating to the management and day-to-day operations of the Debtors' businesses, including general administrative functions, supply chain management, procurement, sales, human resources, accounting, financial, and general corporate. The skills, expertise, and experience of the Workforce, as well as their relationships with customers and vendors and their knowledge of the Debtors' business, are essential to the Debtors' operations and ability to effectively maximize the value of their businesses during the Chapter 11 Cases.

## **II. THE WORKFORCE OBLIGATIONS**

10. In the ordinary course of business, the Debtors incur various labor-related obligations (the "*Workforce Obligations*") under plans, programs, policies, and agreements maintained by or for the benefit of, or contributed to or entered into by, the Debtors prior to the Petition Date (each of the programs described in this Section II of this Motion, a "*Workforce*

*Program*” and together, collectively, the “*Workforce Programs*”),<sup>5</sup> including but not limited to: (i) wages, salaries, and related compensation (the “*Wage Obligations*”), (ii) incentive and/or bonus obligations to non-Insider Employees (the “*Incentive Obligations*”), (iii) deductions associated with the forgoing (the “*Workforce Deductions*”), (iv) various health, financial, and welfare benefits historically provided to the Debtors’ Workforce (the “*Benefits Obligations*”), (v) paid time off (“*PTO Obligations*”), and (vi) reimbursable expenses and related obligations (the “*Reimbursable Expenses Obligations*”). In addition, in connection with the Workforce Programs, the Debtors incur and pay certain fees and expenses to third-party Administrators to administer the various Workforce Programs. By this Motion, the Debtors are seeking authorization to pay the following aggregate amounts on account of the prepetition Workforce Obligations.

<b>Workforce Obligations</b>	<b>Approximate Outstanding Prepetition Amount</b>	<b>Approximate Amount Due Within Interim Period</b>
<b><i>U.S. Workforce Obligations</i></b>		
i. U.S. Wage Obligations (including U.S. Deductions)	\$9,360,000	\$9,360,000
ii. U.S. Incentive Obligations	\$365,000	\$98,000
iii. U.S. Benefits Obligations	\$1,268,800	\$1,268,000
iv. U.S. PTO Obligations	\$9,020,000 <sup>6</sup>	\$0
v. U.S. Workers’ Compensation	\$731,500	\$473,000
<b>U.S. Total</b>	<b>\$20,745,300</b>	<b>\$11,199,800</b>
<b><i>Canadian Workforce Obligations</i></b>		

<sup>5</sup> By this Motion, the Debtors do not seek to assume or reject any Workforce Program to the extent that such Workforce Program is deemed to be an executory contract within the meaning of section 365 of the Bankruptcy Code. Moreover, the Debtors do not waive their right to modify or terminate any Workforce Program to the extent that such right exists under the terms of the Workforce Program or as may be authorized by applicable law.

<sup>6</sup> The Debtors estimate that, as of the Petition Date, aggregate accrued but unpaid PTO Obligations for all U.S. Employees totals approximately \$9.02 million. This accrued amount, however, does not represent a true “cash” liability for the Debtors, as the Debtors anticipate that Employees will use most of their PTO in the ordinary course of business, and eligible departing Employees may receive cash payments on account of unused PTO.

<b>Workforce Obligations</b>	<b>Approximate Outstanding Prepetition Amount</b>	<b>Approximate Amount Due Within Interim Period</b>
i. Canadian Wage Obligations (including Canadian Deductions)	\$901,000	\$901,000
ii. Canadian Incentive Obligations	\$197,583	\$44,000
iii. Canadian Benefits Obligations	\$58,000	\$58,000
iv. Canadian PTO Obligations	\$1,080,000 <sup>7</sup>	\$0
v. Canadian Workers' Compensation	\$25,600	\$16,000
<b>Canadian Total</b>	<b>\$2,262,183</b>	<b>\$1,019,000</b>
i. Reimbursable Expenses Obligations	\$20,000	\$6,000
<b>Non-Employee Director Fees and Expenses</b>	<b>\$0</b>	<b>\$0</b>
<b>Administrator Fees and Expenses</b>	<b>\$252,800</b>	<b>\$230,800</b>
<b>ICs and Temporary Employees</b>	<b>\$637,000</b>	<b>\$637,000</b>
<b>GRAND TOTAL</b>	<b>\$23,931,283</b>	<b>\$13,092,600</b>

**A. The Debtors' U.S. Workforce Obligations**

**1. *The Debtors' U.S. Wages Obligations.***

11. The Debtors' Field Employees working in Rhode Island, Connecticut, New York and New Hampshire are paid wages and salaries on a weekly basis, whereas the Debtors' Corporate Employees and Field Employees working other U.S. states, are paid wages and salaries on a bi-weekly basis.<sup>8</sup> The average gross payroll on account of U.S. Employees for each pay period is approximately \$11.4 million. The Debtors process payroll internally utilizing Intuit's Lawson

<sup>7</sup> The Debtors estimate that, as of the Petition Date, aggregate accrued but unpaid PTO Obligations for all Canadian Employees totals approximately \$1.08 million. This accrued amount, however, does not represent a true "cash" liability for the Debtors, as the Debtors anticipate that Employees will use most of their PTO in the ordinary course of business, and eligible departing Employees may receive cash payments on account of unused PTO.

<sup>8</sup> In order to avoid any potential delay in payment to the Employees as a result of the Chapter 11 Cases, the Debtors paid accrued wages for five Employees on June 12, 2020 and six Employees on June 23, 2020.

payroll software (“*Lawson*”). The Debtors pay their U.S. Employees in arrears for work performed one or two week(s) prior to the Debtors’ normal weekly or bi-weekly payroll, as applicable. Hourly U.S. Employees are eligible for overtime pay at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week. In order to receive overtime pay, U.S. Employees must receive prior authorization for any time worked in excess of 40 hours per week. The Debtors’ overtime pay policy allows the Debtors to assign mandatory overtime work for certain U.S. Employees should business needs require. All U.S. Employees assigned overtime work receive overtime pay at the same one and one-half times rate.

12. The Debtors estimate that, as of the Petition Date, they owe approximately \$9.18 million in Wage Obligations to U.S. Employees, all of which will become due and owing within the first 21 days after the Petition Date (the “*Interim Period*”).

## 2. *Incentive Programs.*<sup>9</sup>

13. In the ordinary course of business, to incentivize and reward outstanding performance, the Debtors offer certain Employees the opportunity to earn awards under certain incentive programs, including a set of short-term incentive plans (each of the plans described in subsection (a) below, a “*2020 STI Plan*” and such plans together, collectively, the “*2020 STI Plans*”) and long-term incentive plans (the “*2020 LTI Plans*” and together with the 2020 STI Plans, the “*U.S. Incentive Programs*”).<sup>10</sup> Pursuant to the U.S. Incentive Programs, eligible

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<sup>9</sup> In addition to the Incentive Programs (as defined and described herein), pursuant to the *Motion of Debtors for Orders (A) Approving Procedures for Store Closing Sales, (B) Authorizing Customary Bonuses to Employees of Closing Stores, and (D) Granting Related Relief* filed contemporaneously herewith (the “*GOB Motion*”) the Debtors are separately requesting to make incentive payments (“*GOB Bonuses*”) to Retail Employees working at stores that are in the process of undergoing going out of business sales (“*GOB Sales*”). The details of the GOB Bonuses are set forth in the GOB Motion. For the avoidance of doubt, the Debtors are not seeking to pay any GOB Bonuses pursuant to this Motion

<sup>10</sup> In the interest of full disclosure, separate from and unrelated to the U.S. Incentive Programs described herein, the Debtors paid retention bonuses which must be repaid if the recipient does not continue working for the Debtors for the specified retention period – to certain Insider and non-Insider Employees on or about June 19, 2020. By

Employees may earn awards based on individual and business targets. Payments with respect to the U.S. Incentive Programs are made by the Debtors directly to the applicable Employees. By this Motion, the Debtors request authorization to continue the U.S. Incentive Programs in the ordinary course of business and to make payments thereunder to non-Insider Employees as they come due. By this Motion, the Debtors do not seek authority to pay any amounts to Insiders under the U.S. Incentive Programs but the Debtors reserve the right to seek such authority during these Chapter 11 Cases by separate motion. Further, the Debtors do not seek authority to pay any amounts to Senior Employees under any of the U.S. Incentive Programs pursuant to the Interim Order, but do request authority to make such payments to Senior Employees pursuant to the Final Order.

a. *2020 Short-Term Incentive Plans.*

14. The 2020 STI Plans comprise a set of incentive plans targeted across all of the Debtors' enterprise-wide and worldwide operations. As described in detail below, U.S. Employees are eligible to participate in the 2020 STI Plan that is designed for such Employee's business segment, based upon such Employee's title.<sup>11</sup> Under most of the 2020 STI Plans, bonuses are earned quarterly based on a set of metrics that differ by business segment and eligible Employees entitled to a bonus payment are paid at the end of the applicable fiscal year ended December 31 (the "*Fiscal Year*"). As of the Petition Date, the Debtors believe U.S. Employees have earned approximately \$365,000 under the 2020 STI Plans that has not yet been paid to the applicable U.S. Employees.

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this Motion, the Debtors do not seek approval or authorization from the Court or any other relief with respect to such payments, which were made prior to the Petition Date.

<sup>11</sup> Canadian Employees are eligible to participate in some, but not all of the 2020 STI Plans as described in greater detail in Section II.B.2 of this Motion.

- a) Store Pilot Incentive Plan. The Debtors intend to begin a new incentive plan, pursuant to which approximately 1,381 Field Employees with the title of “Store Manager”, “Assistant Store Manager”, and “Sales Associate” and work in a store that is a part of the pilot program are eligible to participate in an incentive plan based on achieving certain sales goals (the “*Store Pilot Incentive Plan*”). Pursuant to the Store Pilot Incentive Plan, eligible Field Employees earn bonuses on a monthly and quarterly basis based on the sales performance of the store(s) in which the Employee works. The Debtors request authorization to implement the Store Pilot Incentive Plan postpetition and to pay eligible Field Employees bonuses earned under the Store Pilot Incentive Plan postpetition, in the ordinary course of business.
- b) Corporate Incentive Plan. Corporate and Field Employees with a job level of “Manager” or higher, who are not eligible for any other STI Plans, of which there are approximately 247 Employees, are eligible to receive incentive payouts under a corporate incentive plan (the “*Corporate Incentive Plan*”). Pursuant to the Corporate Incentive Plan, eligible Employees earn bonuses on a quarterly basis based on the performance of their respective business units. As of the Petition Date, the Debtors estimate that non-Insider Employees have earned approximately \$72,000 in accrued, but unpaid bonuses under the Corporate Incentive Plan for the three-month period (a “*Fiscal Quarter*”) ended March 31, 2020. The Debtors request authority to pay any amounts earned to non-Insider Employees under the Corporate Incentive Plan as they become due and owing in the ordinary course of business.



- c) RD Incentive Plan. Approximately nine Field Employees with the title of “Domestic Regional Director” are eligible to participate in an incentive plan based on achieving certain sales and inventory shrinkage goals (the “**RD Incentive Plan**”). Pursuant to the RD Incentive Plan, eligible Employees earn bonuses on a quarterly basis based on the sales and inventory shrinkage performance of the stores the applicable Domestic Regional Director oversees. As of the Petition Date, the Debtors estimate that non-Insider Employees have earned approximately \$18,000 in accrued, but unpaid bonuses under the RD Incentive Plan for the Fiscal Quarter ended March 31, 2020.
- d) DM Incentive Plan. Approximately 114 Field Employees with the title of “Domestic District Manager” are eligible to participate in an incentive plan based on achieving certain sales and inventory shrinkage goals (the “**DM Incentive Plan**”). Pursuant to the DM Incentive Plan, eligible Employees earn bonuses on a quarterly basis based on the sales and inventory contribution performance, and shrinkage metrics of the respective regions the applicable Domestic District Manager oversees. As of the Petition Date, the Debtors estimate that non-Insider Employees have earned approximately \$159,000 in accrued, but unpaid bonuses under the DM Incentive Plan for the Fiscal Quarter ended March 31, 2020.
- e) DFD Incentive Plan. Approximately three Field Employees with the title of “Divisional Franchise Director” are eligible to participate in an incentive plan based on achieving certain sales and inventory shrinkage goals (the “**DFD Incentive Plan**”). Pursuant to the DFD Incentive Plan, eligible Employees earn bonuses on

a quarterly basis based on the sales and EBITDA performance of the franchises they oversee.

- f) DFO Incentive Plan. Approximately 22 Field Employees with the title of “Domestic Director Franchise Operations” are eligible to participate in an incentive plan based on achieving certain sales goals (the “*DFO Incentive Plan*”). Pursuant to the DFO Incentive Plan, eligible Employees earn bonuses on a quarterly basis based on both overall sales and GNC-branded product sales at the franchises they oversee.
- g) Nutrimarket Product Representative Incentive Plan. Approximately five Field Employees with the title of “Franchise Product Representative II” and “Senior Franchise Product Representative” are eligible to participate in an incentive plan based on achieving certain sales goals to reward the extra effort required to increase sales of the Debtors’ branded products (the “*Nutrimarket Product Representative Incentive Plan*”). Pursuant to the Nutrimarket Product Representative Incentive Plan, eligible Employees earn bonuses on a quarterly basis based on the amount of GNC-branded product sales such Employees make.
- h) Loss Prevention Incentive Plans. Approximately 14 Field Employees with the title of “Regional LP Manager,” “Senior Regional LP Manager,” and “Senior Director, LP Field” are eligible to participate in incentive plans based on controlling inventory shrinkage, cash loss goals, and sales goals (the “*Loss Prevention Incentive Plans*”). Pursuant to the Loss Prevention Incentive Plans, eligible Employees earn bonuses on a quarterly basis based on the shrinkage and cash loss levels of their respective regions. As of the Petition Date, the Debtors estimate that

non-Insider Employees have earned approximately \$18,000 in accrued, but unpaid bonuses under the Loss Prevention Incentive Plan for the Fiscal Quarter ended March 31, 2020.

- i) Supply Chain Incentive Plans. Approximately 393 Corporate Employees employed in the Debtors' distribution centers are eligible to participate in several short term incentive plans. All supply chain production associates are eligible to participate in an incentive plan intended to optimize, among other things, time spent locating and picking products, observance of best practices for grasping and bending, travel time, and delays in deliveries (the "**LMS Incentive Plan**"). Additionally, all supply chain and production associates except those that are eligible for incentive plans other than the LMS Incentive Plan are eligible to participate in an incentive plan designed to incentivize cost reduction and increased productivity based on savings to budgeted sales for the applicable distribution center (the "**Production Incentive Plan**"). Finally, supply chain Employees with the title of "Logistics Supervisor" are eligible to participate in an incentive plan based on increasing productivity goals (the "**Logistics Supervisor Incentive Plan**" and together with the LMS Incentive Plan and the Production Incentive Plan, the "**Supply Chain Incentive Plans**"). Pursuant to the Supply Chain Incentive Plans, eligible Employees earn bonuses on a quarterly basis based on meeting the targets described above, with a threshold of their distribution center meeting its EBIT goals.
- j) Wholesale Incentive Plans. Approximately four Corporate Employees with the title of "VP Wholesale and Senior Director," "DMM – Owned Brand," "National Account Manager" and "Wholesale Business Specialist" are eligible to participate

in incentive plans (the “*Wholesale Incentive Plans*”) based on achieving EBITDA and revenue goals related to the Debtors’ wholesale sales of branded goods to third-party retailers. Pursuant to the Wholesale Incentive Plans, eligible Employees earn bonuses on a quarterly basis based on the amount of profits attributable to their sales during the applicable quarter.

- k) International Franchise Incentive Plans. Approximately five Field Employees with the title of “International Market Manager” and “International Senior Market Manager” are eligible to participate in incentive plans based on achieving certain sale plan goals (the “*International Franchise Incentive Plans*”). Pursuant to the International Franchise Incentive Plans, eligible Employees earn bonuses on a quarterly basis based on the reaching certain sale goals set out for their respective regions.
- l) Store Manager Pilot Incentive Plan. Approximately 205 Field Employees with the title of “Store Manager” and are in a store that is a part of the pilot program are eligible to participate in an incentive plan based on achieving certain sales goals (the “*SM Pilot Incentive Plan*”). Pursuant to the SM Pilot Incentive Plan, eligible Employees earn bonuses on a monthly basis based on the sales performance of the stores the applicable Store Manager oversees. As of the Petition Date, the Debtors estimate that non-Insider Employees have earned approximately \$94,000 in accrued, but unpaid bonuses under the Store Manager Pilot Incentive Plan in the current Fiscal Quarter.
- m) Merchandise Sales Incentive Plan. Approximately five Field Employees with the title of “Category Merchant” are eligible to participate in an incentive plan based

on achieving certain merchandise sale goals (the “*Merchandise Incentive Plan*”). Pursuant to the Merchandise Incentive Plan, eligible Employees earn bonuses on a monthly basis based on the level of their sales of merchandise. As of the Petition Date, the Debtors estimate that non-Insider Employees have earned approximately \$4,000 in accrued, but unpaid bonuses under the Merchandise Incentive Plan in the current Fiscal Quarter.

15. Pursuant to the STI Plans described in subsections (b)—(f), (h), (j) and (k) above, quarterly bonuses accrued are paid to eligible Employees following the close of the Fiscal Year. Pursuant to the STI Plans described in subsections (g) and (i) above, quarterly bonuses accrued are paid to eligible Employees following the close of the applicable Fiscal Quarter. Pursuant to the STI Plans described in subsections (a), (l) and (m) above, monthly bonuses accrued are paid to eligible Employees following the close of the applicable month or Fiscal Quarter.

16. As of the Petition Date, U.S. Employees have earned approximately \$365,000 pursuant to the STI Plans described in subsections (b) and (m) above, approximately \$98,000 of which will become payable during the Interim Period. As of the Petition Date, the Debtors estimate that no amounts have been earned under any of the STI Plans described in subsections (a) and (c)—(l) above, due to the poor financial performance as the Debtors’ business, in large part caused by the global outbreak of COVID-19. Nevertheless, the Debtors seek authority to continue each of the STI Plans described above for non-Insider Employees, and to make any payments to non-Insider Employees (including Senior Employees solely pursuant to the Final Order) to the extent any amounts become due and owing during the pendency of these Chapter 11 Cases.

17. For the avoidance of doubt, the Debtors are not seeking authority to pay any amounts owed to Insiders under any of the STI Plans.

b. *Long-Term Incentive Plans.*

18. In addition to the 2020 STI Plans, the Debtors offer certain Employees long term incentive awards in the form of lump sum cash awards, restricted stock units, and restricted cash (the “*LTI Plan*”). New hires are not immediately eligible to participate in the LTI Plan by default, but are eligible for consideration for eligibility to earn awards under the LTI Plan in the first quarter of the first Fiscal Year after they are hired. The Debtors assess the use of LTI Plan awards in Employee compensation on a case-by-case basis. Restricted stock units, performance cash and restricted cash awarded under the LTI Plan typically vest after three years, with some awards vesting after one year. As of the Petition Date, the Debtors have allocated \$5.1 million in performance cash awards under the LTI Plan in 2020, for eligible U.S. Employees, however, no performance cash awards have been earned in the current Fiscal Year. Additionally, there are approximately 5.9 million unvested shares issued to U.S. Employees under the LTI Plan which will not be payable until 2021. Additionally there are approximately \$3.1 million accrued in restricted cash awards under the LTI Plan that will become payable in 2020, approximately \$2.6 million accrued in restricted cash awards under the LTI Plan that will become payable in 2021, and approximately \$1.3 million accrued in restricted cash awards under the LTI Plan that will become payable in 2022, for non-Insider Employees. An Employee is only entitled to payments on account of the restricted cash awards under the LTI Plan, if such Employee is employed by the Debtors on the applicable date. The next payment date on account of the restricted cash awards occurs in 2021, and as such no amounts are due and owing on account of the restricted cash awards as of the Petition Date. The Debtors respectfully request authority to continue the LTI Plan in the ordinary course of business for non-Insider Employees. By this Motion, the Debtors do not seek authority to pay any amounts to Insiders under the LTI Plan, but the Debtors reserve the right to

seek such authority during these Chapter 11 Cases by separate motion, The Debtors do not seek to make any payments under LTI Plan to Senior Employees pursuant to the Interim Order.

3. ***U.S. Deductions.***

19. In the ordinary course of their businesses, the Debtors make deductions from the Workforce's paychecks for payments to third parties on behalf of members of the Workforce employed in the United States, for various federal, state, local, and foreign income, FICA, employment insurance and other taxes, as well as for court ordered garnishments, savings programs, repayments for loans taken against the savings programs, benefit plans, insurance and other similar programs (collectively, the "***U.S. Deductions***"). The Debtors' average monthly U.S. Deductions is approximately \$3,460,000. ADP, LLC ("***ADP***") provides the Debtors with services related to the management of the U.S. Deductions and the Canadian Deductions (as defined herein) as well as certain other tax-related services. The Debtors estimate that as of the Petition Date, they owe ADP approximately \$47,000 related to management of the Workforce Deductions<sup>12</sup> and other tax-related services, approximately \$25,000 of which will come due and owing within the Interim Period.

20. As of the Petition Date, certain U.S. Employees are owed prepetition amounts related to their compensation. Where such amounts are owed, the applicable U.S. Deductions have not yet been taken. Additionally, the Debtors may not yet have forwarded to the various third parties noted above the payments that are attributable to the U.S. Deductions that have been withheld from the Workforces' paychecks. The Debtors estimate that, as of the Petition Date, accrued, but yet unremitted U.S. Deductions total approximately \$180,000, all of which will come due and owing within the Interim Period. By this Motion, the Debtors request authority to remit

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<sup>12</sup> Includes both U.S. and Canadian Deductions.

all amounts that are due and owing on account of U.S. Deduction in the ordinary course of business and to pay amounts owed to ADP in connection with the Workforce Deductions as they become due and owing in the ordinary course of course of business.

4. ***U.S. Employee Benefits.***

21. The Debtors provide a wide array of benefits for their U.S. Employees under a variety of benefit programs (each of the programs in subsections (a)-(g) below, a “***U.S. Employee Benefit Program***” and such programs together, collectively, the “***U.S. Employee Benefit Programs***”), which give rise to Benefits Obligations. Full-time U.S. Employees and part-time U.S. Employees who work an average of 30 or more hours per week over a twelve month period (the “***Eligible U.S. Employees***”) are eligible for all of the U.S. Employee Benefit Programs (unless otherwise specified in this Motion), however, some of the U.S. Employee Benefit Programs are available to all U.S. Employees. As noted above, the Debtors are covering the full costs of certain Benefits Obligations relating to the Furloughed Employees while they remain on furlough, including certain obligations that would otherwise be deducted from such Employees’ paychecks. The Debtors seek authority to, in their sole discretion, continue this practice postpetition.

