

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 SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

APPLICANTS

**APPLICATION RECORD OF THE APPLICANTS**  
Volume 3

June 22, 2017

**OSLER, HOSKIN & HARCOURT LLP**  
Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M  
Email: mwasserman@osler.com

Jeremy Dacks LSUC# 41851R  
Email: jdacks@osler.com

Michael De Lellis LSUC# 48038U  
Email: mdelellis@osler.com

Karin Sachar LSUC# 59944E  
ksachar@osler.com  
Fax: 416.862.6666

Lawyers for the Applicants

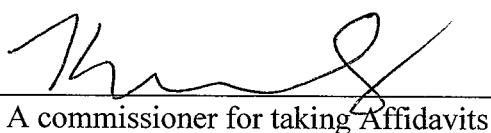
TO: SERVICE LIST

## **Table of Contents**

### **Tab**

1. Notice of Application
  - Schedule A List of Partnership
  - Schedule B Draft Initial Order
  - Schedule C Blackline of Draft Initial Order to Model Initial Order
2. Affidavit of Billy Wong, sworn June 22, 2017
  - Exhibit A Organizational Structure of the Sears Canada Group
  - Exhibit B Trademark License Agreement and Amendments
  - Exhibit C List of Stores the Applicants Intend to Close
  - Exhibit D Sears Canada Group's Audited Financial Statements for the Fiscal Year Ended January 28, 2017
  - Exhibit E Sears Canada Group's Unaudited Financial Statements for the Three Months Ended April 29, 2017
  - Exhibit F Wells Fargo Credit Agreement and Amendments
  - Exhibit G GACP Credit Agreement and Amendments
  - Exhibit H Amended and Restated Wells Fargo Collateral Agreement
  - Exhibit I Amended and Restated GACP Collateral Agreement
  - Exhibit J Intercreditor Agreement
  - Exhibit K DIP Credit Agreements
  - Exhibit L FTI's Consent to Act as Monitor
  - Exhibit M 13-Week Cash Flow Forecast for Sears Canada Group

**THIS IS EXHIBIT "H" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 22<sup>nd</sup> DAY OF JUNE, 2017.**



---

A commissioner for taking Affidavits

AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT

**AMONG**

SEARS CANADA INC.  
AND  
CORBEIL ÉLECTRIQUE INC.,  
**AS GRANTORS**

**AND**

WELLS FARGO CAPITAL FINANCE CORPORATION CANADA  
**AS COLLATERAL AGENT**  
**DATED AS OF APRIL 19, 2017**

---

## TABLE OF CONTENTS

	<u>Page</u>
<b>SECTION 1. DEFINED TERMS .....</b>	<b>2</b>
1.1     Definitions .....	2
1.2     Other Definitional Provisions.....	4
<b>SECTION 2. GUARANTEE .....</b>	<b>4</b>
2.1     Guarantee.....	4
2.2     Right of Contribution.....	5
2.3     No Subrogation.....	5
2.4     Amendments, etc. with respect to the Borrower Obligations.....	6
2.5     Guarantee Absolute and Unconditional.....	6
2.6     Reinstatement .....	7
2.7     Payments.....	7
<b>SECTION 3. GRANT OF SECURITY INTEREST.....</b>	<b>8</b>
3.1     Collateral; Grant of Security Interest.....	8
3.2     No Assumption of Liability.....	8
3.3     Attachment.....	8
<b>SECTION 4. REPRESENTATIONS AND WARRANTIES.....</b>	<b>9</b>
4.1     Title; No Other Liens.....	9
4.2     Perfected First Priority Liens.....	9
4.3     Jurisdiction of Organization. ....	9
4.4     Credit Card Accounts Receivable.....	9
4.5     Related Intellectual Property. ....	10
4.6     Dealer Store Inventory.....	10
<b>SECTION 5. COVENANTS .....</b>	<b>10</b>
5.1     Delivery of Instruments and Chattel Paper.....	10
5.2     Maintenance of Insurance.....	11
5.3     Maintenance of Perfected Security Interest; Further Documentation.....	11
5.4     Changes in Name, etc. ....	11
5.5     Accessions and Fixtures. ....	11
<b>SECTION 6. REMEDIAL PROVISIONS.....</b>	<b>11</b>
6.1     Certain Matters Relating to Credit Card Accounts Receivable. ....	11
6.2     Communications with Obligors; Grantors Remain Liable. ....	11
6.3     Application of Proceeds.....	12
6.4     PPSA and Other Remedies. ....	13
6.5     Receiver-Manager. ....	15
6.6     Deficiency.....	16
6.7     Grant of License in Intellectual Property, Software and other Assets. ....	16
<b>SECTION 7. THE COLLATERAL AGENTS .....</b>	<b>17</b>
7.1     Collateral Agent's Appointment as Attorney-in-Fact, etc. ....	17
7.2     Duty of Collateral Agent. ....	18
7.3     Execution of PPSA Financing Statements.....	19

7.4	Authority of the Collateral Agent .....	19
SECTION 8. MISCELLANEOUS .....		19
8.1	Amendments in Writing. ....	19
8.2	Notices.....	19
8.3	No Waiver by Course of Conduct; Cumulative Remedies. ....	19
8.4	Enforcement Expenses; Indemnification.....	20
8.5	Successors and Assigns. ....	20
8.6	Set-Off. ....	20
8.7	Counterparts.....	21
8.8	Severability.....	21
8.9	Section Headings. ....	21
8.10	Integration.....	21
8.11	Governing Law.....	21
8.12	Acknowledgement. ....	21
8.13	Additional Grantors. ....	22
8.14	Releases. ....	22
8.15	Jurisdiction, Etc. ....	22
8.16	WAIVER OF JURY TRIAL. ....	23
8.17	Provisions Reasonable.....	23
8.18	Judgment Currency.....	23
8.19	Language. ....	23
8.20	Intercreditor Agreement.....	24
8.21	Amendment and Restatement. ....	24

## SCHEDULES

- Schedule 1      Grantors; Notice Addresses  
Schedule 2      Perfection Matters  
Schedule 3      Jurisdictions of Organization

## **AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT**

This AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT, dated as of April 19, 2017, among (a) each of the entities listed on Schedule 1 hereto (together with any other entity that may become a party hereto as provided herein, the “Grantors”), and (b) Wells Fargo Capital Finance Corporation Canada (“WFCFCC”) as collateral agent (in such capacity, the “Collateral Agent”).

### **W I T N E S S E T H:**

WHEREAS, Sears Canada Inc., a corporation organized under the federal laws of Canada (the “Borrower”), the banks, financial institutions and other parties thereto as “Lenders” (the “Lenders”), Canadian Imperial Bank of Commerce, as co-syndication agent, and WFCFCC as administrative agent and collateral agent, are party to that certain Credit Agreement, having the original date of September 10, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”);

WHEREAS, GE Canada Finance Holding Company previously resigned as a co-collateral agent and WFCFCC is acting as the sole Collateral Agent;

WHEREAS, pursuant to the Credit Agreement, the Lenders have severally agreed to make extensions of credit to the Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, the Borrower is a member of an affiliated group of companies that includes each other Grantor;

WHEREAS, the Borrower and the other Grantors are engaged in related businesses, and each Grantor will derive substantial direct and indirect benefit from the making of the extensions of credit under the Credit Agreement;

WHEREAS, it is a condition precedent to the effectiveness of the Credit Agreement that the Grantors execute and deliver this Agreement;

WHEREAS, reference is made to the Guarantee and Collateral Agreement dated as of September 10, 2010 among the Grantors (as defined therein) and WFCFCC (as the same has been amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the “Original Collateral Agreement”);

WHEREAS, in connection with the amendment of the Credit Agreement dated of even date herewith, the requisite parties have agreed to amend and restate the Original Collateral Agreement as provided for in this Agreement; and

WHEREAS, the parties hereto intend that the security interest granted by the parties to this Agreement in the Original Collateral Agreement shall continue to, and the additional security interest granted hereunder shall, secure, support and otherwise benefit the Obligations of the Borrower and the other Grantors as provided herein.

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent and the other Credit Parties party thereto to enter into the Credit Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby agree as follows:

## SECTION 1. DEFINED TERMS

1.1 Definitions. (a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement, and terms used herein but not defined herein and defined in the Ontario PPSA shall have the same meanings herein as in the Ontario PPSA unless the context otherwise requires. Without limiting the foregoing, the following terms are used herein as defined in the Ontario PPSA: Account, Chattel Paper, Document of Title, Equipment, Goods, Intangibles, Instruments, Inventory and Proceeds.

(b) The following terms shall have the following meanings:

**“Agreement”:** this Amended and Restated Guarantee and Collateral Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

**“Borrower Obligations”:** with respect to the Borrower, the collective reference to the unpaid principal of and interest on the Advances and Reimbursement Obligations and all other obligations and liabilities of the Borrower (including, without limitation, interest accruing at the then applicable rate provided in the Credit Agreement after the maturity of the Borrower’s Advances and Reimbursement Obligations and interest accruing at the then applicable rate provided in the Credit Agreement 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) to any Credit Party, 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, the Credit Agreement, this Agreement, the other Loan Documents, any Letter of Credit, any Cash Management Service, any Bank Product or any other document made, delivered or given in connection with any of the foregoing, in each case whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Collateral Agent or to any other Credit Party that are required to be paid by the Borrower pursuant to the terms of any of the foregoing agreements, and all interest, reimbursement obligations, fees, indemnities, costs and expenses 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 any such amounts is allowed in such proceeding).

**“Collateral”:** as defined in Section 3.1.

**“Collateral Agent”:** as defined in Section 7.4(b), or any successor thereto appointed after WFCFCC has resigned as a Collateral Agent in accordance with the terms of the Credit Agreement.

**“Copyrights”:** (i) all copyrights arising under the laws of Canada, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the Canadian Intellectual Property Office and (ii) the right to obtain all renewals thereof.

**“Copyright Licenses”:** any written agreement naming any Grantor as licensor or licensee granting any right under any Copyright, including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

**“Corbeil”:** Corbeil Électrique Inc., a corporation organized under Part I (A) of the *Companies Act* (Quebec).

**“Credit Agreement”**: as defined in the Recitals.

**“Documents”**: means all the books, accounts, invoices, letters, papers, security certificates, documents, and other records (including customer lists and records, subject, however, to privacy, confidentiality, and access rights of customers), in any form evidencing or relating to any part of the Collateral, together with all agreements, licences, and other rights and benefits relating to any of them.

**“Guarantor Obligations”**: with respect to any Guarantor, all obligations and liabilities of such Guarantor, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under or in connection with this Agreement (including, without limitation, Section 2), any other Loan Document, any Cash Management Service or any Bank Product to which such Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Collateral Agent or to any other Credit Party that are required to be paid by such Guarantor pursuant to the terms of this Agreement, any other Loan Document, any Cash Management Service or any Bank Product, and all guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses, or otherwise, 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 guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise, are allowed in such proceeding).

**“Guarantors”**: Corbeil and each other Person who becomes party hereto as a Grantor pursuant to Section 8.13 hereof.

**“Intellectual Property”**: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under Canadian, multinational or foreign laws or otherwise, including, without limitation, all Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks and Trademark Licenses, know-how and processes, 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.

**“Obligations”**: (i) in the case of the Borrower, the Borrower Obligations, and (ii) in the case of each Guarantor, its Guarantor Obligations.

**“Ontario PPSA”**: the Personal Property Security Act as from time to time in effect in the Province of Ontario.

**“Patents”**: (i) all letters patent of Canada, any other country or any political subdivision thereof, all reissues and extensions thereof and all goodwill associated therewith, (ii) all applications for letters patent of Canada or any other country and all divisions, continuations and continuations-in-part thereof and (iii) all rights to obtain any reissues or extensions of the foregoing.

**“Patent License”**: all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent.

**“PPSA”**: the Ontario PPSA and the Regulations thereunder, as from time to time in effect; provided, however, if attachment, perfection or priority of the Collateral Agent’s security interests in any Collateral are governed by the personal property security laws of any jurisdiction other than Ontario (including Quebec), PPSA shall mean those personal property security laws in such other jurisdiction, including the *Civil Code of Quebec*, for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

**“Replacements”**: means all increases, additions, improvements, and accessions to, and all substitutions for and replacements of, any part of the Collateral in which the Grantors now or later have rights.

**“Software”**: means all software used by any Grantor to process, assemble, prepare for sale, market for sale, sell or otherwise dispose of the Collateral, other than software embedded in any category of goods, including all computer programs and all supporting information provided in connection with a transaction related to any program.

**“Trademarks”**: (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the Canadian Intellectual Property Office or in any similar office or agency of Canada, any Province thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, and (ii) the right to obtain all renewals thereof.

**“Trademark License”**: any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark.

**1.2     Other Definitional Provisions.**(a) The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b)     The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c)     Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor’s Collateral or the relevant part thereof.

(d)     Any reference in the Credit Agreement, any other Loan Document or any filing or document related thereto, to Co-Collateral Agent or Control Co-Collateral Agent shall mean Wells Fargo Capital Finance Corporation Canada in its capacity as Collateral Agent.

## SECTION 2. GUARANTEE

**2.1     Guarantee.** (a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Collateral Agent, for the ratable benefit of the Credit Parties and their respective successors, indorsees, transferees and assigns, (i) the prompt and complete payment and performance by the Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Borrower Obligations, and (ii) the complete payment and performance by each other Guarantor when due (whether at the stated maturity, by acceleration or otherwise) of such other Guarantor’s Guarantor Obligations. The Borrower hereby unconditionally and irrevocably guarantees to the Collateral Agent, for the ratable benefit of the Credit Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by each Guarantor when due (whether at the stated maturity, by acceleration or otherwise) of such Guarantor’s Guarantor Obligations.

(b)     The guarantee contained in this Section 2 shall remain in full force and effect until all the Borrower Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) and the obligations of each Guarantor under the guarantee contained in this Section 2

shall have been satisfied by payment in full, no Letter of Credit shall be outstanding (unless the same has been cash collateralized in an amount equal to 105% of the aggregate then undrawn and unexpired amount of such Letters of Credit and all other Reimbursement Obligations or back-to-back letters of credit from an issuer and on terms acceptable to the L/C Issuing Bank have been provided in respect of such Letters of Credit) and the Commitments shall be terminated.

(c) No payment made by the Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by the Collateral Agent or any other Credit Party from the Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of any of the Borrower Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of any of the Borrower Obligations or any payment received or collected from such Guarantor in respect of any of the Borrower Obligations), remain liable for the Borrower Obligations until each of the Borrower Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) are indefeasibly paid in full, no Letter of Credit shall be outstanding (unless the same has been cash collateralized in an amount equal to 105% of the aggregate then undrawn and unexpired amount of such Letters of Credit and all other Reimbursement Obligations or back-to-back letters of credit from an issuer and on terms acceptable to the L/C Issuing Bank have been provided in respect of such Letters of Credit) and the Commitments are terminated.

**2.2 Right of Contribution.** Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to the Collateral Agent and the other Credit Parties, and each Guarantor shall remain liable to the Collateral Agent and the other Credit Parties for the full amount guaranteed by such Guarantor hereunder.