22. The Debtors offer fully-insured health plans through an exchange sponsored by Aon Hewitt, known as the Aon Active Exchange (“***Aon***”), and administered by Alight Solutions LLC (“***Alight***”). Eligible U.S. Employees may enroll their dependents, including spouses, domestic partners, children up to age 26, and disabled children of any age in several of the U.S. Employee Benefit Programs, through Aon’s exchange. The U.S. Employee Benefit Programs include, amongst other things, medical, dental, and vision insurance programs, the Debtors’ prescription drug insurance program, and supplemental life insurance program.



23. The Debtors employ individuals in all 50 states within the United States and Puerto Rico and all of the benefits describe herein are subject to local and states laws which may require the Debtors to adjust or provide additional benefits under the U.S. Employee Benefit Programs.

a. *Medical, Dental, and Vision Programs.*

(1) *U.S. Medical Plans*

24. The Debtors' medical coverage includes several plan options in which Eligible U.S. Employees may enroll that include medical and prescription drug coverage (the "***U.S. Medical Plans***"). The U.S. Medical Plans are provided through various insurance carriers throughout the United States, including, but not limited to, Aetna Inc. ("***Aetna***"), Cigna Corporation ("***Cigna***"),<sup>13</sup> Dean Health Plan, Inc. ("***Dean***"),<sup>14</sup> Geisinger Health System ("***Geisinger***"),<sup>15</sup> Health Net, LLC ("***Health Net***"),<sup>16</sup> Highmark Inc. ("***Highmark***"), Kaiser Foundation Health Plan, Inc. ("***Kaiser***"),<sup>17</sup> UnitedHealth Group Incorporated ("***UnitedHealthcare***"), and UPMC Health Plan, Inc. ("***UPMC***"), Blue Cross Blue Shield of Hawaii ("***BCBS***"), Medical Mutual of Ohio ("***MMOH***"), Priority Health, and Triple—S Salud ("***TSS***" and together with Aetna, Cigna, Dean, Geisinger, Health Net, Highmark, Kaiser, UnitedHealthcare, UPMC, BCBS, MMOH, Priority Health and TSS, collectively, the "***Medical Plan Providers***").

25. Through Aon's exchange, the Debtors generally offer four different levels of medical coverage: (i) "Bronze Plus Medical," (ii) "Silver Medical," (iii) "Gold Medical," and (iv)

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<sup>13</sup> Aetna and Cigna, Highmark, and UnitedHealthcare provide coverage to Employees located throughout the United States.

<sup>14</sup> Dean provides coverage to Employees located in Wisconsin.

<sup>15</sup> Geisinger and UPMC provide coverage to Employees located in Pennsylvania.

<sup>16</sup> Health Net provides coverage to Employees located in Arizona, California, Oregon, and Washington.

<sup>17</sup> Kaiser provides coverage to Employees located in California, Colorado, Washington D.C., Georgia, Maryland, Virginia, Oregon and southwest Washington.

“Platinum Medical.”<sup>18</sup> The Bronze Plus Medical plan is a high-deductible plan that includes a health savings account (the “*HSA*”) and prescription drug coinsurance and has a family-level deductible and out-of-pocket maximums. The HSA is administered by Alight, on Alight’s Your Savings Account platform (such platform “*YSA*”). The Debtors remit to Alight, on behalf of participating Employees, an average of approximately \$14,000 on a weekly basis, which amounts are withheld from Employee paychecks. The amounts that the Debtors remit to Alight on account of the HSA vary week to week depending on Employees’ elected deductions.

26. The Silver Medical and Gold Medical plans are preferred provider organization (“*PPO*”) options with prescription drug copays. The Platinum Medical plan is a PPO option with prescription drug copays that covers in-network care and offers limited benefits for out-of-network care. For some insurance providers through which the Debtors offer a U.S. Medical Plan, the Platinum Medical plan is a health maintenance organization (“*HMO*”) option with prescription drug copays that covers in-network care only.

27. The Debtors also offer several additional health coverage programs as part of the U.S. Medical Plans into which U.S. Employees may enroll at the Employee’s expense. These include critical illness insurance, hospital indemnity insurance, and accident insurance (the “*Additional Medical Benefits*”) through Allstate Insurance Company (“*Allstate*”). Eligible U.S. Employees may choose from three levels of critical illness coverage: (i) \$7,500, (ii) \$15,000, and (iii) \$30,000, which amounts are paid to the Employee if such Employee or their covered family member is treated for a major medical event. In addition, Eligible U.S. Employees may enroll for hospital indemnity insurance which provides the Employee with a payment if the

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<sup>18</sup> In California, the Debtors offer an additional level of medical coverage, “Gold II”, which is similar to Gold Medical except it only covers in-network care. Additionally, in Hawaii the Debtors only offer two types of medical coverage: (i) Gold Medical and (ii) Platinum Medical.

Employee or a covered family member is hospitalized. The Debtors' accident insurance provides an Employee with insurance in case the Employee or a covered family member is injured in a car accident.

28. The Debtors offer Employees who are U.S. citizen expatriates health insurance (the "***ExPat Health Insurance Program***") through GeoBlue Health ("***GeoBlue***"). The ExPat Health Insurance Program provides medical coverage for the covered Employee and his or her family members. Such coverage includes preventative care, primary care, hospitalization coverage and emergency care. As of the Petition Date, one Employee is covered under the ExPat Health Insurance Program. The Debtors pay GeoBlue approximately \$5,000 per Fiscal Quarter to administer the ExPat Health Insurance Program.

29. The U.S. Medical Plans are funded both through Employee contributions and by the Debtors. Approximately 57% of the cost of the U.S. Medical Plans is borne by the Debtors,<sup>19</sup> and Employees contribute to the U.S. Medical Plans through payroll deductions to pay for the balance. Employee contributions are deducted from Employee paychecks 26 times per year or 52 times per year depending on the Employee's payment schedule. Thus, payments to the U.S. Medical Plans consist of both trust fund payments (*i.e.*, Employee contributions) and contributions from the Debtors. The Debtors' total annual cost related to the U.S. Medical Plans, based on the Debtors' most current enrollment data, is approximately \$19.7 million. Alight invoices the Debtors for premiums and fees in connection with the U.S. Medical Plans, in the beginning of each month, for the benefits to be provided for such month. Alight, in turn then pays the Medical Plan Providers for the benefits it actually provides to the U.S. Employees for the relevant benefits period. Said different, the benefits to be provided for any given month are typically paid in full

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<sup>19</sup> The Debtors are currently covering 100% of the costs of the U.S. Medical Plans for Furloughed Employees.

within the first two weeks of such month. Occasionally, this results in the Debtors incurring monthly and quarterly true up payments of about \$10,000-\$50,000 related to late-billed amounts under the U.S. Medical Plans, if the Debtors' initial payment was more or less than the actual costs of the benefits provided for such period.

30. The Debtors also subsidize or continue to provide certain benefits to certain former U.S. Employees after their termination, retirement, or disability leave, including (without limitation) benefits provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("**COBRA**") and together collectively with the U.S. Medical Plans, HSA, Additional Medical Benefits, ExPat Health Insurance, the "**U.S. Medical Benefits**"), through Alight. The Debtors fund premiums on account of COBRA coverage in advance, COBRA participants then pay Alight directly for their coverage and Alight then sends a monthly payment of approximately \$16,000<sup>20</sup> to the Debtors from the amounts it receives from COBRA participants.

31. As of the Petition Date, the Debtors believe that there are approximately \$580,000 in accrued and unpaid amounts owing on account of the U.S. Medical Benefits, all of which will become due within the Interim Period. By this Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the U.S. Medical Benefits, in the ordinary course of business and in their sole discretion and to continue the U.S. Medical Benefits, in the ordinary course of business postpetition.

(2) *U.S. Dental Plans*

32. Through Aon's exchange, the Debtors also offer Eligible U.S. Employees dental care benefits through four different dental plan options: (i) "Bronze Dental," (ii) "Silver Dental,"

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<sup>20</sup> The costs of the COBRA coverage vary from month to month depending on how many Employees are currently receiving COBRA benefits.

(iii) “Gold Dental,” and (iv) “Platinum Dental” (the “**U.S. Dental Plans**”). The Bronze Dental plan is a basic PPO option that covers both in- and out-of-network care but does not cover major services or orthodontic expenses. The Silver Dental plan is a PPO option that covers in- and out-of-network care as well as major services and orthodontic expenses for children up to age 19. The Gold Dental plan is an enhanced PPO option that covers in- and out-of-network care and major services and orthodontic expense for both children and adults. The Platinum Dental plan is a dental HMO option that covers in-network care only, including orthodontic expenses for children and adults. The U.S. Dental Plans are provided through various insurance carriers throughout the United States, including Aetna, Cigna, Delta Dental Insurance Company (“**Delta Dental**”), MetLife, Inc. (“**MetLife**”), and UnitedHealthcare (collectively, the “**Dental Plan Providers**”).<sup>21</sup>

33. The U.S. Dental Plans are funded both through Employee contributions and by the Debtors. Approximately 19% of the cost of the U.S. Dental Plans is borne by the Debtors,<sup>22</sup> and Employees contribute to the U.S. Dental Plans through payroll deductions to pay for the balance. Employee contributions are deducted from Employee paychecks 26 times per year or 52 times per year depending on the Employee’s payment schedule. Thus, payments to the U.S. Dental Plans consist of both trust fund payments (*i.e.*, Employee contributions) and contributions from the Debtors. The Debtors’ total annual cost related to the U.S. Dental Plans, based on the Debtors’ most current enrollment data, is approximately \$1.4 million. Alight invoices the Debtors for premiums and fees in connection with the U.S. Dental Plans, in the beginning of each month, for the benefits to be provided for such month. Alight, in turn then pays the Dental Plan Providers for the benefits it actually provides to the U.S. Employees for the relevant benefits period. Said

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<sup>21</sup> All the Dental Plan Administrators provide coverage for Employees working throughout the United States.

<sup>22</sup> The Debtors are currently covering 100% of the costs of the U.S. Dental Plans for furloughed Employees.

different, the benefits to be provided for any given month are typically paid in full within the first two weeks of such month. Occasionally, this results in the Debtors incurring *de minimis* true up payments related to late-billed amounts under the U.S. Dental Plans, if the Debtors' initial payment was more or less than the actual costs of the benefits provided for such period.

34. As of the Petition Date, the Debtors believe that there are approximately \$45,000 in accrued and unpaid amounts owing on account of the U.S. Dental Plans, approximately all of which will become due within the Interim Period. By this Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the U.S. Dental Plans, in the ordinary course of business and in their sole discretion. The Debtors also request authority to continue the U.S. Dental Plans in the postpetition in the ordinary course of business.

(3) *U.S. Vision Plans*

35. The Debtors also offer several vision care benefits to Eligible U.S. Employees (the "*U.S. Vision Plans*"). Through Aon's exchange, Eligible U.S. Employees can choose between three levels of vision coverage: "Bronze Vision," Silver Vision," and "Gold Vision." The Bronze Vision plan is an exam-only option that provides in-network discounts for certain services. The Silver Vision plan is a PPO option that covers in- and out-of-network care. The Gold Vision plan is an enhanced PPO option that also covers in- and out-of-network care. The U.S. Vision Plans are provided through various insurance carriers throughout the United States, including EyeMed Vision Care, LLC ("*EyeMed*"), MetLife, UnitedHealthcare, and Vision Service Plan Inc. ("*VSP*" and together with EyeMed, MetLife and UnitedHealthcare, collectively, the "*Vision Plan Providers*").<sup>23</sup>

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<sup>23</sup> Each of the Vision Plan Administrators provides coverage for Employees throughout the United States.

36. The U.S. Vision Plans are entirely funded through Employee contributions, which are deducted from Employee paychecks 26 times per year or 52 times per year depending on the Employee's payment schedule.<sup>24</sup> As of the Petition Date, the Debtors believe that there are approximately \$16,000 in accrued and unpaid amounts owing on account of the U.S. Dental Plans, approximately all of which will become due within the Interim Period. By this Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the U.S. Vision Plans, in the ordinary course of business and in their sole discretion. The Debtors also request authority to continue the U.S. Vision Plans in the postpetition in the ordinary course of business.

b. *Miscellaneous Health and Wellness Benefits*

37. The Debtors pay for flu vaccinations for Employees at Rite Aid and Walmart two to three times per year on a seasonal basis depending on the spread of the flu (the "***Flu Vaccine Program***"). The Debtors pay Rite Aid and Walmart based on the actual costs incurred in connection with the Flu Vaccine Program. As of the Petition Date, the Debtors do not believe that there are any amounts due and outstanding on account of the Flu Vaccine Program.

38. The Debtors also offer an employee assistance program (the "***Employee Assistance Program***") administered by Health Advocate, Inc. ("***Health Advocate***") to assist Employees with their personal, family, and work/life concerns through confidential, 24/7 short-term counseling. The Debtors pay Health Advocate approximately \$7,500 per month to administer the Employee Assistance Program. As of the Petition Date, the Debtors estimate that there is approximately \$7,500 due and outstanding to Health Advocate on account of the Employee Assistance Program, all of which will come due during the Interim Period.

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<sup>24</sup> The Debtors are currently covering 100% of the costs of the U.S. Vision Plans for Furloughed Employees.

39. The Debtors offer support to Employees raising children with learning and behavior challenges (the “***Autism Support Program***”) through live teleconsultation and easy-to-follow videos provided by Rethink Autism (“***Rethink***”). The Debtors pay Rethink approximately \$4,300 per month to administer the Autism Support Program. As of the Petition Date, the Debtors estimate that there is approximately \$4,300 due and outstanding to Rethink on account of the Autism Support Program, all of which will come due during the Interim Period.

40. The Debtors request authority to continue to make payments and remittances of prepetition amounts due and owing under the Employee Assistance Program and Autism Support Program as they come due in the ordinary course of business, and to continue the Flu Vaccine Program, Employee Assistance Program, and Autism Support Program in the ordinary course of business postpetition.

c. *Life Insurance, Disability Insurance and AD&D Insurance*

41. The Debtors provide, or in certain cases offer the option of purchasing, certain types of life and disability insurance, including basic life, supplemental life, dependent and spousal life insurance, short-term disability insurance, salary continuation benefits, long-term disability insurance, accidental death and dismemberment insurance, dependent accidental death and dismemberment insurance, and related programs (collectively, the “***U.S. Disability Benefits***”), to all full-time U.S. Employees. All of the Debtors’ U.S. Disability Benefits are administered by Allstate and MetLife, Inc. (“***MetLife***” and together with Allstate, collectively, the “***U.S. Disability Providers***”).

42. The Debtors provide basic life insurance coverage (the “***U.S. Basic Life Insurance***”) to all full-time U.S. Employees through a fully insured plan, administered by MetLife. U.S. Employees are entitled to an amount equal to such Employee’s annual earnings, rounded to the nearest one thousand dollars under the U.S. Basic Life Insurance. The U.S. Basic Life



Insurance is 100% funded by the Debtors. In addition, the Debtors offer all full-time U.S. Employees supplemental life insurance coverage (the “**Supplemental Life Insurance**”). Employees who elect to receive Supplemental Life Insurance must choose a benefit amount that ranges from a minimum of \$10,000 to a maximum of \$1,000,000. The Supplemental Life Insurance is 100% funded through Employee contributions and is of no cost to the Debtors. In addition, the Debtors offer dependent life insurance coverage, which allows all full-time U.S. Employees to purchase life insurance for their spouse and/or dependent children (the “**Dependent Life Insurance**”). The Dependent Life Insurance, provides coverage for (i) spouses in an amount ranging from a minimum of \$5,000 to a maximum of \$350,000, which amounts must be a multiple of \$5,000 and (ii) dependent children, ranging from \$1,000 to \$10,000 depending on the age of the Employee’s dependent child(ren). Under the Dependent Life Insurance, U.S. Employees aged 70 to 75 have the amount of coverage under the Dependent Life Insurance reduced by 35% and upon their 75th birthday, such insurance is reduced by an additional 15%. The Dependent Life Insurance is fully funded by Employee contributions and is therefore of no costs to the Debtors.

43. The Debtors historically offered a life insurance policy that covers certain U.S. Employees who were hired prior to January 1, 1988 (the “**Grandfathered Life Insurance Policy**”). Under the Grandfathered Life Insurance Policy, covered Employees receive a death benefit equal to two times such Employee’s annual salary. The Grandfathered Life Insurance Policy is fully funded by the Debtors. The Debtors’ total annual cost related to the Grandfathered Life Insurance Policy is approximately \$4,500.

44. The Debtors provide short-term disability coverage for all full-time U.S. Employees (“**U.S. Short-Term Disability**”) through a self-insured plan administered by MetLife. U.S. Short-Term Disability generally provides 50% of the U.S. Employee’s base weekly salary up

to a weekly maximum of \$500. The duration of the U.S. Short-Term Disability is based on the U.S. Employee's length of full-time employment with the Debtors. In addition to the U.S. Short-Term Disability, the Debtors offer salary continuation to U.S. Employees receiving U.S. Short-Term Disability who are not receiving payments under state disability programs that, together with their U.S. Short-Term Disability, total an amount greater than 80% of the U.S. Employee's base salary ("**U.S. Salary Continuation**"). U.S. Salary Continuation provides up to an additional 30% of the U.S. Employee's base salary for up to 12 weeks.

45. The Debtors also provide each full-time U.S. Employee with long-term disability coverage ("**U.S. Long-Term Disability**") through a fully-insured plan administered by MetLife. The Debtors offer these Employees an optional buy-up plan for additional long-term disability benefits (the "**Additional U.S. Long-Term Disability**"). The U.S. Long-Term Disability provides 40% of the Employee's pre-disability salary, while the Additional U.S. Long-Term Disability provides an additional 20% of the Employee's pre-disability salary, beyond what the U.S. Long-Term Disability provides. The total annual cost to the Debtors related to U.S. Long-Term Disability, based on the Debtors' most current data, is approximately \$518,000 (inclusive of fees paid to MetLife to administer the plans described in this paragraph but excluding any fees associated with the Additional U.S. Long-Term Disability).

46. The Debtors also offer accidental death and dismemberment insurance ("**AD&D Insurance**") to all full-time U.S. Employees. U.S. Employees must elect to receive the AD&D Insurance and select a benefit amount. The benefit amount must be a minimum of \$10,000 with a maximum equal to the lesser of 10 times the Employee's annual earnings or \$500,000. The AD&D Insurance is fully funded by Employee contributions and is of no cost to the Debtors. The Debtors also offer accidental death and dismemberment insurance for an Employee's spouse and/or

dependent children (the “*Dependent AD&D Insurance*”). All full-time U.S. Employees are eligible to receive the Dependent AD&D Insurance to cover their (i) spouse in an amount ranging from a minimum of \$5,000 and a maximum of \$250,000 and (ii) dependent children in an amount ranging from a minimum of \$1,000 to a maximum of \$25,000. The Dependent AD&D Insurance is fully funded through Employee contributions and is therefore of no costs to the Debtors.

47. The costs of the U.S. Short-Term Disability benefits, U.S. Salary Continuation, U.S. Long-Term Disability benefits and U.S. Basic Life Insurance are borne entirely by the Debtors. The remainder of the U.S. Disability Benefits are fully funded through Employee contributions. The Debtors pay approximately \$18,000 per month to MetLife to administer the U.S. Disability Benefits. As of the Petition Date, the Debtors estimate that there are approximately \$518,000 in obligations outstanding on account of the U.S. Disability Benefits, inclusive of amounts withheld from Employees and of fees paid to MetLife, approximately all of which will become due within the Interim Period. By this Motion, the Debtors seek authority to make all payments and remittances for amounts attributable to the prepetition period and relating to the U.S. Disability Benefits, in the ordinary course of business and in their sole discretion.

d. *Flexible Benefits.*

48. In addition to the HSA noted above, the Debtors also offer Eligible U.S. Employees the opportunity to establish flexible spending accounts which allow such U.S. Employees to set aside pre-tax wages, subject to minimum and maximum annual contributions, to pay for eligible out-of-pocket expenses (the “*FSAs*”) using YSA. There are two types of FSAs offered to Eligible U.S. Employees: health care FSAs (the “*HCFSAs*”) and dependent care FSAs (the “*DCFSAs*”). The HCFSAs allow participating U.S. Employees to set aside wages in an account to pay for out-of-pocket health care expenses that are not covered by another health care plan. The DCFSAs allow participating U.S. Employees to set aside wages in an account to pay for dependent care

expenses such as day care expenses for children up to age 13 and adults unable to care for themselves. The Debtors remit to Alight on behalf of participating Employees an average of approximately \$7,000 on a weekly basis, which amounts are withheld from Employee paychecks. Remittances to Alight on account of the FSAs are based upon actual usage of the FSAs and vary week-to-week.

49. In addition, the Debtors offer U.S. Employees commuter accounts, which allow participating Employees to set aside pre-tax wages, to pay for public transit and qualified parking (the “*Commuter Accounts*”). The Commuter Accounts are administered by Alight through YSA. The Debtors remit to Alight on behalf of participating Employees an average of approximately \$7,000 on a monthly basis, which amounts are withheld from Employee paychecks.

50. Additionally, the Debtors are subject to an ordinance issued by the San Francisco Department of Public Health (“*SFDPH*”) that requires the Debtors to provide a commuter benefits program that supports and encourages Employees to bike, take public transit, and carpool to work (the “*SFDPH Program*”). The Debtors pay the SFDPH approximately \$29,000 per Fiscal Quarter on behalf of participating Employees. By this Motion, the Debtors request authority to make all payments for amounts attributable to the prepetition period and related to the SFDPH Program, in the ordinary course of business and in their sole discretion.

51. The Debtors withhold Employee contributions to the FSAs, HSA, SFDPH Program, and Commuter Accounts each pay period. In addition, the Debtors pay Alight on average approximately, \$5,050 to administer the FSAs, HSA, SFDPH, and Commuter Accounts. As of the Petition Date, the Debtors believe that there are approximately \$57,000 in accrued amounts to be remitted on account of the FSAs, SFDPH Program, and Commuter Accounts to their respective administrators. Additionally, the Debtors estimate that as of the Petition Date, they owe

approximately \$5,800 to Alight to administer the FSAs, HSA, SFDPH Program, and Commuter Accounts. By this Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the FSAs, SFDPH Program, and Commuter Accounts, in the ordinary course of business and in their sole discretion. The Debtors also request authority to continue the FSAs, SFDPH Program, and Commuter Accounts postpetition in the ordinary course of business.

e. *Savings and Retirement Benefits.*

52. Full-time U.S. Employees and part-time U.S. Employees who work 1,000 or more hours within a calendar year, are eligible to participate in a 401(k) retirement plan sponsored by the Debtors (the “**401(k) Plan**”). The 401(k) Plan is administered by Fidelity Investments Inc. (“**Fidelity**”). Under the 401(k) Plan, an eligible U.S. Employee may contribute a portion of his or her eligible earnings each year through pre-tax contributions to the 401(k) Plan, subject to limits imposed by federal law. The Debtors match 50% of the first 5% of participating U.S. Employee contributions to their 401(k) Plan. The Debtors also receive 401(k) consulting services through Aon, in order to ensure the 401(k) Plan complies with applicable law and regulations, which services are typically paid for from 401(k) Plan forfeitures (*i.e.* Debtor contributions to the 401(k) Plan that have accrued, but not yet fully vested when an Employee leaves the Debtors’ employ). Aon also acts as the fiduciary under the 401(k) Plan. Further, the Debtors pay Louis Plung & Company (“**Louis Plung**”) approximately \$13,250 per year from 401(k) forfeitures for 401(k) auditing services.

53. In 2019, the Debtors withheld approximately \$739,000 per month from U.S. Employees participating in the 401(k) Plan, and contributed approximately \$265,000 per month in 2019 on account of matching contributions. As of the Petition Date, the Debtors do not owe any amount on account of the 401(k) Plan. By this Motion the Debtors request authority to continue

sponsoring the 401(k) Plan and to remit all amounts withheld from Employees' paychecks as contributions to the 401(k) Plan, and to pay any outstanding prepetition 401(k) matching contributions and related administrative fees.

54. The Debtors also sponsor a non-qualified deferred compensation plan (the "**NQDC Plan**") for certain U.S. Employees. U.S. Employees with a job title of "director" or above, can participate in the NQDC Plan. Under the NQDC Plan, eligible Employees may defer up to 80% of their eligible salary and commissions and 100% of their earned bonuses, pre-tax. The Debtors match up to 3% of the participating U.S. Employee's base salary deferred. Employee deferrals are 100% vested and the Debtors' matching contribution vests after three years of the Employee's participation and contribution in the NQDC Plan. There are 45 current Employees (three of whom are Insiders) and 13 former Employees who have deferred compensation pursuant to the NQDC Plan. As of the Petition Date, there are approximately \$4.1 million in total deferred compensation obligations under the NQDC Plan. However, not all of this amount is a current cash payment obligation as a participating Employee is only entitled to cash payment distributions in the event such Employee leaves the Debtors' employment or otherwise has a pre-elected scheduled distribution.<sup>25</sup> The obligations under the NQDC Plan are backed by Debtor-owned life insurance policies (the "**COLI Policies**"), purchased on the lives of NQDC Plan participants from Nationwide Insurance ("**Nationwide**"), MetLife, General American Life Insurance Company ("**General American**"), and New England Life Insurance Co. ("**New England Life**"). The COLI Policies are held in a rabbi trust (the "**Rabbi Trust**") for which Bank of America Merrill Lynch ("**BAML**") serves as trustee and Prudential Financial Company ("**Prudential**") serves as the recordkeeper for the NQDC Plan. As of the Petition Date, the cash value of the COLI Policies is

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<sup>25</sup> Of the current Employees who have pre-elected scheduled distributions, one such Employee is an Insider.

approximately \$4.6 million. As the COLI obligations become payable under the terms of the NQDC Plan, the Debtors have historically paid the NQDC Plan liabilities from a general liability account through payroll. From time to time, but not more frequently than quarterly, the Debtors are reimbursed from the Rabbi Trust by accessing the cash value of the COLI Policies. As of the Petition Date, there are approximately \$650,000 in deferred compensation payments scheduled to be made pursuant to the NQDC Plan through January, 2027, including approximately \$23,000 due to be paid to one former Employee during the Interim Period. By this Motion, the Debtors request the authority to maintain the NQDC Plan. The Debtors do not seek authority to make distributions under the NQDC Plan pursuant to this Motion.

55. The Debtors pay BAML approximately \$2,000 annually for its services as trustee of the Rabbi Trust, Prudential approximately \$7,500 annually for its services as recordkeeper, General American approximately \$375 annually, and New England Life approximately \$ 3,174 annually in premiums on account of the COLI Policies. As of the Petition Date, the Debtors do not owe any amounts to BAML, Prudential, General American, or New England Life on account of the Rabbi Trust or the related COLI Policies. The Debtors request the authority to continue making payments to BAML and to Prudential, MetLife, General American, and New England Life on a postpetition basis to maintain the Rabbi Trust, NQDC Plan and COLI Policies, respectively.

f. *Non-Insider Severance.*

56. The Debtors sponsor and administer an executive severance plan (the “*Executive Severance Plan*”)<sup>26</sup> and a non-executive severance plan (the “*Non-Executive Severance Plan*,”

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<sup>26</sup> By this Motion, the Debtors do not seek authority to pay any severance benefits to Insiders, but reserve the right to do so in the future by separate motion.

and together with the Executive Severance Plan, the “*Severance Plans*”) that provide severance pay to certain Employees upon a qualifying termination of employment or other qualifying event.<sup>27</sup>

57. The Non-Executive Severance Plan accrues severance pay of one week for full-time Field Employees, with the title of “Store Manager,” upon one full year of employment with the Debtors. For each subsequent year of employment, such Field Employees accrue an additional week of severance pay up to a maximum of four weeks of severance pay.

58. The Executive Severance Plan provides severance pay for six months for Vice Presidents and twelve months for positions senior to Vice President. Additionally, the Executive Severance Plan provides for the continuation of healthcare coverage through the U.S. Medical Plans and/or U.S. Dental Plans and/or U.S. Vision Plans and the reimbursement of health insurance premiums in excess of the U.S. Employee’s premium payable immediately prior to the U.S. Employee’s termination.

59. Severance benefits under the Severance Plans are typically provided in exchange for a release in liability for the Debtors. The Debtors believe it is important that they have the flexibility to maintain their current practice of honoring the Severance Plans for Employee retention and morale.

60. Approximately 90 U.S. Employees have received severance under the Severance Plans and the Debtors have paid approximately \$2 million in severance benefits to U.S. Employees in the twelve month period prior to the Petition Date. As of the Petition Date, the Debtors have no accrued but unpaid liability to U.S. Employees on account of the Severance Plans. Accordingly,

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<sup>27</sup> Separate and apart from the Severance Plans, certain Employees have employment contracts with the Debtors providing for severance. If an Employee’s employment contract contains severance benefits, such Employee typically may choose between the severance benefits under his or her employment agreement or the severance benefits under the applicable Severance Plan. By this Motion, the Debtors do not seek authority to pay severance benefits under any employment contract. The Debtors reserve the right to seek authority to pay such severance in the future by separate motion.



the Debtors do not seek by this Motion to pay any severance to former Employees who have already been terminated. By this Motion, the Debtors seek authority to continue providing benefits under the Severance Plans in the ordinary course of business to eligible non-Insider U.S. Employees, subject to section 503(c) of the Bankruptcy Code, provided that the Debtors do not seek authority to make payments to Senior Employees under the Severance Plans pursuant to the Interim Order.<sup>28</sup>

g. *U.S. Miscellaneous Employee Benefit Programs*

61. The Debtors offer a number of additional voluntary benefits for Eligible U.S. Employees (the “*Miscellaneous Employee Benefit Programs*”). These benefits include access to discounted legal services, identity theft protection, international vacation medical insurance, and bill negotiation services. Eligible U.S. Employees may also enroll in group auto and home insurance, and pet insurance. The Debtors incur no costs on account of the benefits described above, and the U.S. Employees enroll directly with the applicable carrier and are responsible for all payments in connection therewith.

62. In addition, the Debtors provide certain U.S. Employees, with the title of Vice President or above, with parking spaces at the Debtors’ headquarters (the “*Leased Parking Spaces*”) for use in connection with their commute to work. In addition, the Debtors provide a monthly stipend to U.S. Employees to go towards parking-related expenses in the city of Pittsburgh, Pennsylvania to further encourage such Employees, with the title of Vice President or above, to work from the Debtors’ headquarters (the “*Parking Stipend*” and together with the Leased Parking Spaces, collective, the “*Parking Expenses*”). The average monthly cost on

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<sup>28</sup> For Field Employees who are Store Managers and associates in charge of a store undergoing GOB Sales, the Debtors are requesting authorization pursuant to the GOB Motion to make store closing bonus payments (the “*GOB Store Closing Bonuses*”) to such Field Employees. For the avoidance of doubt the Debtors are not seeking authorization to make GOB Store Closing Bonus payments pursuant to this Motion.

account of the Parking Expenses is approximately \$34,000 per month. As of the Petition Date, the Debtors' owe approximately \$10,000 on account of the Parking Expenses, all of which will become payable during the Interim Period.

63. The Debtors also provide car allowances (the "*Car Allowances*") for two field leaders. The Car Allowances are used by the field leaders in order for them to have a car to cover the regions which they oversee. The Car Allowances cost the Debtors approximately \$2,000 per month. As of the Petition Date the Debtors estimate that they owe approximately \$1,000 on account of the Car Allowances, all of which will be payable during the Interim Period.

64. By this Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the Miscellaneous Employee Benefit Programs, Parking Expenses, and Car Allowances, in the ordinary course of business and in their sole discretion and to continue the Miscellaneous Employee Benefit Programs, in the ordinary course of business postpetition.

**5. *Other Compensation: PTO Obligations.***

65. The Debtors offer their U.S. Employees other forms of compensations, including paid holidays, sick leave or other paid and unpaid leave, vacation time, and other earned time off (collectively, "*PTO*"), which give rise to the Debtors' PTO Obligations. Such forms of compensation are customary and necessary in order for maintaining the morale and stability of the Debtors' workforce.

**a. *PTO: Holiday, Sick Leave, and Vacation Time.***

66. The Debtors provide paid holidays for several dates annually which vary by the business segment in which the U.S. Employees work. All U.S. Employees are entitled to six paid holidays per year, based on scheduled holidays. In addition, U.S. Employees in the corporate, distribution and transportation segments receive an additional four paid holidays beyond the six

holidays that all U.S. Employees receive, on specifically designated days. Likewise, U.S. Employees in the military retail segment receive an additional five paid holidays beyond the six holidays all U.S. Employees receive, on specifically designed days. U.S. Employees in Puerto Rico also receive an additional two holidays beyond the six all U.S. Employees receive.

67. The Debtors also provide paid sick leave to U.S. Employees. Generally, U.S. Employees are provided with 40 hours of sick leave per calendar year. U.S. Employees in the military retail segment accrue paid sick leave based on hours worked and years of employment with the Debtors. U.S. Employees may carry over unused sick leave into subsequent years, subject to annual carryover caps and, in the case of U.S. Employees who work in the Debtors' retail segment, accrued balance caps, subject to applicable law.

68. The Debtors also provide U.S. Employees with paid vacation time. Vacation time offered to U.S. Employees varies depending on which segment of the Debtors' business the U.S. Employee works in. In general, vacation time accrues based on an Employee's length of service to the Debtors.

69. U.S. Employees working in the corporate and distribution and manufacturing segments begin to accrue vacation time after 90 days of employment. Thereafter, these U.S. Employees with (a) less than five years of service accrue 128 hours of vacation time per calendar year, (b) five years of service but less ten years of service accrue 168 hours of vacation time per calendar year, and (c) ten or more years of service accrue 192 hours of vacation time per calendar year. Certain of these U.S. Employees are grandfathered into a previous vacation policy in which U.S. Employees accrue 208 hours of vacation time per year if such U.S. Employees have thirteen or more years of services with the Debtors.

70. U.S. Employees working in the retail segment begin to accrue paid vacation after six months of employment. Such U.S. Employees accrue eight hours of paid vacation time per month until they reach one year of employment, at which point they are granted 88 hours per year until they reach five years of service. These U.S. Employees then accrue 128 hours of vacation time per year until their tenth year of service with the Debtors, when they then accrue 168 hours per year.

71. U.S. Employees at retail locations operated on military bases begin to accrue vacation time immediately and accrue 0.0423 hours of vacation time per hour worked up to 88 hours per year, until their fifth year of service to the Debtors. These Employees then accrue 0.0615 hours of vacation time per hour worked up to a maximum of 128 hours of vacation time per year, until their ninth year of service. Thereafter, they accrue 0.0808 hours of vacation time per hour worked up to a maximum of 168 hours of vacation time per year.

72. The Debtors also offer bereavement leave to U.S. Employees following the death of a family member. U.S. Employees are granted three days of paid leave following the death of an immediate family member and one day of paid leave following the death of other family members.

73. In addition to the above, the Debtors provide certain other paid and unpaid leave, as required by the various state laws in which the Debtors operate, including but not limited to, leave under the (i) Family and Medical Leave Act, (ii) New York State Paid Family Leave Act, (iii) California Paid Family Leave Law, (d) Hawaii Family Leave Law, and (e) Massachusetts Paid Family Leave Law. The type of leave provided under the laws mentioned above and in the other states in which the Debtors operate differ based on the applicable law, but in each case, the Debtors provide the minimum amount of leave required by such law.

74. The Debtors estimate that, as of the Petition Date, the aggregate accrued but unpaid PTO Obligations for all U.S. Employees total approximately \$9.02 million. This accrued amount, however, does not represent a true “cash” liability for the Debtors, as the Debtors anticipate that U.S. Employees will use most of their PTO in the ordinary course of business, and eligible U.S. Employees only receive cash payments on account of unused PTO upon termination or resignation, if at all.

75. Because PTO is an essential feature of the employment package provided to the Debtors’ U.S. Employees, and failure to provide this benefit would harm Employee morale and encourage the premature departure of valuable Employees, the Debtors request authority to honor all of their PTO Obligations as and when they come due in the ordinary course of business.

6. ***U.S. Workers’ Compensation.***

76. Under the laws of the various U.S. states in which the Debtors operate, the Debtors are required to maintain workers’ compensation policies and programs, or participate in workers’ compensation programs administered by state governments, to provide their U.S. Employees with workers’ compensation coverage for claims arising from or related to their employment with the Debtors. The Debtors’ U.S. Employees are covered under workers’ compensation policies (the “***U.S. Workers’ Compensation Policies***”) that are either “monopolistic” (*i.e.* provided by a government-operated insurance provider) or “non-monopolistic” (*i.e.* provided by a private sector insurance providers). The Debtors maintain six monopolistic U.S. Workers’ Compensation Policies in the states of New Mexico, North Dakota, Ohio, Washington, and Wyoming as well as in Puerto Rico (the “***Monopolistic Workers’ Compensation Policies***”). The Debtors also maintain non-monopolistic U.S. Workers’ Compensation Policies (the “***Non-Monopolistic Workers’ Compensation Policies***”), currently issued by Sentry Insurance a Mutual Insurance Company (“***Sentry***”) and previously issued by Liberty Mutual Insurance Company (“***Liberty***”), The

Travelers Companies, Inc. (“*Travelers*”), and Chubb Limited (“*Chubb*”) (collectively, the “*Workers’ Compensation Providers*”). The Debtors pay monthly premiums in the amount of approximately \$52,000 with respect to their current U.S. Workers’ Compensation Policies. As part of the Workers’ Compensation Policies, the Debtors have stop loss coverage that is provided by Sentry (the “*Stop Loss Coverage*”). The Stop Loss Coverage effectively caps the Debtors’ potential liability under the Non-Monopolistic Workers’ Compensation Policies at \$250,000 per claim. With regards to the Monopolistic Workers’ Compensation Policies, the Debtors’ only out of pocket expense is the premiums associated with such policies, with all other costs associated with such policies covered by the applicable state agency.

77. In addition, the Debtors have certain letters of credit outstanding in connection with their U.S. Workers’ Compensation Policies. As of the Petition Date, the Debtors have approximately \$4.5 million outstanding in letters of credit with JPMorgan Chase & Co. (“*Chase*”) in connection with their U.S. Workers’ Compensation Policies.

78. Under the U.S. Workers’ Compensation Policies, upon the filing of a verified claim (“*U.S. Workers’ Compensation Claim*”) by an eligible U.S. Employee, the U.S. Workers’ Compensation Provider pays the U.S. Workers’ Compensation Claim amount directly to the U.S. Employee.

79. As of the Petition Date, the Debtors have approximately \$731,500 accrued but unpaid liability on account of the U.S. Workers’ Compensation Policies, \$473,000 of which will become due during the Interim Period. By this Motion, the Debtors request authority to continue their workers’ compensation program and pay any amounts due and owing in connection therewith. It is critical that the Debtors be permitted to continue their workers’ compensation program and to make payments in connection with outstanding prepetition claims, taxes, charges,

assessments, premiums, and third party administrator fees in the ordinary course of business because alternative arrangements for workers' compensation coverage would most certainly be more costly, and the failure to provide coverage may subject the Debtors and/or their officers to severe penalties. To facilitate the ordinary course handling of U.S. Workers' Compensation Claims, the Debtors further request authority, in their sole discretion, to lift the automatic stay of section 362 of the Bankruptcy Code to allow U.S. Workers' Compensation Claims to proceed under the U.S. Workers' Compensation Policies and to allow the Debtors, their affiliates, the U.S. Workers' Compensation Provider and/or their third party administrators to negotiate, settle and/or litigate U.S. Workers' Compensation Claims, and pay resulting amounts, whether such claims arose before or after the Petition Date.

**B. The Debtors' Canadian Workforce Obligations**

**1. *The Debtors' Canadian Wages Obligations.***

80. The Debtors' Canadian Field and Corporate Employees are paid wages and salaries on a bi-weekly basis. The average gross payroll on account of Canadian Employees for each pay period is approximately \$670,000. The Debtors currently process payroll for the Canadian Employees' wages and salaries internally utilizing Lawson, and solely for Employees in the province of Quebec, CGI Payroll Services Centre Inc.'s Nethris payroll services ("*Nethris*"). The Debtors pay their Canadian Employees in arrears for work on a bi-weekly schedule. The Debtors estimate that, as of the Petition Date, they owe approximately \$850,000 in Wage Obligations to Canadian Employees, all of which will become payable during the Interim Period.

**2. *Incentive Programs.***

81. Canadian Employees with the job titles of Store Manager and District Manager are eligible to earn bonuses through two separate incentive programs described in subsections (a) and (b) below (respectively, the "*Store Manager Incentive Program*" and the "*District Manager*

*Incentive Program*” and together, collectively, the “*Canadian Incentive Programs*” and together with the U.S. Incentive Programs, collectively, the “*Incentive Programs*”).<sup>29</sup> By this Motion, the Debtors request authorization to continue the Canadian Incentive Programs in the ordinary course of business and to make payments to non-Insider Canadian Employees as they come due. In the event that the Debtors seek to pay amounts to Insiders under the Canadian Incentive Programs in the future during these Chapter 11 Cases, the Debtors will do so by separate motion. Further, the Debtors do not seek authority to pay any amounts to Senior Employees under the Canadian Incentive Programs pursuant to the Interim Order, but request such authority pursuant to the Final Order.

- a) Store Manager Incentive Program. Approximately 169 Canadian Employees with a job title of “Canada Store Manager” are eligible to receive incentive payouts under the Store Manager Incentive Program. Pursuant to the Store Manager Incentive Program, eligible Employees earn bonuses on a monthly basis based on the performance of their respective stores and management of wages relative to sales. Monthly bonuses accrued under the Store Manager Incentive Program are paid to eligible Employees following the close of the applicable Fiscal Quarter. As of the Petition Date, the Debtors estimate that non-Insider, Canadian Employees have earned approximately \$44,000 in accrued, but unpaid bonuses under the Store Manager Incentive Program in the current Fiscal Year. None of the Canadian Employees who have accrued, unpaid bonuses under the Store Manager Incentive Program are Senior Employees.

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<sup>29</sup> In addition to the Incentive Programs (as defined herein), pursuant to the GOB Motion the Debtors are separately requesting to pay GOB Bonuses to Field Employees working at stores that are in the process of undergoing going GOB Sales. The details of the GOB Bonuses are set forth in the GOB Motion. For the avoidance of doubt, the Debtors are not seeking to pay any GOB Bonuses pursuant to this Motion.



b) District Manager Incentive Program. Approximately 11 Canadian Employees with a job title of “Canada District Manager” are eligible to receive incentive payouts under the District Manager Incentive Program. Pursuant to the District Manager Incentive Program, eligible Employees earn bonuses on a quarterly basis based on the performance of their business units and wages relative to sales. Quarterly bonuses accrued under the District Manager Incentive Program are paid to eligible Employees following the close of the applicable Fiscal Year. As of the Petition Date, the Debtors estimate that non-Insider Canadian Employees have earned approximately \$14,000 in accrued, but unpaid bonuses under the District Manager Incentive Program in the current Fiscal Year. None of the Employees who have accrued, but unpaid bonuses under the District Manager Incentive Program are Senior Employees.

82. In addition to the Canadian Incentive Programs, Canadian Employees who meet the applicable requirements are eligible to participate in certain U.S. Incentive Programs, including the Corporate Incentive Plan, Loss Prevention Incentive Plan, the GOB Bonuses and the LTI Plan on the same basis as U.S. Employees.

83. As of the Petition Date, the Debtors believe Canadian Employees have earned approximately \$197,583 under the Canadian Incentive Programs, and applicable U.S. Incentive Programs, \$44,000 of which will become due and payable during the Interim Period. By this Motion, the Debtors request authority to continue to make payments to non-Insider Canadian Employees under any applicable U.S. Incentive Programs as they come due. However, for the avoidance of doubt, the Debtors are not seeking to make any payments to Insiders under any of the Canadian Incentive Programs or U.S. Incentive Programs pursuant to this Motion. Further, the

Debtors do not seek authority to pay any amounts to Senior Employees under any of the Canadian or U.S. Incentive Programs pursuant to the Interim Order, but do request such authority pursuant to the Final Order.

3. ***Canadian Deductions.***

84. In the ordinary course of their businesses, the Debtors make deductions from the Workforce's paychecks for payments to third parties on behalf of members of the Workforce employed in Canada, for various federal, provincial, local, and employment insurance and other taxes, as well as for court ordered garnishments, savings programs, repayments for loans taken against the savings programs, benefit plans, insurance and other similar programs (collectively, the "***Canadian Deductions***"). The Debtors' average monthly Canadian Deductions is approximately \$51,000. As noted above, ADP provides the Debtors with services related to the management of the Canadian Deductions and certain other tax-related obligations.

85. As of the Petition Date, certain Canadian Employees are owed prepetition amounts related to their compensation. Where such amounts are owed, the applicable Canadian Deductions have not yet been taken. Additionally, the Debtors may not yet have forwarded to the various third parties noted above the payments that are attributable to the Canadian Deductions that have been withheld from the Workforces' paychecks. The Debtors estimate that, as of the Petition Date, accrued Canadian Deductions to be remitted total approximately \$51,000, all of which will become due and payable during the Interim Period. By this Motion, the Debtors request authority to make all payments and remittances that are due and owing on account of Canadian Deductions in the ordinary course of business including amounts owed to ADP on account of Canadian Deductions as they become due and owing in the ordinary course.