**2.3 No Subrogation.** Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by the Collateral Agent or any other Credit Party, no Guarantor shall be entitled to be subrogated to any of the rights of the Collateral Agent or any other Credit Party against the Borrower or any other Guarantor or any collateral security or guarantee or right of offset held by the Collateral Agent or any other Credit Party for the payment of any of the Borrower Obligations or the Guarantor Obligations, nor shall any Guarantor seek or be entitled to seek any contribution, reimbursement or indemnification from the Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, and notwithstanding the foregoing, in the event that any Guarantor possesses any such rights of subrogation, contribution, reimbursement or indemnification, all such rights shall in all respects be subordinated and junior in right of payment, until all amounts owing to the Collateral Agent and the other Credit Parties by the Borrower on account of its Borrower Obligations and the other Guarantors on account of their Guarantor Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) are indefeasibly paid in full, no Letter of Credit shall be outstanding (unless the same has been cash collateralized in an amount equal to 105% of the aggregate then undrawn and unexpired amount of such Letters of Credit and all other Reimbursement Obligations or back-to-back letters of credit from an issuer and on terms acceptable to the L/C Issuing Bank have been provided in respect of such Letters of Credit) and the Commitments are terminated. If any amount shall be paid to any Guarantor on account of such subrogation, contribution, reimbursement or indemnification rights at any time when any of the Borrower Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) shall not have been indefeasibly paid in full, such amount shall be held by such Guarantor in trust for the Collateral Agent and the other Credit Parties,

segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be transferred to the Agent's Account (or as the Collateral Agent may otherwise direct) in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Agent, if required), to be applied against the Borrower Obligations, whether matured or unmatured, in such order as the Agent may determine.

**2.4      Amendments, etc. with respect to the Borrower Obligations.** Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Borrower Obligations made by the Collateral Agent or any other Credit Party may be rescinded by the Collateral Agent or such other Credit Party and any of the Borrower Obligations continued, and any of the Borrower Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Collateral Agent or any other Credit Party, and the Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Collateral Agent (or the Required Lenders or all Lenders, as the case may be) or any other Credit Party, if applicable, may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by the Collateral Agent or any other Credit Party for the payment of any of the Borrower Obligations may be sold, exchanged, waived, surrendered or released. Neither the Collateral Agent nor any other Credit Party shall have any obligation to any Loan Party or other Person, to protect, secure, perfect or insure any Lien at any time held by it as security for any of the Borrower Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

**2.5      Guarantee Absolute and Unconditional.**

(a)      Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Borrower Obligations and notice of or proof of reliance by the Collateral Agent or any other Credit Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; each of the Borrower Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2; and all dealings between the Borrower and any of the Guarantors, on the one hand, and the Collateral Agent and the other Credit Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the Guarantors with respect to any of the Borrower Obligations. Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (a) the validity or enforceability of the Credit Agreement, any other Loan Document, any Letter of Credit, any agreement relating to any Cash Management Service or Bank Product or any other document made, delivered or given in connection with any of the foregoing, any of the Borrower Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Collateral Agent or any other Credit Party, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Borrower or any other Person against the Collateral Agent or any other Credit Party, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower for the Borrower Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, the Collateral Agent or any other Credit Party may, but

shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for any of the Borrower Obligations or any right of offset with respect thereto, and any failure by the Collateral Agent or any other Credit Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Collateral Agent or any other Credit Party against any Guarantor. For the purposes hereof “demand” shall include the commencement and continuance of any legal proceedings.

(b) The obligations of each Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of the Collateral Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document, any Letter of Credit, any agreement relating to any Cash Management Service or Bank Product or any other document made, delivered or given in connection with any of the foregoing or any other agreement, by any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Guarantor or that would otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than upon a written release of such Guarantor from the Collateral Agent or upon the indefeasible payment in full of all the Borrower Obligations after the Commitments have been terminated).

(c) The Collateral Agent and the other Credit Parties may, at their election upon the occurrence and during the continuance of an Event of Default, foreclose on any Collateral held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such Collateral in lieu of foreclosure, compromise or adjust any part of the Borrower Obligations, make any other accommodation with any Guarantor, or exercise any other right or remedy available to them against any Guarantor, without affecting or impairing in any way the liability of any other Guarantor hereunder except to the extent that all the Borrower Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) have been indefeasibly paid in full (or, with respect to Letters of Credit, cash collateralized as provided in the Credit Agreement) and the Commitments have been terminated. Each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against any other Guarantor, as the case may be, or any Collateral.

2.6 Reinstatement. The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Borrower Obligations is rescinded or must otherwise be restored or returned by the Collateral Agent or any other Credit Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

2.7 Payments. Each Guarantor hereby guarantees that payments hereunder will be paid in Canadian Dollars or Dollars, as applicable, to the Agent’s Account, or such other account as the Collateral Agent may designate in accordance with Section 9.02 of the Credit Agreement. Each Guarantor shall make all payments to the Collateral Agent on its Guarantee Obligations free and clear of, and without deduction or withholding for or on account of, any setoff, counterclaim, defense, duties, taxes, levies, imposts, fees, deductions, withholding, restrictions or conditions of any kind or interest, penalties or other

amounts in respect thereof imposed or levied by or on behalf of any Governmental Authority having the power to tax or any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any other Loan Document unless such deduction or withholding is required by law or the administrative practice of any taxation authority.

### SECTION 3. GRANT OF SECURITY INTEREST

**3.1 Collateral; Grant of Security Interest.** Each Grantor hereby unconditionally (i) confirms that, pursuant to the Original Collateral Agreement, each such Grantor party to the Original Collateral Agreement granted to the Collateral Agent a security interest in all such Grantor's right, title and interest in and to the Collateral (as defined in the Original Collateral Agreement), (ii) ratifies, reaffirms and restates such grant of a security interest in all of such Grantor's right title and interest in and to the Collateral (as defined in the Original Collateral Agreement), in each case, as amended by the terms of this Agreement, and (iii) hereby grants to the Collateral Agent, for the ratable benefit of the Credit Parties, a security interest in, all of the following property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "Collateral"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

- (a) all Credit Card Accounts Receivable;
- (b) all Inventory, Equipment and Goods (including, without limitation, any furniture and fixtures);
- (c) all Chattel Paper relating to Credit Card Accounts Receivable;
- (d) all Instruments relating to Credit Card Accounts Receivable;
- (e) all Documents of Title relating to any Inventory;
- (f) all deposit accounts (other than Excluded Accounts);
- (g) all cash and Cash Equivalents (other than cash and Cash Equivalents held in Excluded Accounts);
- (a) all Documents pertaining to the Collateral; and
- (h) to the extent not otherwise included, all Proceeds, insurance claims and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing and any Replacements of any of the foregoing.

**3.2 No Assumption of Liability.** The security interest in the Collateral granted pursuant to the Original Collateral Agreement, and the security interest in the Collateral granted to the Collateral Agent hereby is granted as security only and shall not subject the Collateral Agent or any other Credit Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Collateral.

**3.3 Attachment.**

Each Grantor acknowledges and agrees that: (a) value has been given by the Collateral Agent and the other Credit Parties, (b) it has rights in the Collateral or the power to transfer rights in the Collateral, (c) this Agreement constitutes a “security agreement” (as that term is defined in the PPSA), (d) the security interest will attach when it signs this Agreement, and (e) it has not otherwise agreed to postpone the time of attachment.

#### SECTION 4. REPRESENTATIONS AND WARRANTIES

To induce the Collateral Agent and certain other Credit Parties to enter into the Credit Agreement and to induce the Lenders and the Swing Line Lender to make their respective extensions of credit to the Borrower thereunder and the L/C Issuing Bank to issue the Letters of Credit, each Grantor hereby represents and warrants to the Collateral Agent and the other Credit Parties that:

4.1 Title; No Other Liens. . Except for the security interest granted to the Collateral Agent for the ratable benefit of the Credit Parties pursuant to this Agreement and the other Liens permitted to exist on the Collateral by the Credit Agreement, such Grantor owns each item of the Collateral free and clear of any and all Liens or claims of others. No Grantor has agreed to permit registration of any financing statement or other public notice with respect to all or any part of the Collateral in any public office, except such as have been filed in favor of the Collateral Agent, for the ratable benefit of the Credit Parties, pursuant to this Agreement or as are permitted by the Credit Agreement. For the avoidance of doubt, it is understood and agreed that any Grantor may, as part of its business, transfer and/or grant licenses to third parties to use Intellectual Property owned, licensed to or developed by a Grantor so long as such conveyances and/or licenses do not materially impair the license of the Collateral Agent in and to such Intellectual Property. For purposes of this Agreement and the other Loan Documents, such licensing activity shall not constitute a “Lien” on such Intellectual Property.

4.2 Perfected First Priority Liens.

The security interests granted pursuant to the Original Collateral Agreement continue to constitute valid perfected security interests, and the security interests granted pursuant to this Agreement (a) upon completion of the filings and other actions specified on Schedule 2 (which, in the case of all filings and other documents referred to on said Schedule, have been delivered to the Collateral Agent in completed and, if applicable, duly executed form) will constitute valid perfected security interests in all of the Collateral in favor of the Collateral Agent, for the ratable benefit of the Credit Parties, as collateral security for such Grantor’s Obligations, enforceable in accordance with the terms hereof against all creditors of such Grantor and any Persons purporting to purchase any Collateral from such Grantor and (b) are prior to all other Liens on the Collateral in existence on the date hereof other than (i) Permitted Liens having priority over the Liens of the Collateral Agent pursuant to applicable law and (ii) subject to the provisions of the Intercreditor Agreement, Liens described in Section 6.02(a)(ii) of the Credit Agreement, but only so long as such Liens are not required to be subordinated to the Collateral Agent’s Lien.

4.3 Jurisdiction of Organization. On the date hereof, such Grantor’s jurisdiction of organization and identification or corporation number from the jurisdiction of organization (if any) are specified on Schedule 3. Such Grantor has furnished to the Collateral Agent a charter, certificate of incorporation or other formation document and certificates of compliance/status/good standing as of a date which is recent to the date hereof.

4.4 Credit Card Accounts Receivable.

(a) No amount payable to such Grantor under or in connection with any Credit Card Accounts Receivable is evidenced by any Instrument or Chattel Paper which has not been delivered to the Collateral Agent.

(b) None of the obligors on any Credit Card Accounts Receivable is a Governmental Authority.

(c) Each Eligible Credit Card Accounts Receivable is a bona fide existing payment obligation of a credit card payment processor or an issuer of credit cards to a Grantor resulting from charges by a customer of a Grantor on credit cards issued by such issuer in connection with the sale of goods by such Grantor, or services performed by such Grantor, in each case in the ordinary course of its business.

(d) Except as would not be reasonably expected to result in a Material Adverse Effect, there are no facts, events or occurrences which would impair the validity of any Credit Card Accounts Receivable, or tend to reduce the amount payable thereunder from the face amount of the claim or invoice or statements delivered to the Collateral Agent with respect thereto (other than arising in the ordinary course of business).

**4.5 Related Intellectual Property.** Each Grantor owns or has a license to use all Intellectual Property which is reasonably necessary to sell the Collateral in the ordinary course. Each Grantor shall take all reasonable and necessary steps to maintain and preserve the benefit of each Trademark License, Copyright License and Patent License which relates to Intellectual Property to the extent that the use of such Intellectual Property would be reasonably necessary in connection with the Collateral Agent's enforcement of any of its remedies under the Loan Documents. Except for consents which have been obtained, such Grantor does not own any Eligible Inventory which is subject to any Copyright License, Trademark License or Patent License or other agreement with any third party which would require any consent of any third party upon sale or disposition of that Eligible Inventory where such sale or disposition is made pursuant to a going-out-of-business sale, orderly liquidation or similar sale, in each case, to the extent such going-out-of-business sale, orderly liquidation or similar sale is conducted at the Stores, and such Grantor will promptly deliver notice to the Collateral Agent upon entering into any Copyright License, Trademark License or Patent License or amendment thereto which would require any such consent.

**4.6 Dealer Store Inventory.** Except as would not be reasonably expected to result in a Material Adverse Effect, all of the Inventory at each Dealer Store is owned by a Grantor free and clear of any and all Liens or claims of others except as permitted under the Credit Agreement.

## SECTION 5. COVENANTS

Each Grantor covenants and agrees with the Collateral Agent and the other Credit Parties that, until the Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) shall have been indefeasibly paid in full, no Letter of Credit shall be outstanding (unless the same has been cash collateralized in an amount equal to 105% of the aggregate then undrawn and unexpired amount of such Letters of Credit and all other Reimbursement Obligations or back-to-back letters of credit from an issuer and on terms acceptable to the L/C Issuing Bank have been provided in respect of such Letters of Credit) and the Commitments shall have terminated:

**5.1 Delivery of Instruments and Chattel Paper.** Other than as may be provided in the Intercreditor Agreement, if any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument, Chattel Paper or transferable records, such Instrument, Chattel

Paper or transferable records, shall be promptly delivered to the Collateral Agent, duly indorsed in a manner satisfactory to the Collateral Agent, to be held as Collateral pursuant to this Agreement.

**5.2     Maintenance of Insurance.** Such Grantor will maintain insurance as and to the extent required under the Credit Agreement.

**5.3     Maintenance of Perfected Security Interest; Further Documentation.** (a) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.2 and shall defend such security interest against the claims and demands of all Persons whomsoever, subject to the rights of such Grantor under the Loan Documents to dispose of the Collateral.

(b) At any time and from time to time, upon the written request of the Collateral Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Collateral Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, filing any financing statement, financing change statement, registration or continuation statements under the PPSA (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby.

**5.4     Changes in Name, etc.** Such Grantor will not, except upon 15 days' prior written notice to the Collateral Agent and delivery to the Collateral Agent of all additional financing statements, financing change statements and other documents reasonably requested by the Collateral Agent to maintain the validity, perfection and priority of the security interests provided for herein, change its name or organizational form, change its jurisdiction of organization, change the location of its chief executive office or registered office or permit any Collateral consisting of Goods to be stored in any jurisdiction other than those referred to in Section 4.3 and in the Perfection Certificate (including the Schedules thereto).

**5.5     Accessions and Fixtures.**

Subject to Permitted Liens or as otherwise permitted pursuant to the Credit Agreement, each Grantor shall prevent the Collateral from becoming (a) an accession to any personal property not subject to this Agreement or (b) affixed to any real property unless the security interest ranks prior to the interests of another Person in the realty.

## SECTION 6. REMEDIAL PROVISIONS

**6.1     Certain Matters Relating to Credit Card Accounts Receivable.** (a) At any time after the occurrence and during the continuance of a Cash Dominion Event, any payments of Credit Card Accounts Receivable, when collected by any Grantor, shall be transferred and maintained in accordance with Section 6.01(m) of the Credit Agreement.

(b) At the Collateral Agent's request, at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall, subject to the terms of the Intercreditor Agreement, deliver to the Collateral Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Credit Card Accounts Receivable, including, without limitation, all original orders, invoices and shipping receipts.

**6.2     Communications with Obligors; Grantors Remain Liable.** (a) The Collateral Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an

Event of Default and subject to the terms of the Intercreditor Agreement communicate with obligors under the Credit Card Accounts Receivable to verify with them, to such Collateral Agent's satisfaction, the existence, amount and terms of any Credit Card Accounts Receivable.