4. ***Other Compensation: PTO Obligations.***

86. The Debtors offer their Canadian Employees other forms of compensations, including PTO. Such forms of compensation are customary and necessary in order for the Debtors to retain qualified employees.

a. *PTO: Holiday, Sick Leave, and Vacation Time.*

87. The Debtors provide paid holidays for several dates annually which vary by the business segment in which the Canadian Employees work. All Canadian Employees are entitled to five paid scheduled holidays per year. Canadian Employees are granted additional paid holidays in accordance with recognized holidays of the Canadian province in which the Canadian Employee is employed.

88. The Debtors also provide paid sick leave to Canadian Employees. Generally, Canadian Employees are provided with 40 hours of sick leave per calendar year. Canadian Employees may carry over unused sick leave into subsequent years.

89. The Debtors also provide Canadian Employees with paid vacation time. Vacation time offered to Canadian Employees varies depending on which segment of the Debtors' business the Canadian Employee works in. In general, vacation time accrues based on an Employee's length of service to the Debtors. Canadian Employees working in the retail segment with less than five years of service to the Debtors accrue 80 hours of vacation time per year and in addition, receive 4% vacation eligible earnings. These Field Employees with 5 years of service but less than 10 years of service accrue 120 hours of vacation time per year and 6% vacation eligible earnings. FieldCanadian Employees with 10 or more years of service to the Debtors accrue 160 hours of vacation time per year and 8% in vacation eligible earnings.

90. Canadian Employees in the corporate segment with five or less years of service to the Debtors accrue 120 hours of vacation time per year and in addition, receive 6% vacation

eligible earnings. These Corporate Employees with 5 years of service but less than 10 years of service accrue 160 hours of vacation time per year and 8% vacation eligible earnings. Corporate Canadian Employees with 10 or more years of service to the Debtors accrue 200 hours of vacation time per year and 10% in vacation eligible earnings.

91. Canadian Employees, who are ‘directors’ with four or less years of service to the Debtors accrue 120 hours of vacation time per year and in addition, receive 6% vacation eligible earnings. These Corporate Employees with four years of service but less than 9 years of service accrue 160 hours of vacation time per year and 8% vacation eligible earnings. Director Canadian Employees with 9 or more years of service to the Debtors accrue 200 hours of vacation time per year and 10% in vacation eligible earnings.

92. The Debtors also offer bereavement leave to Canadian Employees following the death of a family member. Canadian Employees are granted three days of paid leave following the death of an immediate family member and one day of paid leave following the death of other family members.

93. The Debtors estimate that, as of the Petition Date, the aggregate accrued but unpaid PTO Obligations for all Canadian Employees total approximately \$1,080,000. This accrued amount, however, does not represent a true “cash” liability for the Debtors, as the Debtors anticipate that Canadian Employees will use most of their PTO in the ordinary course of business, and eligible Canadian Employees only receive cash payments on account of unused PTO upon termination or resignation, if at all.

94. Because PTO is an essential feature of the employment package provided to the Debtors’ Canadian Employees, and failure to provide this benefit would harm Employee morale

and encourage the premature departure of valuable Employees, the Debtors request authority to honor all of their PTO Obligations as and when they come due in the ordinary course of business.

5. ***Canadian Employee Benefits.***

95. The Debtors provide a wide array of benefits for their Employees located in Canada under a variety of benefit programs described in subsections (a)-(e) below (each of the programs in subsections (a)-(e), a “***Canadian Employee Benefit Program***” and such programs together, collectively “***Canadian Employee Benefit Programs***”). Full-time Canadian Employees are eligible for the Canadian Employee Benefit Programs (the “***Eligible Canadian Employees***”), however, some of the Canadian Employee Benefit Programs are available to all Canadian Employees, such as the Canadian Long-Term Disability and the Canadian Company Life Insurance (each as defined below).

96. Eligible Canadian Employees may enroll their dependents, including spouses, domestic partners, and children<sup>30</sup> in the Canadian Employee Benefit Programs. Children under age 21 that are not full-time students are not covered if they are working more than 30 hours per week. The Canadian Employee Benefit Programs include, amongst other things, medical, dental, and vision insurance programs, the Debtors’ prescription drug insurance program, and supplemental life insurance program.

a. ***Canadian Health Program***

97. The Debtors offer Canadian Employees health insurance (the “***Canadian Health Insurance Program***”) through the Canada Life Assurance Company (“***Canada Life***”). The Canadian Health Insurance Program provides Eligible Canadian Employees with medical

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<sup>30</sup> Eligible Canadian Employees may enroll children in that are (i) full-time student and 25 years old or younger; (ii) 26 or younger and a resident of Quebec; or (iii) disabled, regardless of age in the Canadian Benefits Programs.

care, prescription drug, vision and dental coverage, and related benefits (the “*Canadian Health Benefits*”). The Canadian Health Insurance Program is fully insured.

98. The Canadian Health Benefits are funded both through Employee contributions and by the Debtors. Approximately 67% of the cost of the Canadian Health Benefits is borne by the Debtors, and Employees contribute to the Canadian Health Benefits through payroll deductions to pay for the balance<sup>31</sup>. Thus, payments on account of the Canadian Health Benefits consist of both trust fund payments (*i.e.*, Employee contributions) and contributions from the Debtors. The Debtors’ total cost related to the Canadian Health Benefits, based on the Debtors’ most current enrollment data, is approximately \$42,000 per month. As of the Petition Date, the Debtors estimate that approximately \$42,000 in obligations are accrued and outstanding under the Canadian Health Benefits, all of which will come due during the Interim Period.

99. By this Motion, the Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the Canadian Health Benefits, in the ordinary course of business and in their sole discretion and to continue the Canadian Health Benefits, in the ordinary course of business postpetition.

b. *Life Insurance and Disability Insurance.*

100. The Debtors provide, or in certain cases offer the option of purchasing, certain types of life and disability insurance, including basic life and long-term disability insurance (collectively, the “*Canadian Disability Benefits*”), to all full-time Canadian Employees.

101. The Debtors offer each full-time Canadian Employee long-term disability coverage (“*Canadian Long-Term Disability*”) through Canada Life. The Canadian Long-Term Disability provides 60% of the Employee’s pre-disability salary, up to a maximum of \$6,000 per month. The

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<sup>31</sup> The Debtors are currently covering 100% of the costs of the Canadian Health Benefits for Furloughed Employees.

Debtors provide 67% of the premiums for the Canadian Long-Term Disability, with the remaining 33% paid by the Employee. The Debtors' total annual cost related to the Canadian Long-Term Disability, based on the Debtors' most current data, is approximately \$162,000. As of the Petition Date, the Debtors estimate that there are approximately \$9,000 in obligations outstanding on account of the Canadian Long-Term Disability.

102. The Debtors provide basic life insurance coverage ("*Canadian Company Life Insurance*") through Canada Life to all full time Canadian Employees. The Debtors fund 67% of the premiums under the Canadian Company Life Insurance. The Canadian Company Life Insurance provides for an amount equal to the Employee's annual earning subject to a minimum of \$25,000 and maximum of \$250,000. Upon a Canadian Employee reaching the age of 65, the benefits under the Canadian Company Life Insurance are reduced to \$10,000. Further, in the event that an Employee's policy under the Canadian Company Life Insurance terminates on or prior to that Employee's 65<sup>th</sup> birthday, such Employee is entitled to maintain coverage by obtaining an individual life insurance policy, provided that that Employee applies for such individual policy in writing and pays the first premium within 31 days after coverage under the Canadian Company Life Insurance terminates. As of the Petition Date, the Debtors estimate that there are approximately \$3,000 in obligations outstanding on account of the Canadian Company Life Insurance, approximately all of which will become due within the Interim Period.

103. By this Motion, the Debtors seek authority to make all payments or remittances for amounts attributable to the prepetition period and relating to the Canadian Disability Benefits, in the ordinary course of business and in their sole discretion and to continue the Canadian Disability Benefits postpetition in the ordinary course of business.

c. *Canadian Savings and Retirement Benefits.*

104. The Debtors offer Canadian Employees the option of enrolling in a registered retirement savings plan (the “*RRSP*”) administered by Canada Life. Generally, only full-time Canadian Employees, after three months of service to the Debtors are eligible to enroll in the RRSP. However, part-time Canadian Employees who work in Quebec are eligible to enroll in the RRSP after three months of employment with the Debtors. Under the RRSP, an eligible Canadian Employee may contribute a portion of his or her eligible earnings each year through pre-tax contributions to the RRSP, subject to certain limits. The Debtors match 100% of the first 3% of participating Canadian Employee contributions to the RRSP. In addition under the RRSP, an eligible Canadian Employee can establish an RRSP for his or her spouse or common law partner, to which such Canadian Employee can make contributions.

105. Under the RRSP, Employees are entitled to distributions at any time in the form of lump sum payments, annuities, or can transfer the balance of their RRSP to different retirement savings accounts.

106. The Debtors remit to Canada Life approximately \$20,000 on a bi-weekly basis through Employee payroll deferrals and contributed approximately \$15,000 per month on account thereof. As of the Petition Date, no amounts are outstanding in obligations related to the RRSP on account of Canadian Employees. By this Motion the Debtors seek authorization to continue the RRSP in the ordinary course of business.

d. *Non-Insider Severance.*

107. Canadian Employees are eligible to participate in the Severance Plans to the same extent as the U.S. Employees. Approximately 118 Canadian Employees have received severance under the Severance Plans and the Debtors have paid approximately \$1,030,000 in severance benefits to Canadian Employees in the twelve month period prior to the Petition Date. As of the



Petition Date, the Debtors have no accrued but unpaid liability to Canadian Employees on account of the Severance Plans. By this Motion, the Debtors seek to continue providing benefits under the Severance Plans in the ordinary course of business to eligible non-Insider Canadian Employees, subject to section 503(c) of the Bankruptcy Code, provided that the Debtors do not seek authority to make payments to Senior Employees under the Severance Plans pursuant to the Interim Order.<sup>32</sup>

e. *Canadian Miscellaneous Employee Benefits.*

108. The Debtors lease 11 vehicles for Canadian Employees to use for their commutes and travel between stores (the “*Canadian Car Leases*”). The Debtors pay approximately \$8,000 per month on account of the Canadian Car Leases. As of the Petition Date the Debtors owe approximately \$4,000 on account of the Canadian Car Leases, all of which will become payable during the Interim Period. The Debtors request the authority to continue to make postpetition payments related to the Canadian Car Leases as they come due in the ordinary course of business.

6. *Canadian Workers’ Compensation.*

109. Under the laws of the government of Canada as well as the various Canadian provinces in which they operate, the Debtors are required to maintain workers’ compensation policies administered by insurance boards set up by the applicable Canadian provinces (the “*Canadian Insurance Boards*”) to provide Canadian Employees with workers’ compensation coverage for claims arising from and related to their employment with the Debtors (the “*Canadian Workers’ Compensation Program*”). Injured workers residing in Canada are statutorily barred from suing their employers for work related injuries or diseases. Instead they must file for workers’ compensation benefits with the applicable Canadian Insurance Boards. The Debtors pay

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<sup>32</sup> For Field Employees who are Store Managers and associates in charge of a store undergoing GOB Sales, the Debtors are requesting authorization pursuant to the GOB Motion to pay GOB Store Closing Bonus payments to such Field Employees. For the avoidance of doubt the Debtors are not seeking authorization to make GOB Store Closing Bonus payments pursuant to this Motion.

monthly non-negotiable premiums calculated based on gross payroll, and can either receive a rebate or be required to pay an adjustment based on expected versus actual claim costs, at the end of the year after filing a reconciliation form. The Debtors' only costs associated with the Canadian Workers' Compensation Program are the non-negotiable premiums. The Debtors pay approximately \$7,000 per month in arrears to the Canadian Insurance Boards on account of non-negotiable premiums. As of the Petition Date, approximately \$25,600 is owed to the Canadian Insurance Boards, consisting of accrued and unpaid workers' compensation premiums. The Debtors estimate that approximately \$16,000 will become due and owing on account of the Canadian Workers' Compensation Program during the Interim Period. By this Motion, the Debtors request authority to continue their Canadian Workers' Compensation Program and pay any amounts due and owing in connection therewith. It is critical that the Debtors be permitted to continue the Canadian Workers' Compensation Program and to pay outstanding premiums because the failure to provide coverage may subject the Debtors and/or their officers to severe penalties.

**C. Universal Employee Benefits**

**1. Reimbursable Expenses.**

110. In the ordinary course of business, the Debtors reimburse certain Employees in connection with: (i) business expenses, (ii) relocation expenses and (iii) certain educational expenses, incurred by such Employees, which give rise to the Debtors' Reimbursable Expenses Obligations. By this Motion, the Debtors seek authority to pay all prepetition Reimbursable Expense Obligations (as described below) accrued and unpaid as of the Petition Date and to continue such practices on a postpetition basis in the ordinary course of business.

**a. Business Expenses.**

111. The Debtors routinely reimburse their Employees for travel, lodging, ground transportation and rental cars, meals, supplies, mobile phone chargers, and other business expenses

(collectively, the “**Business Expenses**”). The Debtors have issued approximately 280 corporate credit cards (the “**Corporate Credit Cards**”), through Chase to certain Employees to pay for these Business Expenses.<sup>33</sup> Employees may also incur out-of-pocket Business Expenses and seek reimbursement for their Business Expenses from the Debtors. Generally, an Employee requesting reimbursement must submit a reimbursement request through the Debtors’ reimbursement system, SAP Concur, within 14 days of incurring the Business Expense. All claimed Business Expenses (whether charged to the Corporate Credit Cards or out-of-pocket), are subject to a review and approval process. The Debtors estimate that, as of the Petition Date, approximately \$20,000 of out-of-pocket Business Expenses, not including amounts outstanding on the Corporate Credit Cards, are accrued and unpaid on account of Employee Business Expenses, \$6,000 of which will become due and owing within the Interim Period.

b. *Relocation Expenses.*

112. In the ordinary course of business, the Debtors cover relocation expenses for certain Employees on a case by case basis (the “**Relocation Expenses**”), pursuant to various relocation policies maintained by the Debtors, including, (i) the Homeowner Relocation Policy (the “**Homeowner Policy**”), (ii) the Renter Relocation Policy (the “**Renter Policy**”), (iii) the Household Goods Move Policy (the “**Household Goods Policy**”), and (iv) the Lump-Sum Relocation Policy (the “**Lump-Sum Policy**”) (collectively, the “**Relocation Policies**”). Pursuant to the Relocation Policies, Employees are eligible for reimbursement of Relocation Expenses if (i) at the request of the Debtors, the Employee relocates at least 50 miles further than the distance between the

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<sup>33</sup> The Debtors are separately seeking to continue to maintain the Corporate Credit Card program and to pay prepetition amounts owing related to the Corporate Credit Cards pursuant to the *Motion of Debtors for Orders (A) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (B) Authorizing Continuation of Existing Deposit Practices, (C) Authorizing Continuation of Intercompany Transactions, and (D) Granting Administrative Claim Status to Postpetition Intercompany Claims*, filed contemporaneously herewith.

Employee's former residence and former job site and (ii) the Employee signs a repayment agreement under which a portion or all of the reimbursed Relocation Expenses would have to be returned to the Debtors upon a voluntary termination within 24-months of the Employee's relocation.

113. Under the Homeowner Policy, the Debtors provides reimbursement for (i) house hunting costs, (ii) costs related to the sale of the Employee's existing home, and (iii) moving expenses. In addition, the Debtors provide other payments and benefits under the Homeowner Policy, such as a (i) home sale bonus, capped at \$5,000 if the Employee sells his or her house within 60 days and (ii) temporary living accommodations on a case by case basis.

114. Under the Renter Policy, the Debtors provide reimbursement for (i) rental hunting costs, (ii) moving expenses, and (iii) cost related to lease cancellation, if applicable, for up to two months' rent. In addition, the Debtors provide temporary living accommodations on a case by case basis.

115. Pursuant to the Household Goods Policy, eligible Employees are entitled to reimbursement for expenses incurred on account of moving normal household goods, up to a maximum of 5,000 pounds. The Household Goods Policy is separate and in addition to the moving expense reimbursements provided under the Homeowner Policy and Renter Policy.

116. Under the Lump-Sum Policy, the Debtors provide a one-time lump payment to the eligible Employee to cover relocation expenses.

117. As of the Petition Date, the Debtors estimate that no amounts accrued prior to the Petition Date are owed to Employees on account of Relocation Expenses. The Debtors request authority to continue the Relocation Policies in the ordinary course of business on a postpetition

basis and reimburse Employees for any Relocation Expenses that become due and owing pursuant to the Relocation Policies during these Chapter 11 Cases.

c. *Education Assistance Programs.*

118. The Debtors encourage the development of the professional skills of their Employees through a tuition reimbursement plan. All full-time Employees who have been employed by, and provided full-time service to, the Debtors for at least one year, and who have an overall internal performance rating of “satisfactory,” may be eligible for reimbursement for educational expenses related to undergraduate or graduate degrees, up to a maximum of \$3,000 per calendar year (the “*Tuition Reimbursable Expenses*” and together with the Relocation Expenses and the Business Expenses, collectively, the “*Reimbursable Expenses*”). If an Employee has received reimbursement for the Tuition Reimbursable Expenses and voluntarily terminates their employment with the Debtors within 12 months of receiving such reimbursement, the Employee is required to repay any reimbursements received in the preceding calendar year. As of the Petition Date, the Debtors estimate there is approximately \$14,000 in approved but unpaid Tuition Reimbursable Expenses, that Employees may be entitled to, subject to such Employees satisfying the requirements noted above. By this Motion, the Debtors request authority to pay any amounts owed on account of the Tuition Reimbursable Expenses as they come due in the ordinary course of business.

2. *Retirement Bonuses.*

119. In addition, the Debtors offer bonuses to certain Employees upon retirement based on years of service to the Debtors (the “*Retirement Bonuses*”). All full-time Employees who have worked at least 20 years for the Debtors are entitled to a Retirement Bonus upon retirement. Employees who retire after 20 years of service may be entitled to \$500 and Employees with over

20 years of service may be entitled to \$1,000 upon retirement. As of the Petition Date, the Debtors do not owe any amounts to Employees on account of the Retirement Bonuses.

3. ***Discount Policy.***

120. The Debtors offer two discount policies: (i) an Employee discount policy (the “***Employee Discount Policy***”) and (ii) a retiree discount policy (the “***Retiree Discount Policy***”) and together with the Employee Discount Policy, the “***Discount Policies***”) in order to incentivize all active and former Employees of the Debtors to use the Debtors’ products. In general, the Discount Policies provide a 20% discount on any merchandise purchases in any of the Debtors’ retail stores. The Debtors do not incur any cash obligations in connection with the Discount Policies.

**D. The Debtors’ ICs and Temporary Employees Obligations**

121. The Debtors incur Wage Obligations on account of their ICs and Temporary Employees whom are employed in the United States and Canada. These ICs and Temporary Employees are provided by the Staffing Agencies. The Debtors pay certain of the Staffing Agencies monthly and others weekly on account of the ICs and Temporary Employees provided by such Staffing Agency. On average, the Debtors spend approximately \$637,000 per month on account of the ICs and Temporary Employees. The Debtors estimate that, as of the Petition Date, they owe approximately \$637,000 to the Staffing Agencies on account of the ICs and Temporary Employees, of which all will become due and owing within the Interim Period. By this Motion, the Debtors seek authority to pay all amounts owed on account of the ICs and Temporary Employees in the ordinary course of business.

**III. HONORING OF PREPETITION WORKFORCE OBLIGATIONS**

122. The Debtors request authority to pay or provide, as they become due, all prepetition Workforce Obligations that are described in this Motion. The Debtors estimate that the aggregate

amount of the prepetition Workforce Obligations described above is approximately \$23,931,283, as set forth in the table in section 10 of this Motion.

123. Due to the disruption and uncertainty that typically accompanies a Chapter 11 filing, the Debtors believe that the continuity and competence of their Workforce would be jeopardized if the relief requested herein is not granted. Specifically, if the Debtors fail to honor and pay prepetition Wage Obligations, Reimbursable Expenses Obligations and Benefits Obligations, in the ordinary course of business, the Debtors' Workforce will suffer extreme personal hardship and, in some cases, may be unable to pay their basic living expenses. This hardship would have a highly negative impact on Workforce morale and productivity, thereby resulting in immediate and irreparable harm to the Debtors' continuing operations and their estates. Accordingly, the Debtors have determined that payment of these amounts is vital to preventing the loss of key members of the Workforce during the pendency of the Chapter 11 Cases and to maintaining the continuity and stability of the Debtors' operations.

#### **IV. POSTPETITION CONTINUATION OF WORKFORCE PROGRAMS**

124. The Debtors also request confirmation of their right to continue to honor and perform their obligations with respect to all of the Workforce Programs.<sup>34</sup> The Workforce Programs are essential to the Debtors' efforts to maintain Workforce morale, reward performance through certain incentives, minimize attrition, and preserve the continuity and stability of the Debtors' operations. The Debtors believe that the expenses associated with the Workforce Programs are reasonable and cost-efficient in light of the potential attrition, loss of morale, loss of productivity, and disruption of business operations that would occur if the Workforce Programs

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<sup>34</sup> For the avoidance of doubt the Debtors will not make any payments to Insiders under any of the Incentive Programs absent a further order of this court authorizing such payments.

were discontinued. Notwithstanding the foregoing, the Debtors reserve the right to evaluate all Workforce Programs and to make such modifications, including terminating any particular plan, program, or policy, as may be necessary or appropriate during the pendency of the Chapter 11 Cases.

## V. PAYMENTS TO NON-EMPLOYEE DIRECTORS

125. In the ordinary course of business, the Debtors pay fees (the “*Non-Employee Director Fees*”) for the services of ten non-Employee directors of Debtor, GNC Holdings, Inc. (the “*Non-Employee Directors*”). The Non-Employee Directors are paid in cash and restricted stock awards on account of their board service and service on any board committees. The Non-Employee Directors are paid on a quarterly basis for services conducted during the prospective Fiscal Quarter.

126. The Debtors also reimburse the Non-Employee Directors for all properly documented expense claims for out-of-pocket expenses wholly, exclusively, and necessarily incurred to attend orientation, board, committee, or shareholder meetings and fulfill related duties, in accordance with the Debtors’ overall corporate travel and expense policy (the “*Non-Employee Director Expenses*”). The Debtors pay approximately \$270,000 in the aggregate per Fiscal Quarter to the Non-Employee Directors on account of Non-Employee Director Fees and Non-Employee Director Expenses.

127. The Non-Employee Directors’ service is necessary for the continued management of the Debtors and, accordingly, it is essential that the Debtors be authorized to pay all Non-Employee Director Fees and any Non-Employee Director Expenses incurred by the Non-Employee Directors that have accrued as of the Petition Date. As of the Petition Date, the Debtors estimate that no Non-Employee Director Fees are accrued and unpaid. In addition, the Debtors are not aware of any accrued and unpaid Non-Employee Director Expenses as of the Petition Date.



Nonetheless, by this Motion, the Debtors request the authority to reimburse any unpaid Non-Employee Director Expenses incurred by the Non-Employee Directors prior to the Petition Date. The Debtors seek authority to continue to pay the Non-Employee Director Fees and Non-Employee Director Expenses in the ordinary course of business on a postpetition basis.

## **VI. PAYMENTS TO ADMINISTRATORS**

128. With respect to the Workforce Programs described above, the Debtors contract with several vendors, as described in more detail above, to administer and deliver payments or other benefits to their Workforce (the “*Administrators*”). The Debtors’ Administrators include but are not limited to, ADP, GeoBlue, Alight, Rethink, MetLife, Allstate, the U.S. Disability Providers, Fidelity, Aon, Louis Plung, BAML, Prudential, General American, New England Life, the Workers’ Compensation Providers, and Canada Life. The Debtors pay these Administrators fees and expenses incurred in connection with providing such services. As of the Petition Date, the Debtors estimate they owe approximately \$252,800 to the Administrators, approximately \$230,800 of which will come due during the Interim Period.

129. In conjunction with the Debtors’ payment of the Workforce Obligations and continued performance under the Workforce Programs, the Debtors believe that it is necessary to obtain specific authorization to pay any claims of the Administrators on a postpetition basis, including prepetition claims to the extent necessary, to ensure uninterrupted delivery of certain benefits to the Workforce. The Debtors believe that the Administrators may fail to adequately and timely perform or may terminate their services to the Debtors unless the Debtors pay the Administrators’ prepetition claims for administrative services rendered and expenses incurred. A need to engage replacement Administrators postpetition likely would cause significant disruption to the payment of benefits and other obligations to the Workforce. Accordingly, the Debtors

submit that the payment of claims owed to the Administrators is in the best interest of the Debtors' estates.

## **VII. HONORING OF PREPETITION CHECKS**

130. Prior to the Petition Date, the Debtors paid certain of their prepetition Workforce Obligations with checks that had not been presented for payment as of the Petition Date. In order to ensure the orderly payment of any prepetition Workforce Obligations, the Debtors request that the Court enter an order authorizing the Debtors' banks to honor any such checks that are drawn on the Debtors' accounts, and authorizing the banks to rely on the representations of the Debtors as to which checks are subject to this Motion. To the extent that any such checks are nevertheless refused payment, the Debtors additionally request authority to replace any checks or electronic fund transfers that may be dishonored and to reimburse any related expenses that may be incurred as a result of any bank's failure to honor a prepetition check or electronic fund transfer.

### **BASIS FOR RELIEF**

#### **I. HONORING ALL PREPETITION WORKFORCE OBLIGATIONS IS A SOUND EXERCISE OF BUSINESS JUDGMENT AND THEREFORE SHOULD BE APPROVED.**

131. The Debtors should be authorized to honor all prepetition Workforce Obligations on the terms set forth in the Proposed Orders, as it reflects a sound exercise of their business judgment. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor "may use, sell, or lease, other than in the ordinary course of business, property of the estate" after notice and a hearing. 11 U.S.C. § 363(b)(1). Generally, the debtor is only required to "show that a sound business purpose" justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring "good business reason" for use under section 363(b) of the Bankruptcy Code). This standard prohibits other parties from second-guessing the debtor's business judgment

if the debtor has shown that the proposed use will benefit the debtor's estate. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct."); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.").

132. For the reasons discussed herein, paying their prepetition Workforce Obligations reflects a sound exercise of business judgment. If the Debtors do not pay the Workforce Obligations, their businesses and operations will suffer from falling morale and potential losses of key members of the Workforce, all at the most inopportune moment as the Debtors transition into chapter 11 and work to maximize value. On the other hand, demonstrating the Debtors' commitment to their Workforce will help engender goodwill, enthusiasm, and loyalty. Therefore, the Debtors submit that this Court should authorize the relief requested in this Motion.

## **II. HONORING ALL PREPETITION WORKFORCE OBLIGATIONS IS NECESSARY TO THE SUCCESS OF THE DEBTORS' REORGANIZATION AND THEREFORE SHOULD BE APPROVED.**

133. In addition, the Debtors should be authorized to honor their prepetition Workforce Obligations as set forth in the Proposed Orders because doing so is necessary to the success of their reorganization. Section 105(a) of the Bankruptcy Code provides that a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). Courts have interpreted this provision to authorize payments on prepetition claims where the payments are essential to the success of the debtor's reorganization under what is known as the "necessity of payment doctrine." *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) ("Thus, the 'necessity of payment' doctrine...teaches no more than, if a payment of a claim which arose prior to reorganization is

essential to the continued operation of the [debtor's business] during reorganization, payment may be authorized..."); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) “provides a statutory basis for payment of pre-petition claims” under necessity of payment doctrine); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (“The appropriate standard...is commonly referred to as ‘the necessity of payment doctrine.’”).

134. Paying their prepetition Workforce Obligations is a necessary step for the Debtors to achieve a successful restructuring. The Debtors' Workforce is a fundamental building block of their operations, from each associate making individual sales in stores to supply chain managers overseeing the blocking and tackling of getting the Debtors' products on the shelves or delivered to customers' doorsteps and beyond. For every member of the Workforce, resignation or just flagging performance as a result of failing to pay their prepetition Workforce Obligations has the potential to harm the value of the Debtors' estates and reduce the likelihood of a successful reorganization. Accordingly, the Debtors should be authorized to pay their prepetition Workforce Obligations under section 105(a) of the Bankruptcy Code and the necessity of payment doctrine.

### **III. PAYMENT OF THE PRIORITY PORTION OF THE PREPETITION WORKFORCE OBLIGATIONS WILL NOT PREJUDICE CREDITORS.**

135. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code require that certain claims for prepetition wages, salaries, commissions, vacation, sick leave, sales commissions, and employee-benefit contributions be accorded priority in payment in an amount not to exceed \$13,650 for each individual. *See* 11 U.S.C. §§ 507(a)(4), (5). In chapter 11 cases, priority claims must be paid in full. Accordingly, granting the relief requested with respect to the priority portion of their prepetition Workforce Obligations will not adversely affect the Debtors' other unsecured creditors.

136. The Debtors do not believe that any individual Employee is owed prepetition amounts in excess of the priority cap. The amounts of certain prepetition Workforce Obligations, however, are unknown pending submission of claims, and, therefore, the Debtors do not know the exact amount due on account of each Employee for the prepetition period. To the extent that Employees are owed aggregate amounts in excess of the priority cap, or amounts that are otherwise not entitled to priority status, the Debtors submit that payment of their prepetition Workforce Obligations in such higher amounts or otherwise non-priority amounts is nonetheless justified under the authority discussed above.

#### **IV. CERTAIN PREPETITION WORKFORCE OBLIGATIONS ARE REQUIRED TO BE PAID BY LAW.**

137. The Debtors are subject to federal and state laws that require them to pay certain of their prepetition Workforce Obligations or risk suit or cancellation of their qualification to operate in certain jurisdictions. Foremost, Deductions on account of income tax withholdings obligations are derived from Employee funds and held in trust for the benefit of the related payees and, thus, do not constitute property of the Debtors' estates under section 541 of the Bankruptcy Code. *See Begier v. IRS*, 496 U.S. 53, 58–59 (1990); *see also In re Columbia Gas Sys., Inc.*, 997 F.2d 1039, 1059 (3d Cir. 1993) (concluding that property that debtor holds in trust—either express or constructive—does not become property of estate when debtor files for bankruptcy, and stating that “Congress clearly intended the exclusion by section 541(d) to include not only funds held in express trust, but also funds held in constructive trust”); *EBS Pension L.L.C. v. Edison Bros. Stores, Inc. (In re Edison Bros., Inc.)*, 243 B.R. 231, 235 (Bankr. D. Del. 2000) (same). Thus, the Debtors should be authorized to pay such Deductions regardless of when those Deductions accrued or were withheld.

138. Similarly, state laws require the Debtors to maintain the Workers' Compensation Policy. If the Debtors fail to maintain their workers' compensation program, state laws may prohibit the Debtors from operating in those states. Payment of all Workers' Compensation Claims is therefore crucial to the Debtors' continued operations and the success of the Debtors' restructuring. The Debtors therefore request that the Court authorize the Debtors to maintain their workers' compensation program.

**V. A LIMITED WAIVER OF THE AUTOMATIC STAY FOR WORKERS' COMPENSATION CLAIMS IS APPROPRIATE HERE.**

139. Section 362(a) of the Bankruptcy Code operates to stay "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title..." 11 U.S.C. § 362(a)(1). Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for "cause." *Id.* at § 362(d)(1). Cause exists here to modify the automatic stay to permit the Employees to proceed with Workers' Compensation Claims in the appropriate judicial or administrative forum. Staying the Workers' Compensation Claims could have a detrimental effect on the financial well-being and morale of the Employees.

**PROCESSING OF CHECKS AND  
ELECTRONIC FUND TRANSFERS SHOULD BE AUTHORIZED**

140. The Debtors have sufficient funds to pay any amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing and cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Workforce Obligations.

Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND  
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

141. Certain aspects of the relief requested herein are subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant this relief on an expedited basis if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

142. Additionally, with respect to any aspect of the relief sought herein that constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

**RESERVATION OF RIGHTS**

143. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable

nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

#### **NOTICE**

144. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; and (p) all parties requesting notice pursuant to Bankruptcy Rule 2002.

Notice of this Motion and any order entered hereon will be served in accordance with Local



Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

*[Remainder of page intentionally left blank.]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Orders, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Kara Hammond Coyle

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*Proposed Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. ___

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**INTERIM ORDER (A) AUTHORIZING  
PAYMENT OF CERTAIN PREPETITION WORKFORCE  
OBLIGATIONS, (B) AUTHORIZING CONTINUANCE OF WORKFORCE  
PROGRAMS, (C) AUTHORIZING PAYMENT OF WITHHOLDING AND PAYROLL-  
RELATED TAXES, AND (D) AUTHORIZING PAYMENT OF PREPETITION CLAIMS  
OWING TO WORKFORCE PROGRAM ADMINISTRATORS OR PROVIDERS**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an order (this “*Interim Order*”) (a) authorizing, but not directing, the Debtors, in their discretion, to pay, continue, or otherwise honor their prepetition Workforce Obligations; (b) confirming the Debtors’ authority to continue each of the Workforce Programs in the ordinary course of business; (c) authorizing the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes and other Deductions relating to the Workforce Obligations; and (d) authorizing the Debtors, in their discretion, to pay any prepetition claims owing to the Administrators in the ordinary course of

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

business; and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED, on an interim basis as set forth herein.
2. Aggregate payments authorized by this Interim Order shall not exceed \$13,092,600 absent further order of the Court.
3. Subject to the requirements of sections 507 (a)(4) and (a)(5) of the Bankruptcy Code, the Debtors are authorized but not directed, to pay or otherwise honor their prepetition Workforce Obligations to, or for the benefit of, the Workforce under the Workforce Programs. Such payments shall not exceed the amounts set forth in the table below in the aggregate without further order of the Court.

<b>Workforce Obligations</b>	<b>Approximate Interim Amount</b>
<b><i>U.S. Workforce Obligations</i></b>	
i. U.S. Wage Obligations (including U.S. Deductions)	\$9,360,000
ii. U.S. Incentive Obligations	\$98,000
iii. U.S. Benefits Obligations	\$1,268,000
iv. U.S. PTO Obligations	\$0
v. U.S. Workers' Compensation	\$473,000
<b>U.S. Total</b>	<b>\$11,199,800</b>
<b><i>Canadian Workforce Obligations</i></b>	
i. Canadian Wage Obligations (including Canadian Deductions)	\$901,000
ii. Canadian Incentive Obligations	\$44,000
iii. Canadian Benefits Obligations	\$58,000
iv. Canadian PTO Obligations	\$0
v. Canadian Workers' Compensation	\$16,000
<b>Canadian Total</b>	<b>\$1,019,000</b>
i. Reimbursable Expenses Obligations	\$6,000
<b>Non-Employee Director Fees and Expenses</b>	<b>\$0</b>
<b>Administrator Fees and Expenses</b>	<b>\$230,800</b>
<b>ICs and Temporary Employees</b>	<b>\$637,000</b>
<b>GRAND TOTAL</b>	<b>\$13,092,600</b>

4. The Debtors are authorized but not directed, to pay the Non-Employee Director Fees and Non-Employee Director Expenses, to the extent any amounts are accrued and unpaid.

5. The Debtors are authorized to (a) continue each of the Workforce Programs, in the ordinary course of business during the pendency of the Chapter 11 Cases in the manner and to the extent that such Workforce Programs were in effect immediately prior to the filing of the Chapter 11 Cases, and (b) continue to fund and to make payments in connection with the costs of and the

expenses incurred in the administration of any Workforce Program in the ordinary course of business.

6. The Debtors are authorized to maintain the NQDC Plan during the pendency of these Chapter 11 Cases, provided, however, that the Debtors are not authorized to make any distributions under the NQDC Plan absent further order of this Court.

7. Subject to the caps set forth in the table in paragraph 2 of this Interim Order, the Debtors are authorized to reimburse the Employees with respect to all Reimbursable Expenses Obligations incurred prior to the Petition Date. In addition, the Debtors are authorized to make direct payments to third parties owed amounts in connection with such Reimbursable Expenses Obligations.

8. The Debtors are authorized but not directed to pay any and all local, state, and federal withholding and payroll-related or similar taxes related to their prepetition Workforce Obligations and to withhold and pay amounts that are attributable to the Deductions, including, but not limited to, all withholding taxes, social security taxes, and Medicare taxes, whether such taxes relate to the period before or after the Petition Date.

9. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with any Workers' Compensation Claims in the appropriate judicial or administrative forum and the Debtors are authorized to continue their workers' compensation program and pay all prepetition amounts relating thereto in the ordinary course of business. This modification of the automatic stay pertains solely to Workers' Compensation Claims.

10. Subject to the caps set forth in the table in paragraph 2 of this Interim Order, the Debtors are authorized but not directed to pay amounts owed in connection with claims of the Administrators in connection with administering and delivering payments or providing other

services and benefits to the Workforce for prepetition services rendered and claims for reimbursement based on prepetition disbursements made by the Administrators. Such payments shall not exceed \$6,000 in the aggregate without further order of the Court

11. Subject to the caps set forth in the table in paragraph 2 of this Interim Order, the Debtors are authorized but not directed to pay prepetition amounts due and owing to the Staffing Agencies in connection with the provision of ICs and Temporary Employees and to continue to pay the Staffing Agencies for such services postpetition in the ordinary course of business.

12. Subject to the following proviso, the Debtors are authorized but not directed to continue the Incentive Programs and Severance Plans on a postpetition basis in the ordinary course of business, and in each case to pay any accrued amounts thereunder as they become due; provided that (i) no payments with respect to any Incentive Program or Severance Plan shall be made pursuant to this Interim Order to any individual Employee who is an Insider or a Senior Employee and (ii) nothing in this Interim Order shall be deemed to authorize the payment of any amounts in satisfaction of retention bonus or severance obligations that are prohibited by section 503(c) of the Bankruptcy Code.

13. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the Workforce Obligations, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.



14. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

15. Any authorization under this Interim Order to pay, and the payment of, any amounts on account of the Workforce Obligations shall not affect the Debtors' right to contest the amount or validity of any Workforce Obligation, including without limitation, any amounts that may be due to any taxing authority.

16. Notwithstanding anything to the contrary in this Interim Order, the Debtors retain their right to modify or terminate any Workforce Program to the extent that such right exists under the terms of the Workforce Program or as may be required by applicable law.

17. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

18. Notwithstanding anything contained in the Motion or this Interim Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a “*DIP Order*”), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

19. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Interim Order shall be effective and enforceable immediately upon entry hereof.

20. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

21. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

22. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

23. A hearing to consider entry of an order granting the Motion on a final basis (the “*Final Hearing*”) shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_\_ .m. (prevailing Eastern time). Any objections or responses to the entry of such an order must be filed on or before 4:00 p.m. (prevailing Eastern time) on \_\_\_\_\_, 2020, and served on (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (email: caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com), and 885 Third

Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel (jeffrey.mispagel@lw.com); and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); (c) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (d) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (e) counsel to the administrative agent under the DIP ABL FILO Facility, Simpson Thacher & Bartlett LLP, 425 Lexington Ave. New York, New York 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (email: squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); and (f) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: trigg.erin@dorsey.com and kohn.samuel@dorsey.com). In

the event that no objections to entry of the Proposed Final Order on the Motion are timely received, this Court may enter such Proposed Final Order without need for the Final Hearing.

24. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (___)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket Nos. ___ & ___

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**FINAL ORDER (A) AUTHORIZING  
PAYMENT OF CERTAIN PREPETITION WORKFORCE  
OBLIGATIONS, (B) AUTHORIZING CONTINUANCE OF WORKFORCE  
PROGRAMS, (C) AUTHORIZING PAYMENT OF WITHHOLDING AND PAYROLL-  
RELATED TAXES, AND (D) AUTHORIZING PAYMENT OF PREPETITION CLAIMS  
OWING TO WORKFORCE PROGRAM ADMINISTRATORS OR PROVIDERS**

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Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for an order, (this “*Final Order*”) (a) authorizing, but not directing, the Debtors, in their discretion, to pay, continue, or otherwise honor their prepetition Workforce Obligations; (b) confirming the Debtors’ authority to continue each of the Workforce Programs in the ordinary course of business; (c) authorizing the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes and other Deductions relating to the Workforce Obligations; and (d) authorizing the Debtors, in their discretion, to pay any prepetition claims owing to the Administrators in the ordinary course of

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); Lucky Oldco Corporation (7141); General Nutrition Investment Company (3878); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Government Services, LLC (2295); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Puerto Rico Holdings, Inc. (4559); GNC Puerto Rico, LLC (7234); and GNC China Holdco, LLC (0004). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

business; and this Court having reviewed the Motion, the First Day Declaration, and the Interim Order entered on [\_\_\_], 2020; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED, on a final basis as set forth herein.
2. Aggregate payments authorized by this Final Order shall not exceed \$23,931,283 in an aggregate final amount, inclusive of amounts paid pursuant to the Interim Order, or such higher amount as may be set forth in any budget governing postpetition financing or the use of cash collateral.
3. The Debtors are authorized but not directed, to pay or otherwise honor their prepetition Workforce Obligations to, or for the benefit of, the Workforce under the Workforce Programs.

4. The Debtors are authorized but not directed, to pay the Non-Employee Director Fees and Non-Employee Director Expenses, to the extent any amounts are accrued and unpaid.

5. The Debtors are authorized to (a) continue each of the Workforce Programs, in the ordinary course of business during the pendency of the Chapter 11 Cases in the manner and to the extent that such Workforce Programs were in effect immediately prior to the filing of the Chapter 11 Cases, and (b) continue to fund and to make payments in connection with the costs of and the expenses incurred in the administration of any Workforce Program in the ordinary course of business.

6. The Debtors are authorized to maintain the NQDC Plan during the pendency of these Chapter 11 Cases, provided, however, that the Debtors are not authorized to make any distributions under the NQDC Plan absent further order of this Court.

7. The Debtors are authorized to reimburse the Employees with respect to all Reimbursable Expenses Obligations incurred prior to the Petition Date. In addition, the Debtors are authorized to make direct payments to third parties owed amounts in connection with such Reimbursable Expenses Obligations.

8. The Debtors are authorized to pay any and all local, state, and federal withholding and payroll-related or similar taxes related to the Workforce Obligations and to withhold and pay amounts that are attributable to the Deductions, including, but not limited to, all withholding taxes, social security taxes, and Medicare taxes, whether such taxes relate to the period before or after the Petition Date.

9. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with any Workers' Compensation Claims in the appropriate judicial or administrative forum and the Debtors are authorized to continue their workers' compensation program and pay



all prepetition amounts relating thereto in the ordinary course of business. This modification of the automatic stay pertains solely to Workers' Compensation Claims.

10. The Debtors are authorized but not directed to pay amounts owed in connection with claims of the Administrators in connection with administering and delivering payments or providing other services and benefits to the Workforce for prepetition services rendered and claims for reimbursement based on prepetition disbursements made by the Administrators.

11. The Debtors are authorized but not directed to pay prepetition amounts due and owing to the Staffing Agencies in connection with the provision of ICs and Temporary Employees and to continue to pay the Staffing Agencies for such services postpetition in the ordinary course of business.

12. Subject to the following proviso, the Debtors are authorized but not directed to continue the Incentive Programs and Severance Plans on a postpetition basis in the ordinary course of business, and in each case to pay any accrued amounts thereunder as they become due; provided that (i) no payments with respect to any Incentive Program or Severance Plan shall be made pursuant to this Final Order to any individual Employee who is an Insider and (ii) nothing in this Final Order shall be deemed to authorize the payment of any amounts in satisfaction of retention bonus or severance obligations that are prohibited by section 503(c) of the Bankruptcy Code.

13. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the Workforce Obligations, whether those checks were

presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

14. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

15. Any authorization under this Final Order to pay, and the payment of, any amounts on account of the Workforce Obligations shall not affect the Debtors' right to contest the amount or validity of any Workforce Obligation, including without limitation, any amounts that may be due to any taxing authority.

16. Notwithstanding anything to the contrary in this Final Order, the Debtors retain their right to modify or terminate any Workforce Program to the extent that such right exists under the terms of the Workforce Program or as may be required by applicable law.

17. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify,

elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

18. Notwithstanding anything contained in the Motion or this Final Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a “*DIP Order*”), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

19. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Final Order shall be effective and enforceable immediately upon entry hereof.

20. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

21. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC. et al.