(b) Upon the request of the Collateral Agent and subject to the terms of the Intercreditor Agreement at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on the Credit Card Accounts Receivable that the Credit Card Accounts Receivable have been assigned to the Collateral Agent for the ratable benefit of the Credit Parties and that payments in respect thereof shall be made directly to the Collateral Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Credit Card Accounts Receivable to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. No Collateral Agent nor any other Credit Party shall have any obligation or liability under any Credit Card Accounts Receivable (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by any Collateral Agent or any other Credit Party of any payment relating thereto, nor shall any Collateral Agent or any other Credit Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Credit Card Accounts Receivable (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

6.3 Application of Proceeds. Subject to the provisions of the Intercreditor Agreement, if an Event of Default shall have occurred and be continuing, and the Obligations shall have been accelerated or a Liquidation shall have been commenced, the Agent shall apply all or any part of Proceeds constituting Collateral, whether or not held in the Agent's Account, and any proceeds of the guarantee set forth in Section 2, in payment of the Obligations in the following order:

First, to pay all incurred and unpaid fees, expenses, indemnities, and other amounts (including fees, charges and disbursements of counsel to the Agent and the Collateral Agents) payable to the Agent and the Collateral Agents (each in its capacity as such) under the Loan Documents, pro rata among such Persons according to the amounts of such Obligations then due and owing and remaining unpaid to each;

Second, to pay all incurred and unpaid expenses, indemnities, and other amounts (other than principal, interest and fees, and Obligations relating to Cash Management Services and Bank Products) payable to the Lenders, the Swingline Lender and the L/C Issuing Bank (including fees, charges and disbursements of counsel to the respective Lenders, the Swingline Lender and the L/C Issuing Bank and amounts payable under Section 2.12 of the Credit Agreement), under the Loan Documents, pro rata among such Persons according to the amounts of such Obligations then due and owing and remaining unpaid to each;

Third, to pay all accrued and unpaid interest on all Permitted Overadvances, to the Agent or pro rata among the Lenders, as applicable, according to the amounts of such Obligations then due and owing and remaining unpaid to each;

Fourth, to pay all the unpaid principal on all Permitted Overadvances, to the Agent or pro rata among the Lenders, as applicable, according to the amounts of such Obligations then due and owing and remaining unpaid to each;

Fifth, to pay all accrued and unpaid interest on the Swingline Advances (to the extent that Swingline Advances have not been refinanced by a Revolving Advance);

Sixth, to pay all the unpaid principal of the Swingline Advances (to the extent that Swingline Advances have not been refinanced by a Revolving Advance);

Seventh, to pay all accrued and unpaid interest on all Advances, and fees, payable to the Lenders and the L/C Issuing Bank under the Loan Documents, pro rata among such Persons according to the amounts of such Obligations then due and owing and remaining unpaid to each;

Eighth, to pay all the unpaid principal on all Advances, pro rata among the Lenders according to the amounts of such Obligations then due and owing and remaining unpaid to the Lenders;

Ninth, to cash collateralize all outstanding Letters of Credit in an amount equal to 105% of the aggregate then undrawn and unexpired amount of such Letters of Credit and all Reimbursement Obligations;

Tenth, to pay all other amounts then due and owing and remaining unpaid in respect of the Obligations (other than Obligations relating to Cash Management Services and Bank Products), pro rata among the Lenders according to the amounts of the Obligations (other than Obligations relating to Cash Management Services and Bank Products) then due and owing and remaining unpaid to the Lenders;

Eleventh, to the applicable Lenders or Affiliates thereof towards the payment of amounts then due and owing and remaining unpaid in respect of Cash Management Services and the prepayment, settlement and termination of Cash Management Services, pro rata among the applicable Lenders and Affiliates thereof according to the amounts then due and owing and remaining unpaid in respect of Cash Management Services;

Twelfth, to the applicable Lenders or Affiliates thereof towards the payment of amounts then due and owing and remaining unpaid in respect of Bank Products, pro rata among the applicable Lenders and Affiliates thereof according to the amounts that would become due and owing upon the prepayment, settlement and termination of such Bank Products; and

Thirteenth, any balance remaining after the Obligations shall have been indefeasibly paid in full, no Letters of Credit shall be outstanding (unless the same has been cash collateralized as set forth above) and the Commitments shall have terminated shall be paid over to the Borrower or to whomsoever may be lawfully entitled to receive the same.

**6.4 PPSA and Other Remedies.** If an Event of Default shall occur and be continuing, the Collateral Agent, on behalf of the Credit Parties, may (and at the direction of the Required Lenders shall) exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the PPSA or any other applicable law. Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may (and at the direction of the Required Lenders shall) in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of any Collateral Agent or any Credit Party or elsewhere

upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor. The Collateral Agent and any other Credit Party shall each have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption, stay, valuation or appraisal on the part of any Grantor, which right or equity is hereby waived and released, and may credit against the purchase price the amount of any claim then due and payable from any Grantor on account of the Obligations owed to the Collateral Agent or any other Credit Party, and the Collateral Agent or such other Credit Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor. Each Grantor further agrees, at the Collateral Agent's request, to assemble the Collateral and make it available to the Collateral Agent at the Grantor's sole risk and expense, at places which the Collateral Agent shall reasonably select, whether at such Grantor's premises or elsewhere. The Collateral Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.4, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Collateral Agent and the other Credit Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in the order set forth in Section 6.3, and only after such application and after the payment by the Collateral Agent of any other amount required by any provision of law, need the Collateral Agent account for the surplus, if any, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against any Collateral Agent or any other Credit Party arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 15 days before such sale or other disposition. No Collateral Agent shall be obligated to make any sale or other disposition of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale or other disposition of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Any public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice of such sale. If any of the Collateral is sold, leased, or otherwise disposed of by the Collateral Agent on credit, the Obligations shall not be deemed to have been reduced as a result thereof unless and until payment is finally received thereon by the Collateral Agent.

(b) If an Event of Default shall occur and be continuing, with respect to any Collateral consisting of Inventory, the Collateral Agent may conduct one or more going out of business sales, in the Collateral Agent's own right or by one or more agents and contractors. Such sale(s) may be conducted upon any premises owned, leased, or occupied by any Grantor. The Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor). Any amounts realized from the sale of such goods which constitute augmentations to the Inventory (net of an allocable share of the costs and expenses incurred in their disposition) shall be the sole property of the Collateral Agent or such agent or contractor and neither any Grantor nor any Person claiming under or in right of any Grantor shall have any interest therein. Each purchaser at any such going out of business sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor.

(c) If an Event of Default shall occur and be continuing, with respect to any Collateral consisting of Accounts, the Collateral Agent may: (i) demand, collect and receive any amounts relating thereto, as the Collateral Agent may reasonably determine; (ii) commence and prosecute any actions in any court for the purposes of collecting any such Accounts and enforcing any other rights in respect thereof;

(iii) defend, settle or compromise any action brought and, in connection therewith, give such discharges or releases as the Collateral Agent may reasonably deem appropriate; (iv) without limiting the Collateral Agent's rights set forth in Section 7.1, receive, open and dispose of mail addressed to any Grantor and endorse cheques, notes, drafts, acceptances, money orders, bills of lading, warehouse receipts or other instruments or documents evidencing payment, shipment or storage of the goods giving rise to such Accounts or securing or relating to such Accounts, on behalf of and in the name of such Grantor; and (v) sell, assign, transfer, make any agreement in respect of, or otherwise deal with or exercise rights in respect of, any such Accounts or the goods or services which have given rise thereto, as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes.

(d) If an Event of Default shall occur and be continuing, with or without legal process and with or without prior notice or demand for performance, the Collateral Agent may enter upon, occupy, and use any premises owned or occupied by each Grantor. The Collateral Agent shall not be required to remove any of the Collateral from any such premises upon the Collateral Agent taking possession thereof, and may render any Collateral unusable to the Grantors. In no event shall the Collateral Agent be liable to any Grantor for use or occupancy by the Collateral Agent of any premises pursuant to this Section 6.4, nor for any charge (such as wages for the Grantors' employees and utilities) reasonably incurred in connection with the Collateral Agent's exercise of the Collateral Agent's rights and remedies hereunder.

(e) For purposes of this Section 6.4, a written and fully executed agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof. The Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Obligations indefeasibly paid in full.

(f) To the extent permitted by applicable law, each Grantor hereby waives all rights of redemption, stay, valuation and appraisal which such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

(g) Upon notice to the Grantors and subject to any obligation to dispose of any of the Collateral, as provided in the PPSA or other provisions of applicable law, the Collateral Agent may elect to retain all or any part of the Collateral in satisfaction of the Obligations or any of them.

## 6.5 Receiver-Manager.

The Collateral Agent may, in addition to any other rights they may have, appoint by instrument in writing a receiver or receiver and manager (both of which are herein called a "Receiver") of all or any part of the Collateral or may institute proceedings in any court of competent jurisdiction for the appointment of such a Receiver. Any such Receiver is hereby given and shall have the same powers and rights and exclusions and limitations of liability as the Collateral Agent have under this Agreement, at law or in equity. In exercising any such powers, any such Receiver shall, to the extent permitted by applicable law, act as and for all purposes shall be deemed to be the agent of the Grantors and the Collateral Agent shall not be responsible for any act or default of any such Receiver. The Collateral Agent may appoint one or more Receivers hereunder and may remove any such Receiver or Receivers and appoint another or others in his or their stead from time to time. Any Receiver so appointed may be an officer or employee of a Collateral Agent. A court need not appoint, ratify the appointment by the Collateral Agent or otherwise supervise in any manner the actions of any Receiver. Upon receipt of notice by any Grantor from the Collateral Agent of the taking of possession of the Collateral or the appointment of a Receiver, all powers, functions, rights and privileges of each of the directors and officers of such Grantor with respect to the Collateral shall cease, unless specifically continued by the written consent of the Collateral Agent.

6.6 Deficiency. . Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations and the fees and disbursements of any counsel employed by the Collateral Agent or any other Credit Party to collect such deficiency.

6.7 Grant of License in Intellectual Property, Software and other Assets.

(a) For the purpose of enabling the Collateral Agent to exercise the rights and remedies under Section 6 at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby (i) assigns and transfers by way of security to the Collateral Agent and grants the Collateral Agent, for the benefit of the Collateral Agent and the other Credit Parties, an irrevocable, nonexclusive license (exercisable without payment of royalty or any other compensation to such Grantor or any Affiliate of such Grantor) to use, license or sublicense, any Related Intellectual Property now owned or licensed or hereafter owned, licensed or otherwise acquired by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof and (ii) irrevocably agrees that the Collateral Agent may sell any of such Grantor's Inventory directly to any Person, including, without limitation, Persons who have previously purchased such Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Collateral Agent's rights under this Agreement, may sell Inventory which bears any Trademark owned by or licensed to such Grantor and any Inventory that is covered by any Copyright owned by or licensed to such Grantor and the Collateral Agent may finish any work in process and affix any Trademark owned by or licensed to such Grantor and sell such Inventory as provided herein; provided that, notwithstanding the foregoing, except as provided in any agreement between the Collateral Agent and the owner or licensor of such Intellectual Property, this Agreement shall not constitute a license to use, license or sublicense, any Intellectual Property to the extent such license or sublicense is prohibited by or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such Intellectual Property, except to the extent that (x) the term in such contract, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable law, or (y) the contract, license, agreement, instrument or other document pursuant to which such Grantor was granted its rights to any such Intellectual Property was issued by a Subsidiary of such Grantor, the Borrower or an Affiliate of such Grantor controlled by the Borrower (and is not subject to an applicable constraint in an over-license or other agreement with a third party). Notwithstanding anything contained in this Agreement to the contrary, the grant by a Grantor of security in trade-marks (as defined in the *Trade-marks Act (Canada)*) under this Agreement shall be limited to a grant by such Grantor of a security interest in all of its right, title and interest in such trade-mark.

(b) For the purpose of enabling the Collateral Agent to exercise the rights and remedies under Section 6 at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby assigns and transfers to the Collateral Agent and grants to the Collateral Agent, for the benefit of the Collateral Agent and the other Credit Parties, an irrevocable, nonexclusive license (exercisable without payment of royalty or any other compensation to such Grantor or any other Person) to use, license or sublicense, any Software now owned or licensed or hereafter owned, licensed or otherwise acquired by such Grantor; provided that, notwithstanding the foregoing, except as provided in any agreement between the Collateral Agent and the owner or licensor of such Software, this Agreement shall not constitute a license to use, license or sublicense, any Software to the extent such license or sublicense is prohibited by or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such Software, except to the extent that (i) the term in such contract, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring

such consent is ineffective under applicable law, or (ii) the contract, license, agreement, instrument or other document pursuant to which such Grantor was granted its rights to any such Software was issued by a Subsidiary of such Grantor, the Borrower or an Affiliate of such Grantor controlled by the Borrower (and is not subject to an applicable constraint in an over-license or other agreement with a third party).

(c) Without duplication of the rights granted to the Collateral Agent in clauses (a) and (b) of this Section 6.7, and for the purpose of enabling the Collateral Agent to exercise the rights and remedies under Section 6 at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby assigns and transfers to the Collateral Agent and grants to the Collateral Agent, for the benefit of the Collateral Agent and the other Credit Parties, an irrevocable, nonexclusive license (exercisable without payment of royalty, rent or any other compensation to such Grantor or any other Person), to use, license or sublicense, any real property or personal property of such Grantor which does not constitute Collateral, including but not limited to, all Equipment, Intangibles and Goods, whether now or hereafter owned, leased or occupied by such Grantor; provided that, notwithstanding the foregoing, except as provided in any agreement between the Collateral Agent and the owner or licensor of such real or personal property, this Agreement shall not constitute a license to use, license or sublicense, any real or personal property to the extent such license or sublicense is prohibited by or results in the termination of or requires any consent not obtained under, any lease, contract, license, agreement, instrument or other document evidencing or giving rise to such property or any rights therein, except to the extent that (i) the term in such lease, contract, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable law, or (ii) the contract, license, agreement, instrument or other document pursuant to which such Grantor was granted its rights to any such real property or personal property was issued by a Subsidiary or Affiliate of such Grantor (and is not subject to an applicable constraint in an over-license or other agreement with a third party).

## SECTION 7. THE COLLATERAL AGENTS

### 7.1 Collateral Agent's Appointment as Attorney-in-Fact, etc.

(a) Each Grantor hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Collateral Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and endorse and collect any cheques, drafts, notes, acceptances or other instruments for the payment of moneys due under any Credit Card Accounts Receivable or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Collateral Agent for the purpose of collecting any and all such moneys due under any Credit Card Accounts Receivable or with respect to any other Collateral whenever payable;

(ii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iii) execute, in connection with any sale provided for in Section 6.4, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral;

(iv) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Collateral Agent, or as the Collateral Agent shall direct; (2) ask or demand for, collect, and receive payment of and give receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Collateral Agent may deem appropriate; and (7) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent was the absolute owner thereof for all purposes, and do, at the Collateral Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Collateral Agent deem necessary to protect, preserve or realize upon the Collateral and the Collateral Agent's and the other Credit Parties security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Collateral Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Collateral Agent, at their option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) Without limitation to any Collateral Agent's or any other Credit Party's rights to payment, reimbursement or indemnification under any other Loan Document, the expenses of the Collateral Agent incurred in connection with actions undertaken as provided in Sections 7.1 and 8.4, together with interest thereon at a rate per annum equal to the highest rate per annum at which interest would then be payable on any category of past due Base Rate Advances made by the Lenders under the Credit Agreement, from the date of payment by any such Collateral Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Collateral Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

**7.2 Duty of Collateral Agent.** Except as otherwise required by applicable law, each Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under the PPSA or otherwise, shall be to deal with it in the same manner as such Collateral Agent deals with similar property for its own account. Neither the Collateral Agent nor any other Credit Party nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any

obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Collateral Agent and the other Credit Parties hereunder are solely to protect the Collateral Agent's and the other Credit Parties' interests in the Collateral and shall not impose any duty upon the Collateral Agent or any other Credit Party to exercise any such powers. The Collateral Agent and the other Credit Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct, as determined by a final and non-appealable judgment of a court of competent jurisdiction.