APPLICATION OF GNC HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AFFIDAVIT OF TRICIA TOLIVAR  
(sworn June 24, 2020)**

**Torys LLP**

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Lawyers for the Applicant



TAB3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) WEDNESDAY, THE 24TH  
 )  
JUSTICE KOEHNEN ) DAY OF JUNE, 2020

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C., 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC PARENT  
LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC., GENERAL  
NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY,  
LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL  
HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC HEADQUARTERS LLC, GUSTINE  
SIXTH AVENUE ASSOCIATES, LTD., GNC CANADA HOLDINGS, INC., GNC  
GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and GNC  
PUERTO RICO, LLC (the "**Debtors**")

APPLICATION OF GNC HOLDINGS, INC.,  
UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

**INTERIM ORDER  
(FOREIGN MAIN PROCEEDING)**

THIS APPLICATION, made by GNC Holdings, Inc. in its capacity as the proposed foreign representative (the "**Foreign Representative**") of the Debtors in respect of the proceedings commenced on June 23, 2020 in the United States Bankruptcy Court for the District of Delaware (the "**Foreign Proceedings**") for an Order substantially in the form enclosed in the Application Record, was heard by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Notice of Application, and the affidavit of Tricia Tolivar sworn June 24, 2020 (the “**GNC Affidavit**”), filed,

AND UPON HEARING the submissions of counsel for the Foreign Representative, and counsel for FTI Consulting Canada Inc. in its capacity as the proposed information officer (the “**Proposed Information Officer**”), and counsel for the proposed DIP Lenders and the Ad Hoc Group of Crossover Lenders (each as defined in the GNC Affidavit), counsel for the Canada Consultant (as defined in the GNC Affidavit), and no one else appearing although duly served as appears from the affidavits of service of Cathy Pellegrini and Tina Woo affirmed June 24, 2020, filed:

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

### **STAY OF PROCEEDINGS**

2. THIS COURT ORDERS that from the date hereof until and unless otherwise ordered by the Court (the “**Stay Period**”) no proceeding or enforcement process in any court or tribunal in Canada (each, a “**Proceeding**” and, collectively, “**Proceedings**”) including, without limitation, a Proceeding taken or that might be taken against the Debtors under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended, or the *Winding-up and Restructuring Act*, R.S.C., 1985, c. W-11, as amended, shall be commenced or continued against or in respect of the Debtors or affecting their business in Canada (the “**Business**”) or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate in Canada, including all proceeds thereof (the “**Property**”), except with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

3. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, agency, governmental or quasi-governmental body, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against, in respect of, or affecting the Debtors, or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies in the Foreign Proceedings, (ii) empower any of the Debtors to carry on any business in Canada which that Debtor is not lawfully entitled to carry on, or (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**").

### **NO INTERFERENCE WITH RIGHTS**

4. THIS COURT ORDERS that, during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by any of the Debtors in Canada, except with leave of this Court.

### **ADDITIONAL PROTECTIONS**

5. THIS COURT ORDERS that, during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services provided in respect of the Property or Business of the Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use in Canada of their, among other things, current premises, telephone numbers, facsimile numbers, internet addresses, and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with normal payment practices



of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the relevant Debtor(s), or as may be ordered by this Court.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

6. THIS COURT ORDERS that, during the Stay Period, and except as permitted by section 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current, or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a plan of reorganization in respect of the Debtors, if one is filed in the Foreign Proceeding, is recognized by this Court and becomes effective in accordance with its terms, or unless otherwise ordered by this Court.

### **NO SALE OF PROPERTY**

7. THIS COURT ORDERS that each of the Debtors is prohibited from selling or otherwise disposing of, outside the ordinary course of its business, any of its Property in Canada that relates to the Business and from selling or otherwise disposing of any of their other Property in Canada, provided, however, that nothing herein shall prevent the Debtors from seeking approval in the Foreign Proceeding or from this Court to sell or otherwise dispose of the Property.

### **SERVICE OF COURT MATERIALS**

8. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court

further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<<http://cfcanada.fticonsulting.com/GNCC>>’.

9. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors, the Foreign Representative, and the Information Officer are at liberty to serve or distribute this Order, any other materials, and orders in these proceedings, any notices, or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, or facsimile transmission to the Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the applicable Debtor and that any such service or distribution by courier, personal delivery, or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

10. THIS COURT ORDERS that any party may, from time to time, apply to this Court for such further or other relief as it may advise from time to time, including for directions in respect of the proper execution of this Order.

11. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Debtors and the Foreign Representative and respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors and the Foreign Representative as may be necessary or desirable to give effect to this Order or to assist the Debtors and the Foreign Representative, and their respective agents, in carrying out the terms of this Order.

12. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days’ notice to the Debtors, the Foreign Representative, the Proposed Information Officer and their respective counsel, counsel to the proposed DIP Lenders and the Ad Hoc Group of Crossover Lenders, and to any other party

or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order

13. THIS COURT ORDERS AND DECLARES that this Order shall be effective as of 12:01 a.m. on the date of this Order.

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The Honourable Justice Koehnen

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, c. C-36, AS AMENDED Court File No.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC. et al.

APPLICATION OF GNC HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**INTERIM ORDER  
(FOREIGN MAIN PROCEEDING)**

**Torys LLP**

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Toronto, ON M5K 1N2  
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Leora Jackson (LSO #: 68448L)  
Tel: 416.865.7547 | ljackson@torys.com

Lawyers for the Applicant



TAB4

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) WEEKDAY, THE #  
 )  
JUSTICE ) DAY OF JUNE, 2020  
 )

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C., 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC PARENT  
LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC., GENERAL  
NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY,  
LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL  
HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC HEADQUARTERS LLC, GUSTINE  
SIXTH AVENUE ASSOCIATES, LTD., GNC CANADA HOLDINGS, INC., GNC  
GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and GNC  
PUERTO RICO, LLC (the “**Debtors**”)

APPLICATION OF GNC HOLDINGS, INC.,  
UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

**INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)**

THIS APPLICATION, made by GNC Holdings, Inc. in its capacity as the foreign representative (the “**Foreign Representative**”) of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”) for an Order substantially in the form enclosed in the Application Record, was heard by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Notice of Application, the affidavit of Tricia Tolivar sworn June 24, 2020 (the “**GNC Affidavit**”) and the affidavit of ■ sworn June ■, 2020, all filed, and upon being provided with copies of the documents required by s. 46 of the CCAA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) is being sought,

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for FTI Consulting Canada Inc. in its capacity as the proposed information officer (the “**Proposed Information Officer**”), counsel for the DIP Lenders and the Ad Hoc Group of Crossover Lenders (each as defined in the GNC Affidavit), counsel for the Canada Consultant (as defined in the GNC Affidavit), and no one else appearing although duly served as appears from the affidavits of service of Cathy Pellegrini and Tina Woo affirmed June 24, 2020;

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **FOREIGN REPRESENTATIVE**

2. THIS COURT ORDERS AND DECLARES that the Foreign Representative is the “foreign representative” as defined in section 45 of the CCAA of the Debtors in respect of the cases commenced in the United States Bankruptcy Court for the District of Delaware by the Debtors pursuant to Chapter 11 of the *United States Bankruptcy Code* (the “**Foreign Proceeding**”).

## **CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING**

3. THIS COURT DECLARES that the centre of its main interests for each of the Debtors is the United States of America, and that the Foreign Proceeding is hereby recognized as a “foreign main proceeding” as defined in section 45 of the CCAA.

## **STAY OF PROCEEDINGS**

4. THIS COURT ORDERS that until otherwise ordered by this Court:

- (a) all proceedings taken or that might be taken against any Debtor under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;
- (b) further proceedings in any action, suit, or proceeding against any Debtor are restrained; and
- (c) the commencement of any action, suit, or proceeding against any Debtor is prohibited.

## **NO SALE OF PROPERTY**

5. THIS COURT ORDERS that, except with leave of this Court, each of the Debtors is prohibited from selling or otherwise disposing of:

- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
- (b) any of its other property in Canada.



## **GENERAL**

6. THIS COURT ORDERS that within 2 business days from the date of this Order, or as soon as practicable thereafter, the Foreign Representative shall cause to be published a notice substantially in the form attached to this Order as Schedule A, once a week for two consecutive weeks, in the Globe and Mail and La Presse.

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Debtors and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

8. THIS COURT ORDERS AND DECLARES that the Interim Order made on June 24, 2020 shall be of no further force and effect once this Order becomes effective, and that this Order shall be effective as of 12:01 a.m. Eastern Time on the date of this Order, provided that nothing herein shall invalidate any action taken in compliance with such Interim Order prior to the effective time of this Order.

9. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Debtors and the Foreign Representative and their counsel, the Proposed Information Officer and its counsel, to counsel for the DIP Lenders and the Ad Hoc Group of Crossover Lenders, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, c. C-36, AS AMENDED Court File No.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC. et al.

APPLICATION OF GNC HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)**

**Torys LLP**

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Lawyers for the Applicant



TAB5

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE )  
 )  
JUSTICE ) DAY OF ~~MONTH~~JUNE, ~~20YR~~2020  
 ) WEEKDAY, THE #

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C., 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF ~~THE [LIST DEBTOR NAMES](the "Debtors")~~A PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC  
PARENT LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC.,  
GENERAL NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT  
COMPANY, LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC  
INTERNATIONAL HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC  
HEADQUARTERS LLC, GUSTINE SIXTH AVENUE ASSOCIATES, LTD., GNC  
CANADA HOLDINGS, INC., GNC GOVERNMENT SERVICES, LLC, GNC PUERTO  
RICO HOLDINGS, INC. and GNC PUERTO RICO, LLC (the "Debtors")

APPLICATION OF ~~[NAME OF FOREIGN REPRESENTATIVE]~~GNC HOLDINGS,  
INC.,  
UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

INITIAL RECOGNITION ORDER  
(FOREIGN MAIN<sup>1</sup> PROCEEDING)

THIS APPLICATION,<sup>2</sup> made by ~~[NAME OF FOREIGN REPRESENTATIVE]~~GNC  
Holdings, Inc. in its capacity as the foreign representative (the "Foreign Representative") of

<sup>1</sup>Under section 47 the Canadian Court must be satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, and then determine if the foreign proceeding is a foreign "main" or a foreign "non-main" proceeding. If the Canadian Court recognizes a foreign proceeding as a "main" proceeding, then section 48 of the CCAA provides that the Court must grant certain relief, subject to any terms and conditions it considers appropriate. The provisions of this model Order are minimal, and based on the mandatory relief set out in section 48 of the CCAA with respect to a foreign main proceeding. As noted below, supplemental and other relief is set out in the model Supplemental Order (Foreign Main Proceeding).

<sup>2</sup>Part IV of the CCAA governs cross-border insolvencies.

the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "CCAA") for an Order substantially in the form enclosed in the Application Record, was heard ~~this day at 330 University Avenue,~~ by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Notice of Application, the affidavit of ~~[NAME]~~ Tricia Tolivar sworn ~~[DATE], [the preliminary report June 24, 2020 (the "GNC Affidavit") and the affidavit of [NAME], in its capacity as proposed information officer (the "Proposed Information Officer") dated [DATE] ■ sworn June ■, each 2020, all~~ filed, and upon being provided with copies of the documents required by s. 46 of the CCAA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) ~~[will be/is being]~~ sought,<sup>3</sup>

AND UPON HEARING the submissions of counsel for the Foreign Representative, ~~[counsel for the ETI Consulting Canada Inc. in its capacity as the proposed information officer (the "Proposed Information Officer"),] counsel for [OTHER PARTIES], and upon being advised that no other persons were served with the Notice of Application:~~<sup>4</sup> the DIP Lenders and the Ad Hoc Group of Crossover Lenders (each as defined in the GNC Affidavit), counsel for the Canada Consultant (as defined in the GNC Affidavit), and no one else appearing although duly served as appears from the affidavits of service of Cathy Pellegrini and Tina Woo affirmed June 24, 2020;

## SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated<sup>5</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

<sup>3</sup> In addition to the mandatory relief contained in this Order pursuant to section 48 of the CCAA, certain discretionary relief may be granted by the Court pursuant to section 49 of the CCAA. Examples of such discretionary relief are contained in a model Supplemental Order (Foreign Main Proceeding), also available on the Commercial List website.

<sup>4</sup> Revise to be consistent with the service recital in the Supplemental Order, if it is being sought concurrently.

<sup>5</sup> If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in the appropriate circumstances.

DOCSTOR: 22411527

**FOREIGN REPRESENTATIVE**

2. THIS COURT ORDERS AND DECLARES that the Foreign Representative is the "foreign representative" as defined in section 45 of the CCAA of the Debtors in respect of ~~[DESCRIBE FOREIGN PROCEEDING]~~ (the "the cases commenced in the United States Bankruptcy Court for the District of Delaware by the Debtors pursuant to Chapter 11 of the United States Bankruptcy Code (the "Foreign Proceeding")").

DOCSTOR: 22411527

## CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING

3. THIS COURT DECLARES that the centre of its main interests for each of the Debtors is ~~[FILING JURISDICTION FOR FOREIGN PROCEEDING]~~ [the United States of America](#),<sup>6</sup> and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding"<sup>7</sup> as defined in section 45 of the CCAA.

### STAY OF PROCEEDINGS<sup>8</sup>

4. THIS COURT ORDERS that until otherwise ordered by this Court:

- (a) all proceedings taken or that might be taken against any Debtor under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;
- (b) further proceedings in any action, suit, or proceeding against any Debtor are restrained; and
- (c) the commencement of any action, suit, or proceeding against any Debtor is prohibited.

### NO SALE OF PROPERTY<sup>9</sup>

5. THIS COURT ORDERS that, except with leave of this Court, each of the Debtors is prohibited from selling or otherwise disposing of:

- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
- (b) any of its other property in Canada.

<sup>6</sup> A "foreign main proceeding" as defined in section 45 of the CCAA is "a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests". Accordingly, the Court must make this determination in concluding that the proceeding being recognized is a foreign main proceeding. This determination should be made for each individual Debtor.

<sup>7</sup> A separate model order is being developed with respect to foreign non-main proceedings.

<sup>8</sup> The provisions of this paragraph 4 are based on section 48 of the CCAA. More comprehensive stay provisions are found in the model Supplemental Order (Foreign Main Proceeding).

<sup>9</sup> Based on section 48(d) of the CCAA.

DOCUMENT: 22411527

## GENERAL

6. THIS COURT ORDERS that ~~{without delay}~~ within ~~{NUMBER}~~ 2 business days from the date of this Order, or as soon as practicable thereafter<sup>10</sup>, the Foreign Representative shall cause to be published a notice substantially in the form attached to this Order as Schedule ~~{\*}~~ A,<sup>11</sup> once a week for two consecutive weeks, in ~~{NAME OF NEWSPAPER(S)}~~ the Globe and Mail and La Presse.<sup>12</sup>

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada; to give effect to this Order and to assist the Debtors and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

8. THIS COURT ORDERS AND DECLARES that ~~{the Interim-Initial}~~ Order made on ~~{DATE}~~ June 24, 2020 shall be of no further force and effect once this Order becomes effective, and that ~~{}~~ this Order shall be effective as of ~~{TIME}~~ 12:01 a.m. Eastern Time on the date of this Order~~{}~~, provided that nothing herein shall invalidate any action taken in compliance with such Interim ~~Initial~~ Order prior to the effective time of this Order.<sup>14</sup>

9. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Debtors and the Foreign Representative and their ~~respective~~ counsel, the Proposed Information Officer and its counsel, to counsel for the DIP Lenders and the Ad Hoc Group of Crossover Lenders, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

---

<sup>10</sup> Section 53 of the CCAA requires publication "without delay after the order is made". The alternative language, above, may provide more certainty as to when that publication must take place.

<sup>11</sup> The notice must contain information prescribed under the CCAA (section 53(b)).

<sup>12</sup> Section 53(b) of the CCAA requires that the Foreign Representative publish, unless otherwise directed by the Court, notice of the Recognition Order once a week for two consecutive weeks, in one or more newspapers in Canada specified by the Court. In addition, the Foreign Representative has ongoing reporting obligations pursuant to section 53(a) of the CCAA.

<sup>13</sup> This time should be after the effective time that the Foreign Representative was appointed in the Foreign Proceeding.

<sup>14</sup> If an Interim Initial Order was not made, references to an Interim Initial Order should be removed from this paragraph.



~~{ATTACH APPROPRIATE SCHEDULE(S)}~~

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985, c. C-36, AS      Court File No.  
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC. et  
al.

APPLICATION OF GNC HOLDINGS, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C., 1985, c. C-36, AS AMENDED

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at TORONTO

INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)

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Lawyers for the Applicant

Document comparison by Workshare 9.5 on Wednesday, June 24, 2020 2:32:14 AM

Input:	
Document 1 ID	file:///C:/Users/rmackinn/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/AJTSLMN7/MODEL - order-initial-recognition-order-foreign-main-proceeding-EN (1).DOC
Description	MODEL - order-initial-recognition-order-foreign-main-proceeding-EN (1)
Document 2 ID	interwovenSite://INVENTORYS1/TorysAtWork/29949597/5
Description	#29949597v5<TorysAtWork> - Draft Order -initial-recognition-order-foreign-main-proceeding - EN
Rendering set	Firm_Standard

Legend:	
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<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	

Padding cell	
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<b>Statistics:</b>	
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Insertions	68
Deletions	99
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	171



TAB6

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

THE HONOURABLE	)	WEEKDAY, THE #
	)	
JUSTICE	)	DAY OF JUNE, 2020

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C., 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC PARENT  
LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC., GENERAL  
NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY,  
LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL  
HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC HEADQUARTERS LLC,  
GUSTINE SIXTH AVENUE ASSOCIATES, LTD., GNC CANADA HOLDINGS, INC.,  
GNC GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and  
GNC PUERTO RICO, LLC (the "**Debtors**")

APPLICATION OF GNC HOLDINGS, INC.,  
UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*

**SUPPLEMENTAL ORDER**  
**(FOREIGN MAIN PROCEEDING)**

THIS APPLICATION, made by GNC Holdings, Inc. in its capacity as the foreign representative (the "**Foreign Representative**") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Notice of Application, the affidavit of Tricia Tolivar sworn June 24, 2020 (the "**GNC Affidavit**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the

submissions of counsel for the Foreign Representative, counsel for the proposed information officer, counsel for the DIP Lenders and the Ad Hoc Group of Crossover Lenders (each as defined in the GNC Affidavit), counsel for the Canada Consultant (as defined in the GNC Affidavit), and no one appearing for any other parties although duly served as appears from the affidavits of service of Cathy Pellegrini and Tina Woo affirmed June 24, 2020, and on reading the consent of FTI Consulting Canada Inc. to act as the information officer:

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **INITIAL RECOGNITION ORDER**

2. THIS COURT ORDERS that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated ■ (the “**Recognition Order**”).

3. THIS COURT ORDERS that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

## **RECOGNITION OF FOREIGN ORDERS**

4. THIS COURT ORDERS that the following orders (collectively, the “**Foreign Orders**”) of United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”) made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

- (a) Orders (a) enforcing the protections of 11 U.S.C. §§ 362, 365, 525, and 541(c) and (b) approving notice to customers, suppliers, and other stakeholders of



Debtors' non-Debtor global affiliates (“**Automatic Stay Comfort Order for Foreign Entities**”);

- (b) Orders (a) authorizing continued use of existing cash management system, including maintenance of existing bank accounts, checks, and business forms, (b) authorizing continuation of existing deposit practices, (c) authorizing continuation of intercompany transactions, and (d) granting administrative claim status to postpetition intercompany claims (“**Cash Management Order**”);
- (c) Orders (i) authorizing the Debtors to (a) file a consolidated creditor matrix, (b) file a consolidated top 30 creditors list, (c) modify requirements to file a list of, and provide notice to, all equity holders, and (d) redact portions of their consolidated creditor matrix and list of equity interest holders containing personal identification information, and (ii) approving notice procedures for certain customers (“**Consolidated Creditor Matrix Order**”);
- (d) Order authorizing payment of certain prepetition critical vendor claims (“**Critical Vendors Order**”);
- (e) Orders authorizing the Debtors to (i) maintain and administer prepetition customer programs and (ii) pay prepetition obligations related thereto (“**Customer Programs Order**”);
- (f) Interim Orders (i) authorizing the Debtors to (a) obtain senior secured postpetition financing, (b) grant liens and superpriority administrative expense status, (c) use cash collateral of prepetition secured parties, and (d) grant adequate protection to prepetition secured parties; (ii) schedule a final hearing pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (iii) granting related relief (the “**DIP Order**”);
- (g) Order establishing certain notice and hearing procedures for transfers of, or worthlessness deductions with respect to, common stock and convertible preferred stock of GNC Holdings (“**Equity Trading NOL Order**”);

- (h) Orders (a) authorizing rejection of certain unexpired leases effective as of the petition date and (b) granting related relief (“**Order from First Omnibus Motion to Reject Certain Unexpired Leases**”);
- (i) Order authorizing GNC Holdings to act as foreign representative of the Debtors (“**Foreign Representative Order**”);
- (j) Orders authorizing the Debtors to (a) pay prepetition insurance obligations and prepetition bonding obligations and (b) maintain their postpetition insurance coverage and bonding program (“**Insurance Order**”);
- (k) Order authorizing joint administration of Chapter 11 Cases (“**Joint Administration Order**”);
- (l) Orders (a) authorizing payment of prepetition lien claims and import claims and (b) confirming administrative expense priority of outstanding orders (“**Lien and Import Claims Order**”);
- (m) Order for appointment of Prime Clerk LLC as claims and noticing agent (“**Prime Clerk – Claims Agent Order**”);
- (n) Orders (a) authorizing rejection of certain unexpired leases effective as of the petition date and (b) granting related relief (“**Order from Second Omnibus Motion to Reject Certain Unexpired Leases**”);
- (o) Orders authorizing payment of prepetition taxes and fees (“**Tax Order**”);
- (p) Orders (a) authorizing rejection of certain unexpired leases effective as of the petition date and (b) granting related relief (“**Order from Third Omnibus Motion to Reject Certain Unexpired Leases**”);
- (q) Orders (a) prohibiting utility companies from altering or discontinuing service on account of prepetition invoices, (b) approving deposit as adequate assurance of payment, (c) establishing procedures for resolving requests by utility companies for additional assurance of payment, and (d) authorizing payment of any prepetition service fees (“**Utilities Order**”); and

- (r) Orders (a) authorizing payment of certain prepetition workforce obligations, (b) authorizing continuance of workforce programs, (c) authorizing payment of withholding and payroll-related taxes, and (d) authorizing payment of prepetition claims owing to workforce program administrators (“**Wages Order**”).

attached, collectively, as Schedule A to this Order,

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

#### **APPOINTMENT OF INFORMATION OFFICER**

5. THIS COURT ORDERS that FTI Consulting Canada Inc. (the “**Information Officer**”) is hereby appointed as an officer of this Court, with the powers and duties set out herein.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

6. THIS COURT ORDERS that until such date as this Court may order (the “**Stay Period**”) no proceeding or enforcement process in any court or tribunal in Canada (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Debtors or affecting their business (the “**Business**”) or their current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), except with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

7. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Debtors, or affecting the Business or the Property, are hereby stayed and suspended

except with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower any of the Debtors to carry on any business in Canada which that Debtor is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iv) prevent the filing of any registration to preserve or perfect a security interest, (v) prevent the registration of a claim for lien, (vi) prevent the DIP ABL FILO Lenders under the post-filing financing approved in the Foreign Proceedings pursuant to the DIP Order (the “**DIP ABL FILO Credit Agreement**”) or the agent thereunder (the “**DIP ABL FILO Agent**”) from making any filing or any registration contemplated by or consistent with the DIP ABL FILO Credit Agreement or the DIP Order, or (vii) prevent the DIP Term Lenders under the post-filing financing approved in the Foreign Proceedings pursuant to the DIP Order (the “**DIP Term Credit Agreement**”) or the agent thereunder (the “**DIP Term Agent**”) from making any filing or any registration contemplated by or consistent with the DIP Term Credit Agreement or the DIP Order.