**7.3     Execution of PPSA Financing Statements.** Each Grantor authorizes the Collateral Agent to file or record PPSA financing statements and other filing or recording documents or instruments with respect to the Collateral without the signature of such Grantor in such form and in such offices as the Collateral Agent determine appropriate to perfect the security interests of the Collateral Agent under this Agreement. Each Grantor hereby ratifies and authorizes the filing by the Collateral Agent of any financing statement with respect to the Collateral made prior to the date hereof.

**7.4     Authority of the Collateral Agent.**

Each Grantor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the other Credit Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the Grantors, the Collateral Agent shall be conclusively presumed to be acting as agent for the Credit Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

## SECTION 8. MISCELLANEOUS

**8.1     Amendments in Writing.** None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 9.01 of the Credit Agreement.

**8.2     Notices.** All notices, requests and demands to or upon the Collateral Agent or any Grantor hereunder shall be effected in the manner provided for in Section 9.02 of the Credit Agreement; provided that any such notice, request or demand to or upon any Grantor shall be addressed to such Grantor at its notice address set forth on Schedule 1.

**8.3     No Waiver by Course of Conduct; Cumulative Remedies.** Neither the Collateral Agent nor any other Credit Party shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Collateral Agent or any other Credit Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Collateral Agent or any other Credit Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Collateral Agent or such other Credit Party would otherwise have on any future occasion. The rights and remedies herein provided are

cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

**8.4 Enforcement Expenses; Indemnification.** Without limitation to any Collateral Agent's or any other Credit Party's rights to payment, reimbursement or indemnification under any other Loan Document:

(a) each Grantor jointly and severally agrees to pay or reimburse each Collateral Agent and the other Credit Parties for all their costs and expenses incurred in collecting against any Grantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents, including, without limitation, the fees and disbursements of the Credit Parties' counsel in accordance with the terms of the Credit Agreement;

(b) each Grantor agrees to pay, and to save the Collateral Agent and the other Credit Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement and the other Loan Documents;

(c) each Grantor agrees to pay, and to save the Collateral Agent and the other Credit Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement and the other Loan Documents to the extent the Borrower would be required to do so pursuant to Section 9.04 of the Credit Agreement; and

(d) to the fullest extent permitted by applicable law, no Grantor shall assert, and each Grantor hereby waives, any claim against any Collateral Agent and the other Credit Parties, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, or the transactions contemplated hereby or thereby. No Collateral Agent or any other Credit Party shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by any such Collateral Agent or other Credit Party through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Collateral Agent or other Credit Party as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) The agreements in this Section 8.4 shall survive repayment of the Obligations and all other amounts payable under the Credit Agreement and the other Loan Documents, the termination of the Commitments, the release of the Collateral from the Liens created hereby and the termination of this Agreement.

**8.5 Successors and Assigns.** This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Collateral Agent and the other Credit Parties and their successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent.

**8.6 Set-Off.** Each Grantor hereby irrevocably authorizes each Collateral Agent and each of the other Credit Parties at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to such Grantor or any other Grantor, any such notice being expressly waived

by each Grantor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, at any time held or owing by any such Collateral Agent or other Credit Party to or for the credit or the account of such Grantor, or any part thereof in such amounts as such Collateral Agent or other Credit Party may elect, against and on account of the obligations and liabilities of such Grantor to such Collateral Agent or other Credit Party hereunder and claims of every nature and description of such Collateral Agent or other Credit Party against such Grantor, in any currency, whether arising hereunder, under the Credit Agreement, any other Loan Document, any agreement relating to any Cash Management Services or Bank Product or otherwise, as such Collateral Agent or other Credit Party may elect, whether or not any Collateral Agent or any other Credit Party has made any demand for payment. The applicable Collateral Agent or Credit Party shall notify such Grantor promptly of any such set-off and the application made by such Collateral Agent or other Credit Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Collateral Agent and the other Credit Parties under this Section 8.6 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Collateral Agent and the other Credit Parties may have.

8.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or electronic mail of “PDF” file shall be effective as delivery of a manually executed counterpart of this Agreement.

8.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.10 Integration. This Agreement and the other Loan Documents represent the agreement of the Grantors, the Collateral Agent and the other Credit Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Collateral Agent or the other Credit Parties relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

8.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, except as required by mandatory provisions of law and except to the extent that the validity or perfection of the security interests hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the Province of Ontario.

8.12 Acknowledgement. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) neither the Collateral Agent nor any other Credit Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement, any of the other Loan

Documents, any Cash Management Service or any Bank Product, and the relationship between the Grantors, on the one hand, and the Collateral Agent and the other Credit Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Credit Parties or among the Grantors and the Credit Parties.

**8.13 Additional Grantors.** Each Subsidiary of the Borrower that is required to become a party to this Agreement pursuant to Section 6.01(i) of the Credit Agreement shall become a Guarantor and a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of Annex 1 hereto.

**8.14 Releases.** This Agreement, the Lien in favor of the Collateral Agent (for the benefit of the Credit Parties) and all other security interests granted hereby shall terminate with respect to all Obligations when (i) the Commitments shall have expired or been terminated, (ii) the principal of and interest on each Loan and all fees and other Obligations (other than (A) contingent indemnification obligations for which claims have not been asserted and (B) unless the Obligations have been accelerated as a result of the occurrence of any Event of Default or the Loan Parties are liquidating substantially all of their assets, subject to the first proviso hereto, Obligations in respect of Bank Products and Cash Management Services) shall have been indefeasibly paid in full, and (iii) all Letters of Credit shall have (A) expired or terminated and have been reduced to zero, (B) been cash collateralized to the extent required by the Credit Agreement, or (C) been supported by another letter of credit in a manner reasonably satisfactory to the L/C Issuing Bank and the Collateral Agent, provided, however, that in connection with the termination of this Agreement, the Collateral Agent may require such indemnities or, in the case of the succeeding clause (y) only, collateral security as they shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, and (y) any Obligations that may then exist or thereafter arise with respect to Bank Products and Cash Management Services to the extent not provided for thereunder; provided, further, that this Agreement and the security interest granted herein shall be reinstated if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by any Credit Party upon the bankruptcy or reorganization of the Borrower, Grantor or other Loan Party. At the request and sole expense of any Grantor following any such termination, the Collateral Agent shall deliver to such Grantor any Collateral held by the Collateral Agent hereunder, and execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor in a transaction permitted by the Credit Agreement, then the Collateral shall be released from the Liens created hereby without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to such Grantor or its transferee, as the case may be, and the Collateral Agent, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable to evidence the release of the Liens created hereby on such Collateral. At the request and sole expense of the Borrower, the Collateral Agent shall release any Grantor from its obligations hereunder, including, without limitation, its obligations pursuant to Section 2 hereof, and shall execute and deliver to the Borrower all releases or other documentation reasonably necessary or desirable to evidence such release, in the event that all the equity interest of such Grantor shall be sold, transferred or otherwise disposed of in a transaction permitted by the Credit Agreement and/or in the event that such Grantor shall dispose of all or substantially all of its assets and shall cease to own any Collateral.

**8.15 Jurisdiction, Etc.**

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any court sitting in Toronto, Ontario, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such court. Each of the Grantors hereby irrevocably consents to the service of process in any action or proceeding in such courts by the mailing thereof by any parties hereto by registered or certified mail, postage prepaid, to such Grantor at its address specified pursuant to Section 9.02 of the Credit Agreement or Schedule I hereto, as applicable. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents in the courts of any jurisdiction.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any court in Toronto, Ontario. 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.

**8.16 WAIVER OF JURY TRIAL.** EACH GRANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR THE ACTIONS OF THE AGENT, THE COLLATERAL AGENT OR ANY LENDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

**8.17 Provisions Reasonable.**

Each Grantor expressly acknowledges and agrees that the provisions of this Agreement and, in particular, those respecting remedies and powers of the Collateral Agent against such Grantor, its business and the Collateral upon default, are commercially reasonable and not manifestly unreasonable.

**8.18 Judgment Currency.** If, for the purposes of obtaining or enforcing judgment in any court or for any other purpose hereunder or in connection herewith, it is necessary to convert a sum due hereunder in any currency into another currency, such conversion shall be carried out to the extent and in the manner provided in the Credit Agreement.

**8.19 Language.**

The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein (including, without limitation, the other Loan Documents) be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement.*

8.20 Intercreditor Agreement. Notwithstanding any term or provision of this Agreement to the contrary, the Grantors, the Collateral Agent and the Lenders shall be bound by the terms and conditions of the Intercreditor Agreement until the Intercreditor Agreement has been terminated. For certainty, any provision of this Agreement which requires any Grantor to take an action or to not take an action, as applicable, or instructs or permits the Collateral Agent or any Lender to take an action or not to take an action, as applicable, where such action or inaction is otherwise prohibited pursuant to the terms of the Intercreditor Agreement, shall be of no force and effect until the Intercreditor Agreement has been terminated.

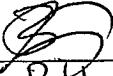
8.21 Amendment and Restatement. This Agreement amends and restates the Original Collateral Agreement, and the obligations of the Grantors under the Original Collateral Agreement and the grant of security interests in the Collateral by the Grantors under the Original Collateral Agreement shall continue under this Agreement, and shall not in any event be terminated, extinguished or annulled, but shall hereafter be governed by this Agreement. For greater certainty, this Agreement shall not constitute a novation of the Original Collateral Agreement or in any way impair or otherwise affect the rights and obligations of the parties thereunder (including with respect to the representations and warranties made thereunder) except as such rights or obligations are amended or modified hereby. The Original Collateral Agreement as amended and restated hereby shall be deemed to be a continuing agreement among the parties, and all documents, instruments and agreements delivered pursuant to or in connection with the Original Collateral Agreement not amended and restated in connection with the entry of the parties into this Agreement (or otherwise amended or modified in connection with the amendment of the Credit Agreement as of the date hereof) shall remain in full force and effect, each in accordance with its terms, as of the date of delivery or such other date as contemplated by such document, instrument or agreement, unless such document, instrument or agreement has otherwise been terminated or has expired in accordance with or pursuant to the terms of this Agreement, the Original Collateral Agreement or such document, instrument or agreement or as otherwise agreed by the required parties hereto or thereto.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered as of the date first above written.

Grantors:

SEARS CANADA INC.

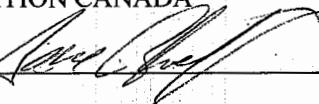
By:   
Name: Billy Wong  
Title: CFO

CORBEIL ÉLECTRIQUE INC.

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Collateral Agent:**

WELLS FARGO CAPITAL FINANCE  
CORPORATION CANADA

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**David G. Phillips**  
Senior Vice President  
Credit Officer, Canada  
Wells Fargo Capital Finance  
Corporation Canada

FORM OF ASSUMPTION AGREEMENT

ASSUMPTION AGREEMENT, dated as of [        ], 20\_\_\_\_, made by [        ] (the “Additional Grantor”), in favor of Wells Fargo Capital Finance Corporation Canada as Collateral Agent (collectively in such capacity, the “Collateral Agent”), for the banks and other financial institutions or entities (the “Lenders”) parties to the Credit Agreement referred to below. All capitalized terms not defined herein shall have the meaning ascribed to them in such Credit Agreement.

W I T N E S S E T H :

WHEREAS, Sears Canada Inc., a corporation organized under the federal laws of Canada (the “Borrower”), the Lenders party thereto, Wells Fargo Capital Finance Corporation Canada, as administrative agent, and the Collateral Agent, among others, have entered into a certain Credit Agreement, dated as of September 10, 2010 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”);

WHEREAS, in connection with the Credit Agreement, the Borrower and certain of its Affiliates (other than the Additional Grantor) have entered into a certain Amended and Restated Guarantee and Collateral Agreement, dated as of April 19, 2017 (as amended, supplemented or otherwise modified from time to time, the “Guarantee and Collateral Agreement”), in favor of the Collateral Agent for the benefit of the Lenders;

WHEREAS, the Credit Agreement requires the Additional Grantor to become a party to the Guarantee and Collateral Agreement; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Guarantee and Collateral Agreement;

NOW, THEREFORE, IT IS AGREED:

1. Guarantee and Collateral Agreement. By executing and delivering this Assumption Agreement, the Additional Grantor, as provided in Section 8.13 of the Guarantee and Collateral Agreement, hereby becomes a party to the Guarantee and Collateral Agreement as a Grantor thereunder with the same force and effect as if originally named therein as a Guarantor and a Grantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Guarantor and a Grantor thereunder. The information set forth in Annex 1-A hereto is hereby added to the information set forth in the Schedules to the Guarantee and Collateral Agreement. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Section 4 of the Guarantee and Collateral Agreement is true and correct on and as the date hereof (after giving effect to this Assumption Agreement) as if made on and as of such date.

2. Governing Law. THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN.

[Remainder of Page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By: \_\_\_\_\_

Name:

Title:

Annex 1-A to  
Assumption Agreement

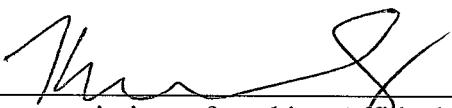
Supplement to Schedule 1

Supplement to Schedule 2

Supplement to Schedule 3

6666128

**THIS IS EXHIBIT "I" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 22<sup>nd</sup> DAY OF JUNE, 2017.**



---

A commissioner for taking Affidavits

**AMENDED AND RESTATED  
GUARANTEE AND COLLATERAL AGREEMENT**

AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT, dated as of April 19, 2017, among (a) each of the entities listed on Schedule 1 hereto (together with any other entity that may become a party hereto as provided herein, the “Grantors”), and (b) GACP Finance Co., LLC, as Agent (in such capacity, the “Agent”).

**W I T N E S S E T H:**

WHEREAS, Sears Canada Inc., a corporation organized under the federal laws of Canada (the “Borrower”), the banks, financial institutions and other parties thereto as “Lenders” (the “Lenders”), and the Agent are party to that certain Credit Agreement, dated March 20, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”);

WHEREAS, pursuant to the Credit Agreement, the Lenders have severally agreed to make extensions of credit to the Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, the Borrower is a member of an affiliated group of companies that includes each other Grantor;

WHEREAS, the Borrower and the other Grantors are engaged in related businesses, and each Grantor will derive substantial direct and indirect benefit from the making of the extensions of credit under the Credit Agreement;

WHEREAS, the Borrower and the other Grantors are parties to a guarantee and collateral agreement dated as of March 20, 2017 (the “Original GCA”), pursuant to which the Borrower and the other Grantors granted a security interest to the Agent over the “Collateral” described therein; and

WHEREAS, it is a condition precedent to the continuing effectiveness of the Credit Agreement that the Grantors execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the premises and to induce the Agent and the other Credit Parties party thereto to continue to advance the Term Loan (or any portion thereof) to the Borrower, the undertaking delivered by the Borrower to the Agent and the Lenders pursuant to Section 5.01(v) of the Credit Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby agree that the Original GCA is hereby amended and restated as follows:

**SECTION 1. DEFINED TERMS**

**1.1      Definitions.**

(a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement, and terms used herein but not defined herein and defined in the Ontario PPSA shall have the same meanings herein as in the Ontario PPSA unless the context otherwise requires. Without limiting the foregoing, the following terms are used herein as defined in the Ontario PPSA: Account, Chattel Paper, Document of Title, Equipment, Intangibles, Goods, Instrument and Proceeds.

(b) The following terms shall have the following meanings:

**“Advances”**: the amounts advanced to the Borrower pursuant to the terms of the Credit Agreement.

**“Agent”**: as defined above, or any successor thereto appointed after GACP Finance Co., LLC has resigned as the Agent in accordance with the terms of the Credit Agreement.

**“Agreement”**: this Amended and Restated Guarantee and Collateral Agreement, as the same may be further amended, restated, supplemented or otherwise modified from time to time.

**Borrower Obligations”**: with respect to the Borrower, the collective reference to the unpaid principal of and interest on the Advances and all other obligations and liabilities of the Borrower (including, without limitation, interest accruing at the then applicable rate provided in the Credit Agreement after the maturity of the Advances and interest accruing at the then applicable rate provided in the Credit Agreement 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) to any Credit Party, 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, the Credit Agreement, this Agreement, the other Loan Documents, any Cash Management Service, or any other document made, delivered or given in connection with any of the foregoing, in each case whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Agent or to any other Credit Party that are required to be paid by the Borrower pursuant to the terms of any of the foregoing agreements, and all interest, reimbursement obligations, fees, indemnities, costs and expenses 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 any such amounts is allowed in such proceeding).

**“Collateral”**: as defined in Section 3.1.

**“Copyrights”**: (i) all copyrights arising under the laws of Canada, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the Canadian Intellectual Property Office and (ii) the right to obtain all renewals thereof.

**“Copyright Licenses”**: any written agreement naming any Grantor as licensor or licensee granting any right under any Copyright, including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

**“Corbeil”**: Corbeil Électrique Inc., a corporation organized under Part 1 (A) of the *Companies Act* (Quebec).

**“Credit Agreement”**: as defined in the Recitals.

**“Documents”**: means all the books, accounts, invoices, letters, papers, security certificates, documents, and other records (including customer lists and records, subject, however, to privacy, confidentiality, and access rights of customers), in any form evidencing or relating to any part of the Collateral, together with all agreements, licences, and other rights and benefits relating to any of them.

**“Guarantor Obligations”**: with respect to any Guarantor, all obligations and liabilities of such Guarantor, whether direct or indirect, absolute or contingent, due or to become due, or now existing or

hereafter incurred, which may arise under or in connection with this Agreement (including, without limitation, Section 2), any other Loan Document or any Cash Management Service to which such Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Agent or to any other Credit Party that are required to be paid by such Guarantor pursuant to the terms of this Agreement, any other Loan Document or any Cash Management Service, and all guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses, or otherwise, 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 guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise, are allowed in such proceeding).

**“Guarantors”**: Corbeil and each other Person who becomes party hereto as a Grantor pursuant to Section 8.13 hereof.

**“Intellectual Property”**: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under Canadian, multinational or foreign laws or otherwise, including, without limitation, all Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks and Trademark Licenses, know-how and processes, 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.

**“Obligations”**: (i) in the case of the Borrower, the Borrower Obligations, and (ii) in the case of each Guarantor, its Guarantor Obligations.

**“Ontario PPSA”**: the Personal Property Security Act as from time to time in effect in the Province of Ontario.

**“Patents”**: (i) all letters patent of Canada, any other country or any political subdivision thereof, all reissues and extensions thereof and all goodwill associated therewith, (ii) all applications for letters patent of Canada or any other country and all divisions, continuations and continuations-in-part thereof and (iii) all rights to obtain any reissues or extensions of the foregoing.

**“Patent License”**: all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent.

**“PPSA”**: the Ontario PPSA, the *Civil Code of Québec* as in effect in the Province of Quebec or any other applicable Canadian federal or provincial statute pertaining to the granting, perfecting, priority or ranking of security interests, liens or hypothecs on personal property, and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time.

**“Replacements”**: means all increases, additions, improvements, and accessions to, and all substitutions for and replacements of, any part of the Collateral in which the Grantors now or later has rights.

**“Software”**: means all software used by any Grantor to process, assemble, prepare for sale, market for sale, sell or otherwise dispose of the Collateral, other than software embedded in any category of goods, including all computer programs and all supporting information provided in connection with a transaction related to any program.

**“Trademarks”**: (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the Canadian Intellectual Property Office or in any similar office or agency of Canada, any Province thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, and (ii) the right to obtain all renewals thereof.

**“Trademark License”**: any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark.

## 1.2 Other Definitional Provisions.

(a) The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor’s Collateral or the relevant part thereof.

## SECTION 2. GUARANTEE

### 2.1 Guarantee.

(a) Subject to Section 2.1(d), each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Agent, for the ratable benefit of the Credit Parties and their respective successors, indorsees, transferees and assigns, (i) the prompt and complete payment and performance by the Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Borrower Obligations, and (ii) the complete payment and performance by each other Guarantor when due (whether at the stated maturity, by acceleration or otherwise) of such other Guarantor’s Guarantor Obligations. The Borrower hereby unconditionally and irrevocably guarantees to the Agent, for the ratable benefit of the Credit Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by each Guarantor when due (whether at the stated maturity, by acceleration or otherwise) of such Guarantor’s Guarantor Obligations.

(b) The guarantee contained in this Section 2 shall remain in full force and effect until all the Borrower Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) and the obligations of each Guarantor under the guarantee contained in this Section 2 shall have been satisfied by payment in full and the Commitments shall be terminated.

(c) No payment made by the Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by the Agent or any other Credit Party from the Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of any of the Borrower Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of any of the Borrower Obligations or any payment received or collected from such Guarantor in respect of any of the Borrower Obligations), remain liable for the Borrower Obligations

until each of the Borrower Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) are indefeasibly paid in full and the Commitments are terminated.

(d) Notwithstanding any other provision contained herein or in any other Loan Document, if a "secured creditor" (as that term is defined under the *Bankruptcy and Insolvency Act* (Canada)) is determined by a court of competent jurisdiction not to include a Person to whom obligations are owed on a joint or joint and several basis, then the Borrower's Obligations (and the Guarantor Obligations in respect of each Guarantor), to the extent such Obligations are secured, shall be several obligations and not joint or joint and several obligations.

2.2 Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to the Agent and the other Credit Parties, and each Guarantor shall remain liable to the Agent and the other Credit Parties for the full amount guaranteed by such Guarantor hereunder.

2.3 No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by the Agent or any other Credit Party, no Guarantor shall be entitled to be subrogated to any of the rights of the Agent or any other Credit Party against the Borrower or any other Guarantor or any collateral security or guarantee or right of offset held by the Agent or any other Credit Party for the payment of any of the Borrower Obligations or the Guarantor Obligations, nor shall any Guarantor seek or be entitled to seek any contribution, reimbursement or indemnification from the Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, and notwithstanding the foregoing, in the event that any Guarantor possesses any such rights of subrogation, contribution, reimbursement or indemnification, all such rights shall in all respects be subordinated and junior in right of payment, until all amounts owing to the Agent and the other Credit Parties by the Borrower on account of its Borrower Obligations and the other Guarantors on account of their Guarantor Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) are indefeasibly paid in full and the Commitments are terminated. If any amount shall be paid to any Guarantor on account of such subrogation, contribution, reimbursement or indemnification rights at any time when any of the Borrower Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) shall not have been indefeasibly paid in full, such amount shall be held by such Guarantor in trust for the Agent and the other Credit Parties, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be transferred to the Agent's Account (or as the Agent may otherwise direct) in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Agent, if required), to be applied against the Borrower Obligations, whether matured or unmatured, in such order as the Agent may determine.

2.4 Amendments, etc. with respect to the Borrower Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Borrower Obligations made by the Agent or any other Credit Party may be rescinded by the Agent or such other Credit Party and any of the Borrower Obligations continued, and any of the Borrower Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Agent or any other Credit Party, and the Credit Agreement and the other Loan Documents and any other documents executed

and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Agent (or the Required Lenders or all Lenders, as the case may be) or any other Credit Party, if applicable, may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by the Agent or any other Credit Party for the payment of any of the Borrower Obligations may be sold, exchanged, waived, surrendered or released. Neither the Agent nor any other Credit Party shall have any obligation to any Loan Party or other Person, to protect, secure, perfect or insure any Lien at any time held by it as security for any of the Borrower Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.5     Guarantee Absolute and Unconditional.

(a)     Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Borrower Obligations and notice of or proof of reliance by the Agent or any other Credit Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; each of the Borrower Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2; and all dealings between the Borrower and any of the Guarantors, on the one hand, and the Agent and the other Credit Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or non-payment to or upon the Borrower or any of the Guarantors with respect to any of the Borrower Obligations. Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (a) the validity or enforceability of the Credit Agreement, any other Loan Document, any agreement relating to any Cash Management Service or any other document made, delivered or given in connection with any of the foregoing, any of the Borrower Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Agent or any other Credit Party, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Borrower or any other Person against the Agent or any other Credit Party, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower for the Borrower Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, the Agent or any other Credit Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for any of the Borrower Obligations or any right of offset with respect thereto, and any failure by the Agent or any other Credit Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Agent or any other Credit Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

(b)     The obligations of each Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document, any agreement relating to any Cash Management Service or any other document made, delivered or given in connection with any of the foregoing or any other agreement, by any default, failure or delay, willful or otherwise, in the

performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Guarantor or that would otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than upon a written release of such Guarantor from the Agent or upon the indefeasible payment in full of all the Borrower Obligations after the Commitments have been terminated).

(c) The Agent and the other Credit Parties may, at their election upon the occurrence and during the continuance of an Event of Default, foreclose on any Collateral held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such Collateral in lieu of foreclosure, compromise or adjust any part of the Borrower Obligations, make any other accommodation with any Guarantor, or exercise any other right or remedy available to them against any Guarantor, without affecting or impairing in any way the liability of any other Guarantor hereunder except to the extent that all the Borrower Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) have been indefeasibly paid in full and the Commitments have been terminated. Each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against any other Guarantor, as the case may be, or any Collateral.

2.6 Reinstatement. The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Borrower Obligations is rescinded or must otherwise be restored or returned by the Agent or any other Credit Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

2.7 Payments. Each Guarantor hereby guarantees that payments hereunder will be paid in Canadian Dollars or Dollars, as applicable, to the Agent's Account, or such other account as the Agent may designate in accordance with Section 8.02 of the Credit Agreement. Each Guarantor shall make all payments to the Agent on its Guarantee Obligations free and clear of, and without deduction or withholding for or on account of, any setoff, counterclaim, defense, duties, taxes, levies, imposts, fees, deductions, withholding, restrictions or conditions of any kind or interest, penalties or other amounts in respect thereof imposed or levied by or on behalf of any Governmental Authority having the power to tax or any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any other Loan Document unless such deduction or withholding is required by law or the administrative practice of any taxation authority.

### SECTION 3. GRANT OF SECURITY INTEREST

3.1 Collateral; Grant of Security Interest. Each Grantor hereby grants to the Agent, for the ratable benefit of the Credit Parties, a security interest in, all of the following property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "**Collateral**"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

- (a) all Credit Card Accounts Receivable;

- (b) all Inventory, Equipment and Goods (including, without limitation, any furniture and fixtures);
- (c) all Chattel Paper relating to Credit Card Accounts Receivable;
- (d) all Instruments relating to Credit Card Accounts Receivable;
- (e) all Documents of Title relating to any Inventory;
- (f) all deposit accounts (other than Excluded Accounts);
- (g) all cash and Cash Equivalents (other than cash and Cash Equivalents held in Excluded Accounts);
- (h) all Documents pertaining to the Collateral; and
- (i) to the extent not otherwise included, all Proceeds, insurance claims and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing and any Replacements of any of the foregoing.

**3.2     No Assumption of Liability.** The security interest in the Collateral, granted to the Agent is granted as security only and shall not subject the Agent or any other Credit Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Collateral.

### **3.3     Attachment.**

Each Grantor acknowledges and agrees that: (a) value has been given by the Agent and the other Credit Parties, (b) it has rights in the Collateral or the power to transfer rights in the Collateral, (c) this Agreement constitutes a “security agreement” (as that term is defined in the PPSA), (d) the security interest will attach when it signs this Agreement, and (e) it has not otherwise agreed to postpone the time of attachment.

## **SECTION 4. REPRESENTATIONS AND WARRANTIES**

To induce the Agent and certain other Credit Parties to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower thereunder, each Grantor hereby represents and warrants to the Agent and the other Credit Parties that:

**4.1     Title; No Other Liens.** Except for the security interest granted to the Agent for the ratable benefit of the Credit Parties pursuant to this Agreement and the other Liens permitted to exist on the Collateral by the Credit Agreement, such Grantor owns each item of the Collateral free and clear of any and all Liens or claims of others. No Grantor has agreed to permit registration of any financing statement or other public notice with respect to all or any part of the Collateral in any public office, except such as have been filed in favor of the Agent, for the ratable benefit of the Credit Parties, pursuant to this Agreement or as are permitted by the Credit Agreement. For the avoidance of doubt, it is understood and agreed that any Grantor may, as part of its business, transfer and/or grant licenses to third parties to use Intellectual Property owned, licensed to or developed by a Grantor so long as such conveyances and/or licenses do not materially impair the license of the Agent in and to such Intellectual Property. For purposes of this Agreement and the other Loan Documents, such licensing activity shall not constitute a “Lien” on such Intellectual Property.

4.2     Perfected Liens.

The security interests granted pursuant to this Agreement (a) upon completion of the filings and other actions specified on Schedule 2 (which, in the case of all filings and other documents referred to on said Schedule, have been delivered to the Agent in completed and, if applicable, duly executed form) will constitute valid perfected security interests in all of the Collateral in favor of the Agent, for the ratable benefit of the Credit Parties, as collateral security for such Grantor's Obligations, enforceable in accordance with the terms hereof against all creditors of such Grantor and any Persons purporting to purchase any Collateral from such Grantor and (b) are prior to all other Liens on the Collateral in existence on the date hereof other than Permitted Liens having priority over the Liens of the Agent pursuant to applicable law but only so long as such Liens are not required to be subordinated to the Agent's Lien.

4.3     Jurisdiction of Organization. On the date hereof, such Grantor's jurisdiction of organization and identification or corporation number from the jurisdiction of organization (if any) are specified on Schedule 3. Such Grantor has furnished to the Agent a charter, certificate of incorporation or other formation document and certificates of compliance/status/good standing as of a date which is recent to the date hereof.

4.4     Credit Card Accounts Receivable.

(a)     No amount payable to such Grantor under or in connection with any Credit Card Accounts Receivable is evidenced by any Instrument or Chattel Paper which has not been delivered to the Agent.

(b)     None of the obligors on any Credit Card Accounts Receivable is a Governmental Authority.

(c)     Each Eligible Credit Card Accounts Receivable is a bona fide existing payment obligation of a credit card payment processor or an issuer of credit cards to a Grantor resulting from charges by a customer of a Grantor on credit cards issued by such issuer in connection with the sale of goods by such Grantor, or services performed by such Grantor, in each case in the ordinary course of its business.