#### **NO INTERFERENCE WITH RIGHTS**

8. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by any of the Debtors and affecting the Business in Canada, except with leave of this Court.

#### **ADDITIONAL PROTECTIONS**

9. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services provided in respect of the Property or Business of the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use in Canada of their current premises, bank accounts, telephone numbers, facsimile numbers, internet addresses, and domain names.

10. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current, or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

11. THIS COURT ORDERS that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

#### **OTHER PROVISIONS RELATING TO INFORMATION OFFICER**

12. THIS COURT ORDERS that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court at such times and intervals that the Information Officer considers appropriate with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) shall have full and complete access to the Property, including the premises, books, records, data including data in electronic form, and other financial documents of the Debtors, to the extent that is necessary to perform its duties arising under this Order; and

- (d) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. THIS COURT ORDERS that the Debtors and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by the Debtors or the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. THIS COURT ORDERS that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. THIS COURT ORDERS that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. THIS COURT ORDERS that the Information Officer may provide any creditor of a Debtor with information provided by the Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative, and the relevant Debtors may agree.

17. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer shall be paid by the Debtors their reasonable fees and disbursements incurred in

respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Debtors are hereby authorized and directed to pay the accounts of the Information Officer and counsel for the Information Officer on a weekly basis and, in addition, the Debtors are hereby authorized to pay to the Information Officer and counsel to the Information Officer retainers in the amounts of CDN\$350,000 to the Information Officer and CDN\$100,000 to its counsel to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

18. THIS COURT ORDERS that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose, the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer, if any, shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property in Canada, which charge shall not exceed an aggregate amount of CDN\$250,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 23 and 26 hereof.

## **INTERIM FINANCING**

20. THIS COURT ORDERS that the DIP ABL FILO Agent, for its own benefit and the benefit of the DIP ABL FILO Lenders, shall be entitled to the benefit of and is hereby granted a charge (the “**DIP ABL FILO Lenders’ Charge**”) on the Property in Canada, which DIP ABL FILO Lenders’ Charge shall be consistent with the liens and charges created by the DIP Order with respect to the Property in Canada, shall have the priority set out in paragraphs 23, 24 and 26 hereof, and shall not be enforced except in accordance with the terms of the DIP Order.

21. THIS COURT ORDERS that the DIP Term Agent, for its own benefit and the benefit of the DIP Term Lenders, shall be entitled to the benefit of and is hereby granted a charge

(the “**DIP Term Lenders’ Charge**” and together with the DIP ABL FILO Lenders’ Charge, the “**DIP Lenders’ Charges**”) on the Property in Canada, which DIP Term Lenders’ Charge shall be consistent with the liens and charges created by the DIP Order with respect to the Property in Canada, shall have the priority set out in paragraphs 23, 24 and 26 hereof, and shall not be enforced except in accordance with the terms of the DIP Order.

22. **THIS COURT ORDERS** that notwithstanding the foregoing or any provisions to the contrary contained in:

- (a) this Order;
- (b) the DIP ABL FILO Credit Agreement; or
- (c) the DIP Term Credit Agreement;

to the extent that the DIP ABL FILO Agent and the DIP Term Agent (collectively, the “**DIP Agents**”) have been granted a security interest hereunder in any shares or other equity interests in the capital stock (“**ULC Shares**”) of an issuer that is an unlimited company, unlimited liability company, or unlimited liability corporation under the laws of Canada or any of its provinces or political subdivisions (each a “**ULC**”), the Debtor that owns such ULC Shares will remain the sole registered and beneficial owner of such ULC Shares until such time as such ULC Shares are effectively transferred into the name of a DIP Agent, the DIP Lenders, or any of their successors or assigns (in either case, a “**ULC Beneficiary**”), or any other person or entity on the books and records of the applicable ULC. Nothing in this Order or the DIP Agreements is intended to and nothing in this Order or the DIP Agreements shall constitute the DIP Agents, any other ULC Beneficiary, or any other person or entity other than the applicable Debtor, a member or shareholder of a ULC for the purposes of the *Companies Act* (Nova Scotia), the *Business Corporations Act* (Alberta), the *Business Corporations Act* (British Columbia), and any other present or future laws governing ULCs (the “**ULC Laws**”) (whether listed or unlisted, registered, or beneficial) until such time as notice is given to such Debtor and further steps are taken pursuant hereto or thereto so as to register a DIP Agent, any other ULC Beneficiary, or such other person or entity, as specified in such notice, as the holder of the ULC Shares.



## **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

23. THIS COURT ORDERS that the Administration Charge shall have priority over both the DIP ABL FILO Lenders' Charge and the DIP Term Lenders' Charge on Property in Canada.

24. THIS COURT ORDERS that DIP Lenders' Charges as between them, shall have the priorities, with respect to Property in Canada, set forth in the DIP Order.

25. THIS COURT ORDERS that the filing, registration, or perfection of the Administration Charge or the DIP Lenders' Charges (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title, or interest filed, registered, recorded, or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record, or perfect the Charges.

26. THIS COURT ORDERS that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except for any validly perfected purchased money security interest of a secured creditor.

27. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Administration Charge or the DIP Lenders' Charges, unless the Debtors also obtain the prior written consent of the Information Officer and each of the DIP Agents.

28. THIS COURT ORDERS that the Administration Charge and the DIP Lenders' Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued

pursuant to *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”), or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions, or other similar provisions with respect to borrowings, incurring debt, or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, or other agreement (collectively, an “**Agreement**”) which binds any Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by a Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

29. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Debtor’s interest in such real property leases.

#### **SERVICE AND NOTICE**

30. THIS COURT ORDERS that that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the

Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL

<<http://cfcanada.fticonsulting.com/GNCC>>.

31. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors, the Foreign Representative, and the Information Officer are at liberty to serve or distribute this Order, any other materials, and orders in these proceedings, any notices, or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable Debtor and that any such service or distribution by courier, personal delivery, or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

32. THIS COURT ORDERS that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

33. THIS COURT ORDERS that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Debtor, the Business, or the Property.

34. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtors, the Foreign Representative, and the Information Officer and its respective agents in carrying out the terms of this Order.

35. THIS COURT ORDERS that each of the Debtors, the Foreign Representative, and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

36. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Debtors, the Foreign Representative, the Information Officer and its respective counsel, to counsel to the DIP Lenders and the Ad Hoc Group of Crossover Lenders, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

37. THIS COURT ORDERS that this Order shall be effective as of 12:01 a.m. Eastern Time on the date of this Order.

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**Schedule A**  
**US Court Orders**



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, c. C-36, AS AMENDED Court File No.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC. et al.

APPLICATION OF GNC HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)**

**Torys LLP**

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Lawyers for the Applicant



TAB7



Court File No.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE )  
 )  
JUSTICE ) DAY OF ~~MONTH~~JUNE, ~~20YR~~2020  
 ) WEEKDAY, THE #

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C., 1985, c. C -36, AS AMENDED

AND IN THE MATTER OF ~~THE [LIST DEBTOR NAMES](the "Debtors")~~A PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC  
PARENT LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC.,  
GENERAL NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT  
COMPANY, LUCKY OLD CO CORPORATION, GNC FUNDING INC., GNC  
INTERNATIONAL HOLDINGS INC., GNC CHINA HOLD CO, LLC, GNC  
HEADQUARTERS LLC, GUSTINE SIXTH AVENUE ASSOCIATES, LTD., GNC  
CANADA HOLDINGS, INC., GNC GOVERNMENT SERVICES, LLC, GNC PUERTO  
RICO HOLDINGS, INC. and GNC PUERTO RICO, LLC (the "Debtors")

APPLICATION OF ~~[NAME OF FOREIGN REPRESENTATIVE]~~GNC HOLDINGS, INC.,  
UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*

**SUPPLEMENTAL ORDER<sup>1</sup>**  
**(FOREIGN MAIN<sup>2</sup> PROCEEDING)**

<sup>1</sup>As noted in several footnotes in this model order, practice under Part IV of the CCAA is still developing, and as certain issues are determined by Canadian courts, this model order will be amended to reflect the development of the law in this area.

<sup>2</sup>If the Canadian Court has recognized a foreign proceeding as a "main" proceeding, then section 48 of the CCAA provides that the Court must grant certain relief, subject to any terms and conditions it considers appropriate. The provisions of the model Initial Recognition Order (Foreign Main Proceeding) fulfill the mandatory requirements of section 48 with respect to a foreign main proceeding. Section 49 of the CCAA also allows the Court to make any order that it considers appropriate for the protection of the debtor company's property or the interests of a creditor or creditors. This Supplemental Order contains discretionary relief that might be granted by the Court in the appropriate circumstances. The Model Order Subcommittee has attempted to make the provisions of this model Order consistent with similar provisions in other model Orders. Supplemental relief (whether contained in this Order or in subsequent Orders) may also include provisions dealing with the sale of assets, the recognition of critical vendors, a claims process, or any number of other matters, or may recognize foreign orders or laws granting such relief.

THIS APPLICATION, made by ~~[NAME OF FOREIGN REPRESENTATIVE]~~GNC Holdings, Inc. in its capacity as the foreign representative (the "Foreign Representative") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "CCAA") for an Order substantially in the form enclosed in the Application Record, was heard ~~this day at 330 University Avenue,~~by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Notice of Application, the affidavit of ~~[NAME] sworn [DATE],~~  
~~[the preliminary report of [NAME], in its capacity as proposed information officer dated [DATE]]~~Tricia Tolivar sworn June 24, 2020 (the "GNC Affidavit"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Foreign Representative, ~~[counsel for the proposed information officer,]~~counsel for [OTHER PARTIES], counsel for the DIP Lenders and the Ad Hoc Group of Crossover Lenders (each as defined in the GNC Affidavit), counsel for the Canada Consultant (as defined in the GNC Affidavit), and no one appearing for ~~[NAME]~~<sup>3</sup>any other parties although duly served as appears from the ~~affidavit~~affidavits of service of ~~[NAME] sworn [DATE],~~Cathy Pellegrini and Tina Woo affirmed June 24, 2020, and on reading the consent of ~~[NAME OF PROPOSED INFORMATION OFFICER]~~FTI Consulting Canada Inc. to act as the information officer:

## SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated<sup>4</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

## INITIAL RECOGNITION ORDER

2. THIS COURT ORDERS that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated ~~[DATE]~~[ ] (the "Recognition Order").

<sup>3</sup>~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1) and 11.52(1).~~

<sup>4</sup>~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in the appropriate circumstances.~~

3. THIS COURT ORDERS that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

#### RECOGNITION OF FOREIGN ORDERS<sup>5</sup>

4. THIS COURT ORDERS that the following orders (collectively, the **"Foreign Orders"** of **[NAME OF FOREIGN COURT]**) of **United States Bankruptcy Court for the District of Delaware (the "U.S. Court")** made in the Foreign Proceeding are hereby recognized and given full force and effect<sup>6</sup> in all provinces and territories of Canada pursuant to **Section** 49 of the CCAA:

(a) ~~[list Foreign Orders, or portions of Foreign Orders, copies of which should be attached as schedules to this Order], attached as Schedule A to this Order,~~ **Orders (a) enforcing the protections of 11 U.S.C. §§ 362, 365, 525, and 541(c) and (b) approving notice to customers, suppliers, and other stakeholders of Debtors' non-Debtor global affiliates ("Automatic Stay Comfort Order for Foreign Entities");**

(b) **Orders (a) authorizing continued use of existing cash management system, including maintenance of existing bank accounts, checks, and business forms, (b) authorizing continuation of existing deposit practices, (c) authorizing continuation of intercompany transactions, and (d) granting**

<sup>5</sup> This model Order adopts an approach that might be applicable to some foreign proceedings, but not others. For example, U.S. proceedings will typically generate court orders that will be brought to the Canadian Courts for recognition. Other jurisdictions may have statutory or regulatory rights (rather than court orders) that need to be recognized in Canada.

<sup>6</sup> Section 50 of the CCAA provides that an order made under Part IV of the CCAA may be made on any terms and conditions that the Court considers appropriate in the circumstances. Such terms and conditions would presumably need to be consistent with the orders or laws applicable to the foreign proceeding, subject to (i) the limitations imposed by section 48(2) (an order made under section 48(1) must be consistent with any order made under the CCAA), and (ii) the limitations imposed in section 61 (which provides that the Court may apply legal or equitable rules that are not inconsistent with the CCAA, and further that the Court may refuse to do something that would be contrary to public policy). All of the Foreign Orders should be reviewed by counsel with these issues in mind, and the Court may require confirmation from counsel that there is nothing in the Foreign Orders that is inconsistent with the CCAA or that would raise the public policy exception referenced in section 61 of the CCAA.

administrative claim status to postpetition intercompany claims (“Cash Management Order”);

- (c) Orders (i) authorizing the Debtors to (a) file a consolidated creditor matrix, (b) file a consolidated top 30 creditors list, (c) modify requirements to file a list of, and provide notice to, all equity holders, and (d) redact portions of their consolidated creditor matrix and list of equity interest holders containing personal identification information, and (ii) approving notice procedures for certain customers (“Consolidated Creditor Matrix Order”);
- (d) Order authorizing payment of certain prepetition critical vendor claims (“Critical Vendors Order”);
- (e) Orders authorizing the Debtors to (i) maintain and administer prepetition customer programs and (ii) pay prepetition obligations related thereto (“Customer Programs Order”);
- (f) Interim Orders (i) authorizing the Debtors to (a) obtain senior secured postpetition financing, (b) grant liens and superpriority administrative expense status, (c) use cash collateral of prepetition secured parties, and (d) grant adequate protection to prepetition secured parties; (ii) schedule a final hearing pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (iii) granting related relief (the “DIP Order”);
- (g) Order establishing certain notice and hearing procedures for transfers of, or worthlessness deductions with respect to, common stock and convertible preferred stock of GNC Holdings (“Equity Trading NOL Order”);
- (h) Orders (a) authorizing rejection of certain unexpired leases effective as of the petition date and (b) granting related relief (“Order from First Omnibus Motion to Reject Certain Unexpired Leases”);

- (i) Order authorizing GNC Holdings to act as foreign representative of the Debtors (“Foreign Representative Order”);
- (j) Orders authorizing the Debtors to (a) pay prepetition insurance obligations and prepetition bonding obligations and (b) maintain their postpetition insurance coverage and bonding program (“Insurance Order”);
- (k) Order authorizing joint administration of Chapter 11 Cases (“Joint Administration Order”);
- (l) Orders (a) authorizing payment of prepetition lien claims and import claims and (b) confirming administrative expense priority of outstanding orders (“Lien and Import Claims Order”);
- (m) Order for appointment of Prime Clerk LLC as claims and noticing agent (“Prime Clerk – Claims Agent Order”);
- (n) Orders (a) authorizing rejection of certain unexpired leases effective as of the petition date and (b) granting related relief (“Order from Second Omnibus Motion to Reject Certain Unexpired Leases”);
- (o) Orders authorizing payment of prepetition taxes and fees (“Tax Order”);
- (p) Orders (a) authorizing rejection of certain unexpired leases effective as of the petition date and (b) granting related relief (“Order from Third Omnibus Motion to Reject Certain Unexpired Leases”);
- (q) Orders (a) prohibiting utility companies from altering or discontinuing service on account of prepetition invoices, (b) approving deposit as adequate assurance of payment, (c) establishing procedures for resolving requests by utility companies for additional assurance of payment, and (d) authorizing payment of any prepetition service fees (“Utilities Order”);  
and

(r) Orders (a) authorizing payment of certain prepetition workforce obligations, (b) authorizing continuance of workforce programs, (c) authorizing payment of withholding and payroll-related taxes, and (d) authorizing payment of prepetition claims owing to workforce program administrators (“Wages Order”).

attached, collectively, as Schedule A to this Order,

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

#### **APPOINTMENT OF INFORMATION OFFICER<sup>7</sup>**

5. THIS COURT ORDERS that ~~[NAME OF INFORMATION OFFICER]~~ETL Consulting Canada Inc. (the “Information Officer”) is hereby appointed as an officer of this Court, with the powers and duties set out herein.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY<sup>8</sup>**

6. THIS COURT ORDERS that until such date as this Court may order (the “Stay Period”) no proceeding or enforcement process in any court or tribunal in Canada (each, a “Proceeding”) shall be commenced or continued against or in respect of the Debtors or affecting their business (the “Business”) or their current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all

<sup>7</sup> ~~The appointment of an Information Officer is not required by the CCAA, and is in the discretion of the Court. Information Officers are normally trustees licensed under the *Bankruptcy and Insolvency Act*.~~

<sup>8</sup> ~~The Model Order Subcommittee notes that a “Non-Derogation of Rights” section (found, for example, in the Model Initial CCAA Order) has not been included in this model Order. In a “full” CCAA proceeding, which would typically include a stay of proceedings made under section 11.02 of the CCAA, a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, and 11.1(2). However, in a Part IV proceeding, section 48 of the CCAA (rather than section 11.02 of the CCAA) is being relied upon when a stay of proceedings is being sought, and despite the wording of section 48(2) and section 61, it is not clear if the restrictions applicable to a section 11.02 stay of proceedings are also applicable to a section 48 stay of proceedings, or would restrict the recognition of foreign proceedings or foreign orders that include a stay of proceedings broader than permitted in a section 11.02 stay of proceedings. These issues remain open for determination by Canadian courts.~~

proceeds thereof (the “Property”), except with leave of this Court,<sup>9</sup> and any and all Proceedings currently under way against or in respect of any of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

7. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the Debtors ~~[or the Foreign Representative]~~, or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower any of the Debtors to carry on any business in Canada which that Debtor is not lawfully entitled to carry on, (iii) ~~]~~ affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, ~~]~~ (iv) prevent the filing of any registration to preserve or perfect a security interest, ~~or~~ (v) prevent the registration of a claim for lien, (vi) prevent the DIP ABL FILO Lenders under the post-filing financing approved in the Foreign Proceedings pursuant to the DIP Order (the “DIP ABL FILO Credit Agreement”) or the agent thereunder (the “DIP ABL FILO Agent”) from making any filing or any registration contemplated by or consistent with the DIP ABL FILO Credit Agreement or the DIP Order, or (vii) prevent the DIP Term Lenders under the post-filing financing approved in the Foreign Proceedings pursuant to the DIP Order (the “DIP Term Credit Agreement”) or the agent thereunder (the “DIP Term Agent”) from making any filing or any registration contemplated by or consistent with the DIP Term Credit Agreement or the DIP Order.

#### **NO INTERFERENCE WITH RIGHTS**

8. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal

<sup>9</sup>~~Where the Court considers it to be appropriate, it may authorize other Persons, including a Court appointed Information Officer, to provide consent to any Proceeding. This same comment applies in paragraphs 6 through 11 of this Order.~~

right, contract, agreement, licence, or permit in favour of or held by any of the Debtors and affecting the Business in Canada, except with leave of this Court.

## ADDITIONAL PROTECTIONS

9. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services provided in respect of the Property or Business of the Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use in Canada of their current premises, bank accounts, telephone numbers, facsimile numbers, internet addresses, and domain names.<sup>10</sup>

10. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current, or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.<sup>11</sup>

11. THIS COURT ORDERS that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its

<sup>10</sup> ~~Section 11.01 of the CCAA provides that no order made under section 11 or 11.02 has the effect of (a) prohibiting a person from requiring immediate payment for goods, services, etc. provided after the order is made, or (b) requiring the further advance of money or credit. It is unclear whether these provisions also apply to an order made pursuant to section 48 of the CCAA. Please see the discussion in footnote 8 above.~~

<sup>11</sup> ~~Counsel should specifically address with the Court whether this provision is appropriate in the context of this Order.~~



appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

## OTHER PROVISIONS RELATING TO INFORMATION OFFICER

12. THIS COURT ORDERS that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court at ~~least once every [three] months~~ such times and intervals that the Information Officer considers appropriate with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- ~~(c) — in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;~~
- (c) ~~(d)~~ shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtors, to the extent that is necessary to perform its duties arising under this Order; and
- (d) ~~(e)~~ shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. THIS COURT ORDERS that the Debtors and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by the Debtors or the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii)

provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. THIS COURT ORDERS that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. THIS COURT ORDERS that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. THIS COURT ORDERS that the Information Officer may provide any creditor of a Debtor with information provided by the Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative, and the relevant Debtors may agree.

17. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer shall be paid by the Debtors their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Debtors are hereby authorized and directed to pay the accounts of the Information Officer and counsel for the Information Officer on a ~~{TIME INTERVAL}~~ weekly basis and, in addition, the Debtors are hereby authorized to pay to the Information Officer and counsel to the Information Officer, retainers in the ~~amount[s] of \$[AMOUNT OR- AMOUNTS] [, respectively,]~~ amounts of CDN\$350,000 to the Information Officer and

CDN\$100,000 to its counsel to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

18. THIS COURT ORDERS that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose, the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer, if any, shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property in Canada, which charge shall not exceed an aggregate amount of ~~[\$[AMOUNT]]~~, CDN\$250,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs ~~{24}~~23 and ~~{23}~~26 hereof.

#### INTERIM FINANCING<sup>12</sup>

20. THIS COURT ORDERS that the DIP ~~Lender~~ABL FILO Agent, for its own benefit and the benefit of the DIP ABL FILO Lenders, shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's ABL FILO Lenders' Charge") on the Property in Canada, which DIP ~~Lender's~~ABL FILO Lenders' Charge shall be consistent with the liens and charges created by the ~~[DESCRIBE DIP LOAN ORDER MADE IN THE FOREIGN PROCEEDING]~~, ~~provided however that the DIP Lender's Charge (i) shall not secure an obligation that exists before this Order is made,<sup>13</sup> and (ii) DIP Order~~ with respect to the Property in Canada, shall have the priority set out in paragraphs ~~{24}~~23, 24 and ~~{23}~~26 hereof, and ~~further provided that the DIP Lender's Charge shall not be enforced except in accordance with leave~~the terms of ~~this Court~~the DIP Order.