(d)     Except as would not be reasonably expected to result in a Material Adverse Effect, there are no facts, events or occurrences which would impair the validity of any Credit Card Accounts Receivable, or tend to reduce the amount payable thereunder from the face amount of the claim or invoice or statements delivered to the Agent with respect thereto (other than arising in the ordinary course of business).

4.5     Related Intellectual Property. Each Grantor owns or has a license to use all Intellectual Property which is reasonably necessary to sell the Collateral in the ordinary course. Each Grantor shall take all reasonable and necessary steps to maintain and preserve the benefit of each Trademark License, Copyright License and Patent License which relates to Intellectual Property to the extent that the use of such Intellectual Property would be reasonably necessary in connection with the Agent's enforcement of any of its remedies under the Loan Documents. Except for consents which have been obtained, such Grantor does not own any Eligible Inventory which is subject to any Copyright License, Trademark License or Patent License or other agreement with any third party which would require any consent of any third party upon sale or disposition of that Eligible Inventory where such sale or disposition is made pursuant to a going-out-of-business sale, orderly liquidation or similar sale, in each case, to the extent such going-out-of-business sale, orderly liquidation or similar sale is conducted at the Stores, and such

Grantor will promptly deliver notice to the Agent upon entering into any Copyright License, Trademark License or Patent License or amendment thereto which would require any such consent.

4.6 Dealer Store Inventory. Except as would not be reasonably expected to result in a Material Adverse Effect, all of the Inventory at each Dealer Store is owned by a Grantor free and clear of any and all Liens or claims of others except as permitted under the Credit Agreement.

## SECTION 5. COVENANTS

Each Grantor covenants and agrees with the Agent and the other Credit Parties that, until the Obligations (other than contingent indemnification obligations for which no claim shall have then been asserted) shall have been indefeasibly paid in full and the Commitments shall have terminated:

5.1 Delivery of Instruments and Chattel Paper. Other than as may be provided in the Intercreditor Agreement, if any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument, Chattel Paper or transferable records, such Instrument, Chattel Paper or transferable records, shall be promptly delivered to the Agent, duly indorsed in a manner satisfactory to the Agent, to be held as Collateral pursuant to this Agreement.

5.2 Maintenance of Insurance. Such Grantor will maintain insurance as and to the extent required under the Credit Agreement.

5.3 Maintenance of Perfected Security Interest; Further Documentation.

(a) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.2 and shall defend such security interest against the claims and demands of all Persons whomsoever, subject to the rights of such Grantor under the Loan Documents to dispose of the Collateral.

(b) At any time and from time to time, upon the written request of the Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, filing any financing statement, financing change statement, registration or continuation statements under the PPSA (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby.

5.4 Changes in Name, etc. Such Grantor will not, except upon 15 days' prior written notice to the Agent and delivery to the Agent of all additional financing statements, financing change statements and other documents reasonably requested by the Agent to maintain the validity, perfection and priority of the security interests provided for herein, change its name or organizational form, change its jurisdiction of organization, change the location of its chief executive office or permit any Collateral consisting of Goods to be stored in any jurisdiction other than those referred to in Section 5 and in the Perfection Certificate (including the Schedules thereto).

5.5 Accessions and fixtures. Subject to Permitted Liens or as otherwise permitted pursuant to the Credit Agreement, each Grantor shall prevent the Collateral from becoming (a) an accession to any personal property not subject to this Agreement or (b) affixed to any real property unless the security interest ranks prior to the interests of another Person in the realty.

## SECTION 6. REMEDIAL PROVISIONS

### 6.1 Certain Matters Relating to Credit Card Accounts Receivable.

(a) At any time after the occurrence and during the continuance of a Cash Dominion Event, any payments of Credit Card Accounts Receivable, when collected by any Grantor, shall be transferred and maintained in accordance with Section 5.01(m) of the Credit Agreement.

(b) At the Agent's request at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall, subject to the terms of the Intercreditor Agreement, deliver to the Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Credit Card Accounts Receivable, including, without limitation, all original orders, invoices and shipping receipts.

### 6.2 Communications with Obligors; Grantors Remain Liable.

(a) The Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default and subject to any applicable terms of the Intercreditor Agreement, communicate with obligors under the Credit Card Accounts Receivable to verify with them, to the Agent's satisfaction, the existence, amount and terms of any Credit Card Accounts Receivable.

(b) Upon the request of the Agent and subject to any applicable terms of the Intercreditor Agreement, at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on the Credit Card Accounts Receivable that the Credit Card Accounts Receivable have been assigned to the Agent for the ratable benefit of the Credit Parties and that payments in respect thereof shall be made directly to the Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Credit Card Accounts Receivable to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither the Agent nor any other Credit Party shall have any obligation or liability under any Credit Card Accounts Receivable (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Agent or any other Credit Party of any payment relating thereto, nor shall the Agent or any other Credit Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Credit Card Accounts Receivable (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

6.3 Application of Proceeds. If an Event of Default shall have occurred and be continuing, and the Obligations shall have been accelerated or a Liquidation shall have been commenced, the Agent shall apply all or any part of Proceeds constituting Collateral, whether or not held in the Agent's Account, and any proceeds of the guarantee set forth in Section 2, in payment of the Obligations in accordance with the terms of the Credit Agreement.

### 6.4 PPSA and Other Remedies.

(a) If an Event of Default shall occur and be continuing, the Agent, on behalf of the Credit Parties, may (and at the direction of the Required Lenders shall) exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing,

evidencing or relating to the Obligations, all rights and remedies of a secured party under the PPSA or any other applicable law. Without limiting the generality of the foregoing, the Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may (and at the direction of the Required Lenders shall) in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Agent or any Credit Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor. The Agent and any other Credit Party shall each have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption, stay, valuation or appraisal on the part of any Grantor, which right or equity is hereby waived and released, and may credit against the purchase price the amount of any claim then due and payable from any Grantor on account of the Obligations owed to the Agent or any other Credit Party, and the Agent or such other Credit Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor. Each Grantor further agrees, at the Agent's request, to assemble the Collateral and make it available to the Agent at the Grantor's sole risk and expense, at places which the Agent shall reasonably select, whether at such Grantor's premises or elsewhere. The Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.4, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Agent and the other Credit Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in the order set forth in the Credit Agreement, and only after such application and after the payment by the Agent of any other amount required by any provision of law, need the Agent account for the surplus, if any, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Agent or any other Credit Party arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 15 days before such sale or other disposition. The Agent shall not be obligated to make any sale or other disposition of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale or other disposition of such Collateral shall have been given. The Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Any public sale shall be held at such time or times within ordinary business hours and at such place or places as the Agent may fix and state in the notice of such sale. If any of the Collateral is sold, leased, or otherwise disposed of by the Agent on credit, the Obligations shall not be deemed to have been reduced as a result thereof unless and until payment is finally received thereon by the Agent.

(b) If an Event of Default shall occur and be continuing, with respect to any Collateral consisting of Inventory, the Agent may conduct one or more going out of business sales, in the Agent's own right or by one or more agents and contractors. Such sale(s) may be conducted upon any premises owned, leased, or occupied by any Grantor. The Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory with other goods (all of which other goods shall remain the sole property of the Agent or such agent or contractor). Any amounts realized from the sale of such goods which constitute augmentations to the Inventory (net of an allocable share of the costs and expenses incurred in their disposition) shall be the sole property of the Agent or such agent or contractor

and neither any Grantor nor any Person claiming under or in right of any Grantor shall have any interest therein. Each purchaser at any such going out of business sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor.

(c) If an Event of Default shall occur and be continuing, with respect to any Collateral consisting of Accounts, the Agent may: (i) demand, collect and receive any amounts relating thereto, as the Agent may reasonably determine; (ii) commence and prosecute any actions in any court for the purposes of collecting any such Accounts and enforcing any other rights in respect thereof; (iii) defend, settle or compromise any action brought and, in connection therewith, give such discharges or releases as the Agent may reasonably deem appropriate; (iv) without limiting the Agent's rights set forth in Section 7.1, receive, open and dispose of mail addressed to any Grantor and endorse cheques, notes, drafts, acceptances, money orders, bills of lading, warehouse receipts or other instruments or documents evidencing payment, shipment or storage of the goods giving rise to such Accounts or securing or relating to such Accounts, on behalf of and in the name of such Grantor; and (v) sell, assign, transfer, make any agreement in respect of, or otherwise deal with or exercise rights in respect of, any such Accounts or the goods or services which have given rise thereto, as fully and completely as though the Agent were the absolute owner thereof for all purposes.

(d) If an Event of Default shall occur and be continuing, with or without legal process and with or without prior notice or demand for performance, the Agent may enter upon, occupy, and use any premises owned or occupied by each Grantor. The Agent shall not be required to remove any of the Collateral from any such premises upon the Agent taking possession thereof, and may render any Collateral unusable to the Grantors. In no event shall the Agent be liable to any Grantor for use or occupancy by the Agent of any premises pursuant to this Section 6.4, nor for any charge (such as wages for the Grantors' employees and utilities) reasonably incurred in connection with the Agent's exercise of the Agent's rights and remedies hereunder.

(e) For purposes of this Section 6.4, a written and fully executed agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof. The Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Obligations indefeasibly paid in full.

(f) To the extent permitted by applicable law, each Grantor hereby waives all rights of redemption, stay, valuation and appraisal which such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

(g) Upon notice to the Grantors and subject to any obligation to dispose of any of the Collateral, as provided in the PPSA or other provisions of applicable law, the Agent may elect to retain all or any part of the Collateral in satisfaction of the Obligations or any of them.

## 6.5 Receiver-Manager.

The Agent may, in addition to any other rights they may have, appoint by instrument in writing a receiver or receiver and manager (both of which are herein called a "Receiver") of all or any part of the Collateral or may institute proceedings in any court of competent jurisdiction for the appointment of such a Receiver. Any such Receiver is hereby given and shall have the same powers and rights and exclusions and limitations of liability as the Agent have under this Agreement, at law or in equity. In exercising any such powers, any such Receiver shall, to the extent permitted by applicable law, act as and for all purposes shall be deemed to be the agent of the Grantors and the Agent shall not be responsible for any act or default of any such Receiver. The Agent may appoint one or more Receivers hereunder and may

remove any such Receiver or Receivers and appoint another or others in his or their stead from time to time. Any Receiver so appointed may be an officer or employee of the Agent. A court need not appoint, ratify the appointment by the Agent or otherwise supervise in any manner the actions of any Receiver. Upon receipt of notice by any Grantor from the Agent of the taking of possession of the Collateral or the appointment of a Receiver, all powers, functions, rights and privileges of each of the directors and officers of such Grantor with respect to the Collateral shall cease, unless specifically continued by the written consent of the Agent.

6.6 **Deficiency.** Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations and the fees and disbursements of any counsel employed by the Agent or any other Credit Party to collect such deficiency.

6.7 **Grant of License in Intellectual Property, Software and other Assets.**

(a) For the purpose of enabling the Agent to exercise the rights and remedies under at such time as the Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby (i) assigns and transfers by way of security to the Agent and grants the Agent, for the benefit of the Agent and the other Credit Parties, an irrevocable, nonexclusive license (exercisable without payment of royalty or any other compensation to such Grantor or any Affiliate of such Grantor) to use, license or sublicense, any Related Intellectual Property now owned or licensed or hereafter owned, licensed or otherwise acquired by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof and (ii) irrevocably agrees that the Agent may sell any of such Grantor's Inventory directly to any Person, including, without limitation, Persons who have previously purchased such Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Agent's rights under this Agreement, may sell Inventory which bears any Trademark owned by or licensed to such Grantor and any Inventory that is covered by any Copyright owned by or licensed to such Grantor and the Agent may finish any work in process and affix any Trademark owned by or licensed to such Grantor and sell such Inventory as provided herein; provided that, notwithstanding the foregoing, except as provided in any agreement between the Agent and the owner or licensor of such Intellectual Property, this Agreement shall not constitute a license to use, license or sublicense, any Intellectual Property to the extent such license or sublicense is prohibited by or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such Intellectual Property, except to the extent that (x) the term in such contract, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable law, or (y) the contract, license, agreement, instrument or other document pursuant to which such Grantor was granted its rights to any such Intellectual Property was issued by a Subsidiary of such Grantor, the Borrower or an Affiliate of such Grantor controlled by the Borrower (and is not subject to an applicable constraint in an over-license or other agreement with a third party). Notwithstanding anything contained in this Agreement to the contrary, the grant by a Grantor of security in trade-marks (as defined in the *Trade-marks Act (Canada)*) under this Agreement shall be limited to a grant by such Grantor of a security interest in all of its right, title and interest in such trade-mark.

(b) For the purpose of enabling the Agent to exercise the rights and remedies under Section 6 at such time as the Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby assigns and transfers to the Agent and grants to the Agent, for the benefit of the Agent and the other Credit Parties, an irrevocable, nonexclusive license (exercisable without payment of royalty or any other compensation to such Grantor or any other Person) to use, license or sublicense, any Software now owned or licensed or hereafter owned, licensed or otherwise acquired by such Grantor; provided that, notwithstanding the foregoing, except as provided in any agreement between the Agent and

the owner or licensor of such Software, this Agreement shall not constitute a license to use, license or sublicense, any Software to the extent such license or sublicense is prohibited by or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such Software, except to the extent that (i) the term in such contract, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable law, or (ii) the contract, license, agreement, instrument or other document pursuant to which such Grantor was granted its rights to any such Software was issued by a Subsidiary of such Grantor, the Borrower or an Affiliate of such Grantor controlled by the Borrower (and is not subject to an applicable constraint in an over-license or other agreement with a third party).

(c) Without duplication of the rights granted to the Agent in clauses (a) and (b) of this Section 6.7, and for the purpose of enabling the Agent to exercise the rights and remedies under Section 6 at such time as the Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby assigns and transfers to the Agent and grants to the Agent, for the benefit of the Agent and the other Credit Parties, an irrevocable, nonexclusive license (exercisable without payment of royalty, rent or any other compensation to such Grantor or any other Person), to use, license or sublicense, any real property or personal property of such Grantor which does not constitute Collateral, including but not limited to, all Equipment, Intangibles and Goods, whether now or hereafter owned, leased or occupied by such Grantor; provided that, notwithstanding the foregoing, except as provided in any agreement between the Agent and the owner or licensor of such real or personal property, this Agreement shall not constitute a license to use, license or sublicense, any real or personal property to the extent such license or sublicense is prohibited by or results in the termination of or requires any consent not obtained under, any lease, contract, license, agreement, instrument or other document evidencing or giving rise to such property or any rights therein, except to the extent that (i) the term in such lease, contract, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable law, or (ii) the contract, license, agreement, instrument or other document pursuant to which such Grantor was granted its rights to any such real property or personal property was issued by a Subsidiary or Affiliate of such Grantor (and is not subject to an applicable constraint in an over-license or other agreement with a third party).

## SECTION 7. THE AGENT

### 7.1 Agent's Appointment as Attorney-in-Fact, etc.

(a) Each Grantor hereby irrevocably constitutes and appoints the Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and endorse and collect any cheques, drafts, notes, acceptances or other instruments for the payment of moneys due under any Credit Card Accounts Receivable or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Agent for the purpose of collecting any and all such moneys due under any Credit Card Accounts Receivable or with respect to any other Collateral whenever payable;

(ii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iii) execute, in connection with any sale provided for in Section 6.4, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(iv) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Agent, or as the Agent shall direct; (2) ask or demand for, collect, and receive payment of and give receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Agent may deem appropriate; and (7) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Agent was the absolute owner thereof for all purposes, and do, at the Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Agent deem necessary to protect, preserve or realize upon the Collateral and the Agent's and the other Credit Parties security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Agent, at their option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) Without limitation to the Agent's or any other Credit Party's rights to payment, reimbursement or indemnification under any other Loan Document, the expenses of the Agent incurred in connection with actions undertaken as provided in Sections 7.1 and 8.4, together with interest thereon at a rate per annum equal to the highest rate per annum at which interest would then be payable on any category of past due Advances made by the Lenders under the Credit Agreement, from the date of payment by any the Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

**7.2 Duty of Agent.** Except as otherwise required by applicable law, the Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under the PPSA or otherwise, shall be to deal with it in the same manner as the Agent deals with similar

property for its own account. Neither the Agent nor any other Credit Party nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Agent and the other Credit Parties hereunder are solely to protect the Agent's and the other Credit Parties' interests in the Collateral and shall not impose any duty upon the Agent or any other Credit Party to exercise any such powers. The Agent and the other Credit Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct, as determined by a final and non-appealable judgment of a court of competent jurisdiction.

7.3 Execution of PPSA Financing Statements. Each Grantor authorizes the Agent to file or record PPSA financing statements and other filing or recording documents or instruments with respect to the Collateral without the signature of such Grantor in such form and in such offices as the Agent determine appropriate to perfect the security interests of the Agent under this Agreement. Each Grantor hereby ratifies and authorizes the filing by the Agent of any financing statement with respect to the Collateral made prior to the date hereof.

7.4 Authority of the Agent.

Each Grantor acknowledges that the rights and responsibilities of the Agent under this Agreement with respect to any action taken by the Agent or the exercise or non-exercise by the Agent of any request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Agent and the other Credit Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Agent and the Grantors, the Agent shall be conclusively presumed to be acting as agent for the Credit Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

## SECTION 8. MISCELLANEOUS

8.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 8.01 of the Credit Agreement.

8.2 Notices. All notices, requests and demands to or upon the Agent or any Grantor hereunder shall be effected in the manner provided for in Section 8.02 of the Credit Agreement; provided that any such notice, request or demand to or upon any Grantor shall be addressed to such Grantor at its notice address set forth on Schedule 1.

8.3 No Waiver by Course of Conduct; Cumulative Remedies. Neither the Agent nor any other Credit Party shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of the Agent or any other Credit Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Agent or any other Credit Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Agent or such other Credit Party would otherwise

have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4 Enforcement Expenses; Indemnification. Without limitation to the Agent's or any other Credit Party's rights to payment, reimbursement or indemnification under any other Loan Document:

(a) each Grantor jointly and severally agrees to pay or reimburse the Agent and the other Credit Parties for all their costs and expenses incurred in collecting against any Grantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents, including, without limitation, the fees and disbursements of the Credit Parties' counsel in accordance with the terms of the Credit Agreement;

(b) each Grantor agrees to pay, and to save the Agent and the other Credit Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement and the other Loan Documents;

(c) each Grantor agrees to pay, and to save the Agent and the other Credit Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement and the other Loan Documents to the extent the Borrower would be required to do so pursuant to Section 8.04 of the Credit Agreement; and

(d) to the fullest extent permitted by applicable law, no Grantor shall assert, and each Grantor hereby waives, any claim against the Agent and the other Credit Parties, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, or the transactions contemplated hereby or thereby. Neither the Agent nor any other Credit Party shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by the Agent or other Credit Party through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of the Agent or other Credit Party as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) The agreements in this Section 8.4 shall survive repayment of the Obligations and all other amounts payable under the Credit Agreement and the other Loan Documents, the termination of the Commitments, the release of the Collateral from the Liens created hereby and the termination of this Agreement.

8.5 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Agent and the other Credit Parties and their successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Agent.

8.6 Set-Off. Each Grantor hereby irrevocably authorizes the Agent and each of the other Credit Parties at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to such Grantor or any other Grantor, any such notice being expressly waived by each Grantor, to set-off and appropriate and apply any and all deposits (general or special, time or

demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, at any time held or owing by the Agent or other Credit Party to or for the credit or the account of such Grantor, or any part thereof in such amounts as the Agent or other Credit Party may elect, against and on account of the obligations and liabilities of such Grantor to the Agent or other Credit Party hereunder and claims of every nature and description of the Agent or other Credit Party against such Grantor, in any currency, whether arising hereunder, under the Credit Agreement, any other Loan Document, any agreement relating to any Cash Management Services or otherwise, as the Agent or other Credit Party may elect, whether or not the Agent or any other Credit Party has made any demand for payment. The Agent or the applicable Credit Party, as relevant, shall notify such Grantor promptly of any such set-off and the application made by the Agent or other Credit Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Agent and the other Credit Parties under this Section 8.6 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Agent and the other Credit Parties may have.

8.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or electronic transmission of “PDF” file shall be effective as delivery of a manually executed counterpart of this Agreement.

8.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.10 Integration. This Agreement and the other Loan Documents represent the agreement of the Grantors, the Agent and the other Credit Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Agent or the other Credit Parties relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

8.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, except as required by mandatory provisions of law and except to the extent that the validity or perfection of the security interests hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the Province of Ontario.

8.12 Acknowledgement. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) neither the Agent nor any other Credit Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement, any of the other Loan Documents or any Cash Management Service and the relationship between the Grantors, on the one hand, and the Agent and

the other Credit Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Credit Parties or among the Grantors and the Credit Parties.

8.13 Additional Grantors. Each Subsidiary of the Borrower that is required to become a party to this Agreement pursuant to Section 5.01(i) of the Credit Agreement shall become a Guarantor and a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of Annex 1 hereto.

8.14 Releases. (i) This Agreement, the Lien in favor of the Agent (for the benefit of the Credit Parties) and all other security interests granted hereby shall terminate with respect to all Obligations when (i) the Commitments shall have expired or been terminated, and (ii) the principal of and interest on each Loan and all fees and other Obligations (other than (A) contingent indemnification obligations for which claims have not been asserted and (B) unless the Obligations have been accelerated as a result of the occurrence of any Event of Default or the Loan Parties are liquidating substantially all of their assets, subject to the first proviso hereto, Obligations in respect of Cash Management Services) shall have been indefeasibly paid in full, provided, however, that in connection with the termination of this Agreement, the Agent may require such indemnities or, in the case of the succeeding clause (y) only, collateral security as they shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, and (y) any Obligations that may then exist or thereafter arise with respect to Cash Management Services to the extent not provided for thereunder; provided, further, that this Agreement and the security interest granted herein shall be reinstated if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by any Credit Party upon the bankruptcy or reorganization of the Borrower, Grantor or other Loan Party. At the request and sole expense of any Grantor following any such termination, the Agent shall deliver to such Grantor any Collateral held by the Agent hereunder, and execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

(a) If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor in a transaction permitted by the Credit Agreement, then the Collateral shall be released from the Liens created hereby without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to such Grantor or its transferee, as the case may be, and the Agent, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable to evidence the release of the Liens created hereby on such Collateral. At the request and sole expense of the Borrower, the Agent shall release any Grantor from its obligations hereunder, including, without limitation, its obligations pursuant to Section 2 hereof, and shall execute and deliver to the Borrower all releases or other documentation reasonably necessary or desirable to evidence such release, in the event that all the equity interest of such Grantor shall be sold, transferred or otherwise disposed of in a transaction permitted by the Credit Agreement and/or in the event that such Grantor shall dispose of all or substantially all of its assets and shall cease to own any Collateral.

8.15 Jurisdiction, Etc.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any court sitting in Toronto, Ontario, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto

hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such court. Each of the Grantors hereby irrevocably consents to the service of process in any action or proceeding in such courts by the mailing thereof by any parties hereto by registered or certified mail, postage prepaid, to such Grantor at its address specified pursuant to Section 8.02 of the Credit Agreement or Schedule I hereto, as applicable. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents in the courts of any jurisdiction.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any court in Toronto, Ontario. 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.

**8.16 WAIVER OF JURY TRIAL. EACH GRANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR THE ACTIONS OF THE AGENT, THE AGENT OR ANY LENDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.**

**8.17 Provisions Reasonable.**

Each Grantor expressly acknowledges and agrees that the provisions of this Agreement and, in particular, those respecting remedies and powers of the Agent against such Grantor, its business and the Collateral upon default, are commercially reasonable and not manifestly unreasonable.

**8.18 Judgment Currency.** If, for the purposes of obtaining or enforcing judgment in any court or for any other purpose hereunder or in connection herewith, it is necessary to convert a sum due hereunder in any currency into another currency, such conversion shall be carried out to the extent and in the manner provided in the Credit Agreement.

**8.19 Intercreditor Agreement.** Notwithstanding any term or provision of this Agreement to the contrary, the Grantors, the Agent and the other Credit Parties shall be bound by the terms and conditions of the Intercreditor Agreement until the Intercreditor Agreement has been terminated. For certainty, any provision of this Agreement which requires any Grantor to take an action or to not take an action, as applicable, or instructs or permits the Agent or any other Credit Party to take an action or not to take an action, as applicable, where such action or inaction is otherwise prohibited pursuant to the terms of the Intercreditor Agreement, shall be of no force and effect until the Intercreditor Agreement has been terminated.

**8.20 Language.**

The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein (including, without limitation, the other Loan Documents) be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de*

*crédit soient rédigés en langue anglaise settlement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement.*

8.21 Amendment and Restatement

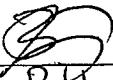
This Agreement (i) is not a novation of the Original GCA; and (ii) is being delivered to amend and restate the Original GCA. As of the date hereof, all rights and obligations of the respective parties under the Original GCA are subsumed within, and governed by, this Agreement. Notwithstanding that this Agreement amends and restates the Original GCA, each Grantor hereby acknowledges and agrees that this Agreement, and all other assignments, guarantees, security or other agreements, filings and registrations with respect to the Original GCA and all other interests granted by the Grantors in favour of the Agent shall remain in place and shall continue to be binding and effective against the Grantors and shall, without limitation, stand as continuing security for the payment and performance of the Obligations.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered as of the date first above written.

Grantors:

SEARS CANADA INC.

By:   
Name: Billy Wong  
Title: CFO

CORBEIL ÉLECTRIQUE INC.

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXECUTION VERSION**

**Agent:**

GACP FINANCE CO., LLC

By:

Name: John Ahn  
Title: President



FORM OF ASSUMPTION AGREEMENT

ASSUMPTION AGREEMENT, dated as of [                ], 20\_\_\_\_], made by  
[                ] (the “Additional Grantor”), in favor of GACP Finance Co., LLC, as Agent  
(collectively in such capacity, the “Agent”), for the banks and other financial institutions or entities (the  
“Lenders”) parties to the Credit Agreement referred to below. All capitalized terms not defined herein  
shall have the meaning ascribed to them in such Credit Agreement.

W I T N E S S E T H:

WHEREAS, Sears Canada Inc., a corporation organized under the federal laws of Canada  
(the “Borrower”), the Lenders party thereto, and the Agent, among others, have entered into a certain  
Credit Agreement, dated as of March 20, 2017 (as amended, supplemented or otherwise modified from  
time to time, the “Credit Agreement”);

WHEREAS, in connection with the Credit Agreement, the Borrower and certain of its  
Affiliates (other than the Additional Grantor) have entered into a certain Amended and Restated  
Guarantee and Collateral Agreement, dated as of April 19, 2017 (as amended, supplemented or otherwise  
modified from time to time, the “Amended and Restated Guarantee and Collateral Agreement”), in favor  
of the Agent for the benefit of the Lenders;

WHEREAS, the Credit Agreement requires the Additional Grantor to become a party to  
the Amended and Restated Guarantee and Collateral Agreement; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Assumption  
Agreement in order to become a party to the Amended and Restated Guarantee and Collateral Agreement;

NOW, THEREFORE, IT IS AGREED:

2. Amended and Restated Guarantee and Collateral Agreement. By executing and  
delivering this Assumption Agreement, the Additional Grantor, as provided in Section 8.13 of the  
Amended and Restated Guarantee and Collateral Agreement, hereby becomes a party to the Amended and  
Restated Guarantee and Collateral Agreement as a Grantor thereunder with the same force and effect as  
if originally named therein as a Guarantor and a Grantor and, without limiting the generality of the  
foregoing, hereby expressly assumes all obligations and liabilities of a Guarantor and a Grantor  
thereunder. The information set forth in Annex 1-A hereto is hereby added to the information set forth in  
the Schedules to the Amended and Restated Guarantee and Collateral Agreement. The Additional Grantor  
hereby represents and warrants that each of the representations and warranties contained in Section 4 of  
the Amended and Restated Guarantee and Collateral Agreement is true and correct on and as the date  
hereof (after giving effect to this Assumption Agreement) as if made on and as of such date.

3. Governing Law. THIS ASSUMPTION AGREEMENT SHALL BE  
GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE  
OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN.

[Remainder of Page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By: \_\_\_\_\_  
Name:  
Title

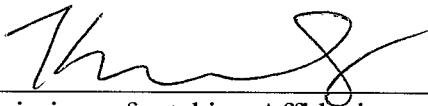
Annex 1-A to  
Assumption Agreement

Supplement to Schedule 1

Supplement to Schedule 2

Supplement to Schedule 3

**THIS IS EXHIBIT "J" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 22<sup>nd</sup> DAY OF JUNE, 2017.**



---

A commissioner for taking Affidavits

**INTERCREDITOR AGREEMENT**

by and among

**WELLS FARGO CAPITAL FINANCE CORPORATION CANADA,**

as ABL Agent,

and

**GACP FINANCE CO., LLC,**

as Term Agent,

and acknowledged by

**SEARS CANADA INC.**

as Borrower,

and

**THE GUARANTORS SIGNATORY HERETO**

dated as of March 20, 2017

## TABLE OF CONTENTS

	Page No.
<b>ARTICLE 1. DEFINITIONS .....</b>	<b>2</b>
<b>Section 1.1. PPSA Definitions.....</b>	<b>2</b>
<b>Section 1.2. Other Definitions.....</b>	<b>2</b>
<b>Section 1.3. Rules of Construction .....</b>	<b>19</b>
<b>ARTICLE 2. LIEN PRIORITY .....</b>	<b>19</b>
<b>Section 2.1. Priority of Liens.....</b>	<b>19</b>
<b>Section 2.2. Waiver of Right to Contest Liens.....</b>	<b>21</b>
<b>Section 2.3. Remedies Standstill.....</b>	<b>22</b>
<b>Section 2.4. Release of Liens.....</b>	<b>25</b>
<b>Section 2.5. No New Liens.....</b>	<b>26</b>
<b>Section 2.6. Waiver of Marshalling.....</b>	<b>27</b>
<b>ARTICLE 3. ACTIONS OF THE PARTIES .....</b>	<b>27</b>
<b>Section 3.1. Certain Actions Permitted .....</b>	<b>27</b>
<b>Section 3.2. Agent for Perfection.....</b>	<b>28</b>
<b>Section 3.3. Sharing of Information and Access; Notices of Default .....</b>	<b>28</b>
<b>Section 3.4. Insurance .....</b>	<b>29</b>
<b>Section 3.5. No Additional Rights For the Loan Parties Hereunder .....</b>	<b>30</b>
<b>Section 3.6. Inspection and Access Rights.....</b>	<b>30</b>
<b>Section 3.7. Tracing of and Priorities in Proceeds.....</b>	<b>33</b>
<b>Section 3.8. Payments Over .....</b>	<b>34</b>
<b>Section 3.9. Legends .....</b>	<b>34</b>
<b>ARTICLE 4. APPLICATION OF PROCEEDS .....</b>	<b>34</b>
<b>Section 4.1. Application of Proceeds.....</b>	<b>34</b>
<b>Section 4.2. Specific Performance .....</b>	<b>37</b>
<b>ARTICLE 5. INTERCREDITOR ACKNOWLEDGEMENTS AND WAIVERS .....</b>	<b>37</b>
<b>Section 5.1. Notice of Acceptance and Other Waivers .....</b>	<b>37</b>
<b>Section 5.2. Modifications and Covenants with respect to ABL Documents and Term Documents .....</b>	<b>38</b>
<b>Section 5.3. Reinstatement and Continuation of Agreement.....</b>	<b>42</b>
<b>ARTICLE 6. INSOLVENCY PROCEEDINGS.....</b>	<b>43</b>
<b>Section 6.1. Enforceability .....</b>	<b>43</b>
<b>Section 6.2. DIP Financing.....</b>	<b>43</b>
<b>Section 6.3. Relief From Stay .....</b>	<b>45</b>
<b>Section 6.4. No Contest.....</b>	<b>45</b>
<b>Section 6.5. Asset Sales .....</b>	<b>45</b>
<b>Section 6.6. Allowance of Claims .....</b>	<b>46</b>
<b>Section 6.7 Separate Grants of Security and Separate Classification .....</b>	<b>46</b>
<b>Section 6.8 ABL Obligations Unconditional .....</b>	<b>47</b>
<b>Section 6.9 Term Obligations Unconditional .....</b>	<b>47</b>
<b>Section 6.10 Plan of Reorganization .....</b>	<b>47</b>
<b>Section 6.11 Rights as Unsecured Creditors .....</b>	<b>47</b>