<sup>12</sup> Optional — if there is a DIP Lender which takes security over assets in Canada or in respect of Canadian Debtors. If more comprehensive interim financing provisions are required, please refer to the model CCAA Initial Order for sample provisions.

<sup>13</sup> This restriction appears in the interim financing provisions found in section 11.2(1) of the CCAA. It is unclear if this prohibits the recognition of a foreign order that creates a DIP Lender's Charge securing pre-filing obligations.

21. THIS COURT ORDERS that the DIP Term Agent, for its own benefit and the benefit of the DIP Term Lenders, shall be entitled to the benefit of and is hereby granted a charge (the “DIP Term Lenders’ Charge” and together with the DIP ABL FILO Lenders’ Charge, the “DIP Lenders’ Charges”) on the Property in Canada, which DIP Term Lenders’ Charge shall be consistent with the liens and charges created by the DIP Order with respect to the Property in Canada, shall have the priority set out in paragraphs 23, 24 and 26 hereof, and shall not be enforced except in accordance with the terms of the DIP Order.

22. THIS COURT ORDERS that notwithstanding the foregoing or any provisions to the contrary contained in:

- (a) this Order;
- (b) the DIP ABL FILO Credit Agreement; or
- (c) the DIP Term Credit Agreement;

to the extent that the DIP ABL FILO Agent and the DIP Term Agent (collectively, the “DIP Agents”) have been granted a security interest hereunder in any shares or other equity interests in the capital stock (“ULC Shares”) of an issuer that is an unlimited company, unlimited liability company, or unlimited liability corporation under the laws of Canada or any of its provinces or political subdivisions (each a “ULC”), the Debtor that owns such ULC Shares will remain the sole registered and beneficial owner of such ULC Shares until such time as such ULC Shares are effectively transferred into the name of a DIP Agent, the DIP Lenders, or any of their successors or assigns (in either case, a “ULC Beneficiary”), or any other person or entity on the books and records of the applicable ULC. Nothing in this Order or the DIP Agreements is intended to and nothing in this Order or the DIP Agreements shall constitute the DIP Agents, any other ULC Beneficiary, or any other person or entity other than the applicable Debtor, a member or shareholder of a ULC for the purposes of the *Companies Act* (Nova Scotia), the *Business Corporations Act* (Alberta), the *Business Corporations Act* (British Columbia), and any other present or future laws governing ULCs (the “ULC Laws”) (whether listed or unlisted, registered, or beneficial) until such time as notice is given to

such Debtor and further steps are taken pursuant hereto or thereto so as to register a DIP Agent, any other ULC Beneficiary, or such other person or entity, as specified in such notice, as the holder of the ULC Shares.

#### VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

**23.** ~~21.~~ THIS COURT ORDERS that the ~~priorities of the~~ Administration Charge shall have priority over both the DIP ABL FILO Lenders' Charge and the DIP Lender's Term Lenders' Charge, as among them, shall be as follows:<sup>14</sup> on Property in Canada.

~~First—Administration Charge (to the maximum amount of \$[AMOUNT]); and~~

~~Second—DIP Lender's Charge.~~

**24.** THIS COURT ORDERS that DIP Lenders' Charges as between them, shall have the priorities, with respect to Property in Canada, set forth in the DIP Order.

**25.** ~~22.~~ THIS COURT ORDERS that the filing, registration, or perfection of the Administration Charge or the DIP ~~Lender's Charge~~ Lenders' Charges (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title, or interest filed, registered, recorded, or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record, or perfect the Charges.

**26.** ~~23.~~ THIS COURT ORDERS that each of the ~~Administration Charge and the DIP Lender's Charge~~ Charges (all as constituted and defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, except for any validly perfected purchased money security interest of a secured creditor.

<sup>14</sup> ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

27. ~~24.~~ THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Administration Charge or the DIP ~~Lender's Charge~~ Lenders' Charges, unless the Debtors also obtain the prior written consent of the Information Officer and each of the DIP ~~Lender~~ Agents.

28. ~~25.~~ THIS COURT ORDERS that the Administration Charge and the DIP ~~Lender's Charge~~ Lenders' Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA *Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3* (the "BIA"), or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions, or other similar provisions with respect to borrowings, incurring debt, or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, or other agreement (collectively, an "Agreement") which binds any Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by a Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

**29.** ~~26.~~ THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Debtor's<sup>15</sup> interest in such real property leases.

## SERVICE AND NOTICE

**30.** ~~27.~~ THIS COURT ORDERS that that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at

~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~~~<https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>~~

shall be valid and effective service. Subject to Rule ~~17.05~~**17.05**, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ~~'<@>'~~~~<http://cfcanada.fticonsulting.com/GNCC>~~.

**31.** ~~28.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors, the Foreign Representative, and the Information Officer are at liberty to serve or distribute this Order, any other materials, and orders in these proceedings, any notices, or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable Debtor and that any such service or distribution by courier, personal delivery, or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## GENERAL

**32.** ~~29.~~ THIS COURT ORDERS that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

33. ~~30.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Debtor, the Business, or the Property.

34. ~~31.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the ~~[JURISDICTION OF THE FOREIGN PROCEEDING]~~ United States of America, to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtors, the Foreign Representative, and the Information Officer and ~~their~~ its respective agents in carrying out the terms of this Order.

35. ~~32.~~ THIS COURT ORDERS that each of the Debtors, the Foreign Representative, and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

~~33.— THIS COURT ORDERS that the Guidelines for Court to Court Communications in Cross-Border Cases developed by the American Law Institute and attached as Schedule [\*] hereto is adopted by this Court for the purposes of these recognition proceedings.~~

36. ~~34.~~ THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Debtors, the Foreign Representative, the Information Officer and ~~their~~ its respective counsel, to counsel to the DIP Lenders and the Ad Hoc Group of Crossover Lenders, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.



37. ~~35.~~ THIS COURT ORDERS that this Order shall be effective as of ~~[TIME]~~12:01 a.m.  
Eastern Time on the date of this Order.<sup>15</sup>

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<sup>15</sup> ~~The time referenced in this Order should be the same time as the time referenced in the Recognition Order, if the two Orders are made on the same date. In the absence of such a provision, Rule 59.01 of the Ontario Rules of Civil Procedure appears to indicate that an Order is effective as of 12:01 a.m. on the date of the Order (Rule 59.01 provides that "An order is effective from the date on which it is made, unless it provides otherwise").~~

Schedule A  
US Court Orders

29948087

|

[29948087](#)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985, c. C-36, AS AMENDED

Court File No.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC. et al.

APPLICATION OF GNC HOLDINGS, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985, c. C-36, AS AMENDED

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at TORONTO

SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)

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Lawyers for the Applicant

~~{ATTACH APPROPRIATE SCHEDULES}~~

Document comparison by Workshare 9.5 on Wednesday, June 24, 2020 2:29:24 AM

Input:	
Document 1 ID	file:///C:/Users/rmackinn/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/AJTSLMN7/MODEL - order-supplemental-recognition-order-foreign-main-proceeding-EN (1).DOC
Description	MODEL - order-supplemental-recognition-order-foreign-main-proceeding-EN (1)
Document 2 ID	interwovenSite://INVENTORYS1/TorysAtWork/29948087/8
Description	#29948087v8<TorysAtWork> - Draft Order-supplemental-recognition-order-foreign-main-proceeding-EN
Rendering set	Firm_Standard

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<del>Moved deletion</del>	
Inserted cell	
Deleted cell	

Moved cell	
Split/Merged cell	
Padding cell	

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	Count
Insertions	213
Deletions	149
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	368



TAB8



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) WEEKDAY, THE #  
 )  
JUSTICE ) DAY OF JUNE, 2020  
 )

IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC PARENT  
LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC., GENERAL  
NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY,  
LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL  
HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC HEADQUARTERS LLC, GUSTINE  
SIXTH AVENUE ASSOCIATED, LTD., GNC CANADA HOLDINGS, INC., GNC  
GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and GNC  
PUERTO RICO, LLC

APPLICATION OF GNC HOLDINGS, INC.,  
UNDER SECTION 46 OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C 36, AS AMENDED

**CONSULTING AGREEMENT APPROVAL ORDER**

THIS MOTION, made by GNC Holdings, Inc. (“GNC”, in its capacity as the foreign representative of the Debtors (as defined below, and GNC, in such capacity, the “**Foreign Representative**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an Order among other things, approving the consulting agreement entered into between, on the one hand, General Nutrition Centres Company (“**GNC Canada**”) and on the other hand, a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (collectively, the “**Consultant**”) dated as of ■, 2020 (the

“**Consulting Agreement**”), and other related relief was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the affidavit of ■ sworn June ■, 2020, and the Exhibits thereto, and the pre-filing report of FTI Consulting Canada Inc. in its capacity as proposed Information Officer dated June ■, 2020 (the “**Pre-Filing Report**”), and on hearing the submissions of counsel for the Foreign Representative and the other entities listed on Schedule “A” hereto (collectively, the “**Debtors**”), FTI Consulting Canada Inc. in its capacity as court-appointed Information Officer (the “**Information Officer**”), the Ad Hoc Group of Crossover Lenders, the Consultant, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of ■ sworn ■ on ■, 2020.

### **Service**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein, shall have the meaning ascribed thereto in the Affidavit of ■ dated ■.

### **Recognition of Chapter 11 Store Closings Order**

3. THIS COURT ORDERS that the Chapter 11 Store Closings Order (as defined in the ■, and a copy of which is attached as Schedule “■” to this Order) of the United States Bankruptcy Court for the District of Delaware made in the bankruptcy cases commenced by the Debtors under Chapter 11 of the United States Bankruptcy Code (the “**Bankruptcy Case**”) is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA, and, while this Order provides additional guidance in terms of dealing with Property (as defined below) in Canada, in the event of any conflict between the terms of the Chapter 11 Store Closings Order and this Order, the Chapter 11 Store Closings Order shall govern.

### **Approval of the Consulting Agreement**

4. THIS COURT ORDERS that the Consulting Agreement, including, without limitation, the Canadian Sale Guidelines attached thereto as **Schedule “A”** (the “**Canadian Sale Guidelines**”), and the transactions contemplated under the Consulting Agreement, are hereby approved with such minor amendments to the Consulting Agreement (but not the Canadian Sale Guidelines) as the Debtors, with the consent of the Information Officer, the Ad Hoc Group of Crossover Lenders, and the Consultant may deem necessary and agree to in writing. The Debtors, and each of them are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Consulting Agreement, including, without limitation, the Canadian Sale Guidelines, and the transactions contemplated therein.

### **The Sale**

5. THIS COURT ORDERS that the Debtors, or any of them, with the assistance of the Consultant, are authorized and directed to conduct the Sale in accordance with the Chapter 11 Store Closings Order, this Order, the Canadian Store Closing Procedures, the Canadian Sale Guidelines and the Consulting Agreement and to advertise and promote the Sale within the Stores in Canada, all in accordance with the foregoing. If there is a conflict between the Chapter 11 Store Closings Order, the Canadian Store Closing Procedures, the Canadian Sale Guidelines and the Consulting Agreement, the order of priority of documents to resolve each conflict is as follows: (1) the Chapter 11 Store Closings Order; (2) this Order; (3) the Canadian Store Closing Procedures; (4) the Canadian Sale Guidelines; and (5) the Consulting Agreement.

6. THIS COURT ORDERS that the Debtors, with the assistance of the Consultant, are authorized to market and sell the Merchandise and, subject to the Canadian Sale Guidelines, the Offered FF&E, free and clear of all liens, claims, encumbrances, security interests, hypothecs, prior claims, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or arise or come into existence following the date of this Order (in each case, whether

contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “**Claims**”), including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by the the Supplemental Order dated ■, 2020, each made in the within proceedings, and any other charges hereinafter granted by this Court in the within proceedings; and (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”), which Claims will attach instead to the proceeds received from the Merchandise and the Offered FF&E, other than amounts due and payable to the Consultant pursuant to the Consulting Agreement, in the same order and priority as the Claims existed as at the date hereof.

7. THIS COURT ORDERS that, subject to the terms of the Chapter 11 Store Closings Order, this Order, the Canadian Store Closing Procedures and the Canadian Sale Guidelines, the Consultant shall have the right to use the Stores in Canada and all related store services, furniture, trade fixtures and equipment, including the FF&E, located at the Stores in Canada, and other assets of the Debtors as designated under the Consulting Agreement for the purpose of conducting the Sale, and for such purposes, the Consultant shall be entitled to the benefit of the stay of proceedings provided for in the Initial Recognition Order, as applicable and as such stay may be extended from time to time.

8. THIS COURT ORDERS that until the Sale Termination Date which, for greater certainty, shall be the earlier of September 30, 2020, and the effective date of a lease rejection in the Bankruptcy Case, the Consultant shall have access to the Stores in Canada in accordance with the applicable leases and the Canadian Store Closing Procedures and the Canadian Sale Guidelines on the basis that the Consultant is assisting the Debtors and the Debtors have granted the right of access to the applicable Store to the Consultant. To the extent that the terms of the applicable leases are in conflict with any term of the the Chapter 11 Store Closings Order, this Order, the Canadian Store Closing Procedures or the Canadian Sale Guidelines, the terms of the Chapter 11 Store Closings Order, this Order, the Canadian Store Closing Procedures and the Sale Guidelines shall govern.

9. THIS COURT ORDERS that nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of the leases for the Stores in Canada. Nothing contained in this Order, the Canadian Store Closing Procedures or the Canadian Sale Guidelines shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease.

10. THIS COURT ORDERS that nothing herein is, or shall be deemed to be, a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

11. THIS COURT ORDERS that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any intellectual property licensor, the trademarks of the Debtors, or any of them, trade names and logos, customer/marketing lists, website and social media accounts as well as all licenses and rights granted to the Debtors, or any of them, to use the trade names, and logos of third parties, relating to and used in connection with the operation of the Stores in Canada solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Chapter 11 Store Closings Order , this Order, the Canadian Store Closing Procedures, the Canadian Sale Guidelines and the Consulting Agreement.

### **Consultant Liability**

12. THIS COURT ORDERS that the Consultant shall act solely as an independent consultant to the Debtors and that it shall not be liable for any claims against the Debtors, or any of them, other than as expressly provided for in the Chapter 11 Store Closings Order, Consulting Agreement, the Canadian Sale Guidelines and the Canadian Store Closing Procedures, and more specifically:

- (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores in Canada or the assets located therein or associated therewith or of the employees of the Debtors, or any of them, located at the Stores in Canada or any other property of the Debtors, or any of them;
- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any

legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and

- (c) the Debtors shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events and closings occurring at the Stores in Canada during and after the term of the Consulting Agreement, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

#### **Consultant as Unaffected Creditor**

13. THIS COURT ORDERS that, subject only to paragraph 7 of this Order, the Consultant shall not be affected by the stay of proceedings in respect of the Debtors, or any of them, and shall be entitled to exercise its remedies under the Consulting Agreement in respect of claims of the Consultant pursuant to the Consulting Agreement (collectively, the “**Consultant’s Claims**”).

14. THIS COURT ORDERS that notwithstanding the terms of any order issued by this Court in the within proceedings, the Debtors, or any of them, shall not be entitled to repudiate, disclaim or resiliate the Consulting Agreement or any of the agreements, contracts or arrangements in relation thereto entered into with the Consultant.

15. THIS COURT ORDERS that the Debtors, or any of them, are hereby authorized and directed to remit, in accordance with the Consulting Agreement, or any other agreement contract or arrangement in relation thereto, all amounts that become due to the Consultant thereunder.

16. THIS COURT ORDERS that subject to any order made in the Bankruptcy Case, no Claims shall attach to any amounts payable by the Debtors, or any of them, to the Consultant pursuant to the Consulting Agreement, including any amounts that must be reimbursed by the Debtors, or any of them, to the Consultant, and the Debtors, or any of them, shall pay any such

amounts to the Consultant free and clear of all Claims, notwithstanding any enforcement or other process, all in accordance with the Consulting Agreement.

17. THIS COURT ORDERS that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the “**BIA**”), in respect of the Debtors, or any of them, or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Debtors, or any of them; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (each, an “**Agreement**”) that binds the Debtors, or any of them, the Consulting Agreement, including, without limitation, the Canadian Sale Guidelines attached thereto as **Schedule “A”** (the “**Canadian Sale Guidelines**”), and the transactions contemplated thereby, including, without limitation, the payment of amounts due to the Consultant, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors, or any of them, and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of the Debtors, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

18. THIS COURT ORDERS that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Debtors, or any of them, or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Debtors, or any of them; (d) the provisions of any federal or provincial statute; or (e) any Agreement that binds the Debtors, or any of them, any obligation to clean up or repair any of the leased premises contained in this Order, the Canadian Store Closing Procedures or the Canadian Sale Guidelines, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors, or any of them, and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of the Debtors, or any of them, nor shall they, or any of them, constitute or be deemed to be a

preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

**General**

19. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

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## **Schedule "A"**

### **List of Debtors**

GNC Holdings, Inc.

General Nutrition Centres Company

GNC Parent LLC

GNC Corporation

General Nutrition Centers, Inc.

General Nutrition Corporation

General Nutrition Investment Company

Lucky Oldco Corporation

GNC Funding Inc.

GNC International Holdings Inc.

GNC China Holdco, LLC

GNC Headquarters LLC

Gustine Sixth Avenue Associated, Ltd.

GNC Canada Holdings, Inc.

GNC Government Services, LLC

GNC Puerto Rico Holdings, Inc.

GNC Puerto Rico, LLC

**Schedule “B”**

**Canadian Sale Guidelines**

## CANADIAN SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of General Nutrition Centres Company (the “**Merchant**”). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a joint venture comprised of Tiger Asset Solutions Canada, ULC and GA Retail Canada ULC (collectively with their respective U.S. affiliates, the “**Consultant**”) and the Merchant dated as of June 18, 2020 (the “**Consulting Agreement**”).

1. Except as otherwise expressly set out herein, and subject to: (i) the orders granted or issued in the Merchant’s bankruptcy case (the “**Bankruptcy Case**”) in the United States of America under Chapter 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) and the Merchant’s ancillary proceedings (the “**CCAA Proceedings**”) in Canada under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) before the Ontario Superior Court of Justice (Commercial List) (individually, an “**Order**”, and, collectively, the “**Orders**”); or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a “**Landlord**” and, collectively, the “**Landlords**”) and approved by each of the Consultant and Information Officer in writing, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected Landlords are privy for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remains open during its normal hours of operation provided for in its respective Lease until the respective Sale Termination Date for such Store. The Sale at the Stores shall end by no later than the Sale Termination Date. Rent payable under the respective Leases shall be paid in accordance with the terms of the Orders, as applicable.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as an “everything on sale”, an “everything must go”, a “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “going out of business” or a “liquidation” sale it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon written request from a Landlord, the Landlord’s counsel, the Merchant or the Information Officer, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail to such Landlord(s) or to their counsel of record and the Information Officer. Where the provisions of the Lease conflict with these Canadian Sale Guidelines, these Canadian Sale Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise

contained in the sign package, including “you pay” or “topper” signs). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with “store closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord’s concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are “final”.
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord, and no advertising trucks shall be used on a Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are materially in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.
10. Subject to the terms of paragraph 9 above, the Consultant may sell Offered FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise

the sale of Offered FF&E consistent with these guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the applicable Landlord, acting reasonably. Additionally, the purchasers of any Offered FF&E sold during the Sale shall only be permitted to remove the Offered FF&E either through the back shipping areas designated by the applicable Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the Offered FF&E can fit in a shopping bag, with applicable Landlord's supervision as required by the applicable Landlord. The Consultant shall repair any damage to the Stores resulting from the removal of any Offered FF&E by Consultant or by third party purchasers of Offered FF&E from Consultant.

11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove Offered FF&E from the Stores. The Merchant will arrange a walk through with each Landlord that requests a walk through with the Consultant to identify the Offered FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or pursuant to the dispute resolution section of the Canadian Store Closing Procedures. If the Merchant has rejected the Lease governing such Store in accordance with the Bankruptcy Code, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for under the Bankruptcy Code), and the rejection of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a rejection notice is delivered to a Landlord pursuant to the Bankruptcy Code while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of such rejection, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the rejection, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the applicable Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or Offered FF&E at any of the Stores.
15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Consultant shall be Daniel Richer who may be reached by phone at 416-865-4445 or email at [dreicher@fasken.com](mailto:dreicher@fasken.com). Contact persons for the Merchant and the Information Officer are set out in the Canadian Store Closing Procedures. If the parties are unable to resolve the dispute between themselves, the notice and dispute sections of the Canadian Store

Closing Procedures shall be followed by the parties. For the duration of any such dispute, the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, for greater certainty, that if a banner has been hung in accordance with these Canadian Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.

16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Canadian Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Canadian Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court).

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC. et al.

APPLICATION OF GNC HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**CONSULTING AGREEMENT APPROVAL  
ORDER**

**Torys LLP**

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Lawyers for the Applicant



TAB9



Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC PARENT LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC., GENERAL NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY, LUCKY OLD CO CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL HOLDINGS INC., GNC CHINA HOLD CO, LLC, GNC HEADQUARTERS LLC, GUSTINE SIXTH AVENUE ASSOCIATES, LTD., GNC CANADA HOLDINGS, INC., GNC GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and GNC PUERTO RICO, LLC**

**APPLICATION OF GNC HOLDINGS, INC., UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**C O N S E N T**

FTI Consulting Canada Inc. ("FTI"), hereby consents to act as Information Officer in these proceedings pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, commenced by GNC Holdings, Inc. ("**GNC Holdings**") in accordance with the terms of an order substantially in the form requested by GNC Holdings, or as such order may be amended in a manner satisfactory to FTI.

**DATED** at Toronto, Ontario, this 23<sup>rd</sup> day of June 2020.

**FTI CONSULTING CANADA INC.**

Per:



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Name: Nigel Meakin

Title: Senior Managing Director

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND  
IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC., GENERAL  
NUTRITION CENTRES COMPANY, GNC PARENT LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS,  
INC., GENERAL NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY, LUCKY OLD CO  
CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL HOLDINGS INC., GNC CHINA HOLD CO, LLC, GNC  
HEADQUARTERS LLC, GUSTINE SIXTH AVENUE ASSOCIATES, LTD., GNC CANADA HOLDINGS, INC., GNC  
GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and GNC PUERTO RICO, LLC

Court File No.

APPLICATION OF GNC HOLDINGS, INC., UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, c. C-36, AS AMENDED

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at TORONTO

CONSENT

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**Lawyers for FTI Consulting Canada Inc.,  
in its capacity as Information Officer**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED Court File No.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC. et al.

APPLICATION OF GNC HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**APPLICATION RECORD  
(Recognition of Foreign Main Proceeding)**

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