TABLE OF CONTENTS (Cont'd)

	Page No.
<b>ARTICLE 7. PURCHASE OPTION .....</b>	<b>48</b>
<b>Section 7.1. Purchase Notice.....</b>	<b>48</b>
<b>Section 7.2. Sale of ABL Obligations .....</b>	<b>48</b>
<b>Section 7.3. Purchase Price.....</b>	<b>48</b>
<b>Section 7.4. Treatment of Excess ABL Obligations.....</b>	<b>49</b>
<b>Section 7.5. Limitation on Representations and Warranties by ABL Credit Parties .....</b>	<b>49</b>
<b>Section 7.6. ABL Agent; L/C Issuing Bank.....</b>	<b>49</b>
<b>Section 7.7. Survival of ABL Obligations.....</b>	<b>50</b>
<b>ARTICLE 8. MISCELLANEOUS .....</b>	<b>50</b>
<b>Section 8.1. Rights of Subrogation .....</b>	<b>50</b>
<b>Section 8.2. Further Assurances.....</b>	<b>50</b>
<b>Section 8.3. Representations .....</b>	<b>51</b>
<b>Section 8.4. Amendments .....</b>	<b>51</b>
<b>Section 8.5. Addresses for Notices.....</b>	<b>51</b>
<b>Section 8.6. No Waiver; Remedies .....</b>	<b>52</b>
<b>Section 8.7. Continuing Agreement, Transfer of Secured Obligations .....</b>	<b>52</b>
<b>Section 8.8. Governing Law; Entire Agreement.....</b>	<b>52</b>
<b>Section 8.9. Counterparts .....</b>	<b>52</b>
<b>Section 8.10. No Third Party Beneficiaries .....</b>	<b>52</b>
<b>Section 8.11. Headings.....</b>	<b>53</b>
<b>Section 8.12. Severability .....</b>	<b>53</b>
<b>Section 8.13. VENUE; JURY TRIAL WAIVER.....</b>	<b>53</b>
<b>Section 8.14. Intercreditor Agreement .....</b>	<b>53</b>
<b>Section 8.15. No Warranties or Liability.....</b>	<b>53</b>
<b>Section 8.16. Conflicts .....</b>	<b>54</b>
<b>Section 8.17. Information Concerning Financial Condition of the Loan Parties.....</b>	<b>54</b>

## INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (as amended, supplemented, restated or otherwise modified from time to time pursuant to the terms hereof, this "Agreement") is entered into as of March 20, 2017 among (a) **WELLS FARGO CAPITAL FINANCE CORPORATION CANADA**, in its capacity as administrative agent (together with its permitted successors and assigns in such capacity, the "ABL Agent") for (i) the financial institutions party from time to time to the ABL Credit Agreement referred to below (such financial institutions, together with their respective successors, assigns and transferees, the "ABL Lenders"), (ii) the L/C Issuing Bank referred to in the ABL Credit Agreement, and (iii) any ABL Bank Product Affiliates and ABL Cash Management Affiliates (each as defined below) (such ABL Bank Product Affiliates and ABL Cash Management Affiliates, together with the ABL Agent, the ABL Lenders and the L/C Issuing Bank, the "ABL Credit Parties"), and (b) **GACP FINANCE CO., LLC**, in its capacity as administrative agent (together with its permitted successors and assigns in such capacity, the "Term Agent") for the financial institutions party from time to time to the Term Loan Agreement referred to below (such financial institutions, together with their respective successors, assigns and transferees, the "Term Lenders" and together with the Term Agent, the "Term Credit Parties"), and acknowledged by (c) **SEARS CANADA INC.**, a corporation organized under the federal laws of Canada (the "Borrower"), and (d) each of the Borrower's Subsidiaries which are signatories to this Agreement as "Guarantors".

### RECITALS

A. Pursuant to that certain Credit Agreement dated as of September 10, 2010, by, among others, the Borrower (in its capacity as a borrower under such Credit Agreement, the "ABL Borrower"), the ABL Lenders and the ABL Agent (as such agreement has been amended prior to the date hereof and as may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms hereof, the "ABL Credit Agreement"), the ABL Lenders have agreed to make certain loans and other financial accommodations to or for the benefit of the ABL Borrower, and the L/C Issuing Bank has agreed to issue certain letters of credit for the account of the ABL Borrower.

B. Pursuant to that certain Guarantee and Collateral Agreement dated as of September 10, 2010 (as such agreement has been amended prior to the date hereof and as may be amended, supplemented, restated or otherwise modified and in effect from time to time in accordance with the terms hereof, the "ABL Guaranty"), by the ABL Borrower and the ABL Guarantors in favor of the ABL Credit Parties, the ABL Guarantors have agreed to guarantee, inter alia, the payment and performance of the ABL Borrower's obligations under the ABL Documents (as hereinafter defined) as provided in the ABL Guaranty.

C. To secure the obligations of the ABL Borrower and the ABL Guarantors (the ABL Borrower, the ABL Guarantors and each other direct or indirect subsidiary of the ABL Borrower that is now or hereafter becomes a party to any ABL Document, collectively, the "ABL Loan Parties") under and in connection with the ABL Documents, the ABL Loan Parties have granted to the ABL Agent (for the benefit of the ABL Credit Parties) Liens on the Collateral (as hereinafter defined).

D. Pursuant to that certain Credit Agreement dated as of the date hereof, by and among the Borrower (in its capacity as a borrower under such Credit Agreement, the “**Term Borrower**”), the Term Lenders and the Term Agent (as such agreement may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms hereof, the “**Term Loan Agreement**”), the Term Lenders have agreed to make certain term loans to the Term Borrower in the principal sum of \$CAN300,000,000.

E. Pursuant to that certain Guarantee and Collateral Agreement dated as of the date hereof (as amended, supplemented, restated or otherwise modified and in effect from time to time in accordance with the terms hereof, the “**Term Guaranty**”), by the Term Borrower and the Term Guarantors in favor of the Term Credit Parties, the Term Guarantors have agreed to guarantee, inter alia, the payment and performance of the Term Borrower’s obligations under the Term Documents (as hereinafter defined) as provided in the Term Guaranty.

F. To secure the obligations of the Term Borrower and the Term Guarantors (the Term Borrower, the Term Guarantors and each other direct or indirect subsidiary of the Term Borrower that is now or hereafter becomes a party to any Term Document, collectively, the “**Term Loan Parties**”) under and in connection with the Term Documents, the Term Loan Parties have granted to the Term Agent (for the benefit of the Term Credit Parties) Liens on the Collateral.

G. Each of the ABL Agent (on behalf of the ABL Credit Parties) and the Term Agent (on behalf of the Term Credit Parties) and, by their acknowledgment hereof, the ABL Loan Parties and the Term Loan Parties, desire to agree to the relative priority of Liens on the Collateral and certain other rights, priorities and interests as provided herein.

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

## **ARTICLE 1.** **DEFINITIONS**

**Section 1.1. PPSA Definitions.** The following terms which are defined in the Ontario PPSA are used herein as so defined: Accessions, Account, Chattel Paper, Document of Title, Equipment, Intangibles, Goods, Instrument and Proceeds.

**Section 1.2. Other Definitions.** Subject to Section 1.1, as used in this Agreement, the following terms shall have the meanings set forth below:

“**ABL Agent**” shall have the meaning assigned to that term in the introduction to this Agreement and shall include any successor thereto as well as any Person designated as the “Agent”, “Administrative Agent” or “Control Co-Collateral Agent” under any ABL Credit Agreement.

“**ABL Bank Product Affiliate**” shall mean any ABL Agent, ABL Lender or any Affiliate of any ABL Lender or ABL Agent (together with their respective successors, assigns and transferees) that has entered into a Swap Contract or other Bank Product with an ABL Loan

Party with the obligations of such ABL Loan Party thereunder being secured by one or more ABL Collateral Documents.

**“ABL Borrower”** shall have the meaning assigned to such terms in the recitals to this Agreement.

**“ABL Borrowing Base”** shall mean, as of any date of determination thereof, the “Borrowing Base” as defined in the ABL Credit Agreement as in effect on the date hereof, including all component definitions thereof, and, in each case, as may be amended or otherwise modified, subject to, to the extent required under Section 5.2(a) hereof, the consent of the Term Agent.

**“ABL Cash Management Affiliate”** shall mean any ABL Agent, ABL Lender or any Affiliate of an ABL Lender or ABL Agent (together with their respective successors, assigns and transferees) that provides Cash Management Services to any of the ABL Loan Parties with the obligations of such ABL Loan Parties thereunder being secured by one or more ABL Collateral Documents.

**“ABL Collateral Documents”** shall mean all “Security Documents” as defined in the ABL Credit Agreement, and all other security agreements, mortgages, hypothecs, charges, deeds of trust and other security documents executed and delivered in connection with the ABL Documents, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time.

**“ABL Credit Agreement”** shall have the meaning assigned to such term in the recitals to this Agreement and shall include any other agreement extending the maturity of, consolidating, restructuring, refunding, replacing or refinancing all or any portion of the ABL Obligations, in each case including pursuant to a DIP Financing by any of the ABL Credit Parties, in accordance with the terms hereof, whether by the same or any other agent, lender or group of lenders and whether or not increasing the amount of any indebtedness that may be incurred thereunder.

**“ABL Credit Parties”** shall have the meaning assigned to that term in the introduction to this Agreement.

**“ABL Documents”** shall mean the ABL Credit Agreement, the ABL Guaranty, the ABL Collateral Documents, all Swap Contracts and other Bank Products between any ABL Loan Party and any ABL Bank Product Affiliate, all Cash Management Services Agreements between any ABL Loan Party and any ABL Cash Management Affiliate, those other ancillary agreements as to which any ABL Credit Party is a party or a beneficiary and all other related agreements, instruments, documents and certificates, now or hereafter executed by or on behalf of any ABL Loan Party or any of its respective Subsidiaries or Affiliates, and delivered to the ABL Agent or any other ABL Credit Party, in connection with any of the foregoing or any ABL Credit Agreement, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms hereof.

**“ABL Event of Default”** shall mean an Event of Default as defined in the ABL Credit Agreement.

**“ABL Excess Availability”** shall mean “Excess Availability” as defined in the ABL Credit Agreement as in effect on the date hereof.

**“ABL Guarantors”** shall mean the collective reference to (i) the ABL Borrower, (ii) the Persons signatory hereto and designated as “Guarantors”, and (iii) any other Person who becomes a guarantor of the ABL Obligations.

**“ABL Guaranty”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any further guaranty made by an ABL Guarantor guaranteeing, *inter alia*, the payment and performance of the ABL Obligations.

**“ABL First Lien Mortgages”** shall mean the Mortgages on real estate of the ABL Loan Parties more fully described on Schedule I hereto.

**“ABL Lenders”** shall have the meaning assigned to that term in the introduction to this Agreement, as well as any Person designated as a “Lender” under any ABL Credit Agreement.

**“ABL Line Cap”** shall mean the “Line Cap” as defined in the ABL Credit Agreement as in effect on the date hereof, including all component definitions thereof, and, in each case, as may be amended or otherwise modified, subject to, to the extent required under Section 5.2(a) hereof, the consent of the Term Agent.

**“ABL Loan Parties”** shall have the meaning assigned to that term in the recitals to this Agreement.

**“ABL Obligations”** shall mean all obligations (including all “Obligations” under and as defined in the ABL Credit Agreement and “Borrower Obligations” and “Guarantor Obligations”, each as defined in the ABL Guaranty) of every nature of each ABL Loan Party from time to time owed to the ABL Credit Parties, or any of them, under any ABL Document (including any DIP Financing provided by any of the ABL Credit Parties), whether for principal, interest, reimbursement of amounts drawn under Letters of Credit, payments for early termination of Swap Contracts, amounts due or to become due under any Bank Products or Cash Management Services, Letter of Credit fees, commitment fees, early termination fees, agency fees and other fees, expenses, indemnification obligations and all other amounts owing or due under the terms of the ABL Documents (including interest, fees, expenses and other amounts which, but for the filing of an Insolvency Proceeding with respect to such ABL Loan Party, would have accrued or been payable on any ABL Obligation, whether or not a claim is allowed or allowable against such ABL Loan Party for such amount in the related Insolvency Proceeding), as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time in accordance with the terms hereof.

**“ABL Priority Collateral”** shall mean all Collateral consisting of the following, regardless of when required to be granted by the applicable Loan Party as Collateral (including after the commencement of an Insolvency Proceeding in respect of such Loan Party):

- (1) all Accounts, other than Accounts which constitute Proceeds of Term Priority Collateral, and all Credit Card Accounts Receivable;

(2) all Chattel Paper, other than Chattel Paper which constitutes Proceeds of Term Priority Collateral;

(3) all (x) deposit accounts (other than Term Loan Priority Accounts) and money and all cash, cash equivalents, checks, other negotiable instruments, funds and other evidences of payments held therein not constituting Term Priority Collateral or the Proceeds thereof, and (y) securities accounts (other than Term Loan Priority Accounts), security entitlements and securities credited to such a securities account, other than Term Priority Collateral, and, in each case, all cash, cash equivalents, checks and other property held therein or credited thereto not constituting Term Priority Collateral or Proceeds thereof;

(4) all Inventory;

(5) all owned real property that is subject to and described in the ABL First Lien Mortgages;

(6) to the extent relating to any of the items referred to in the preceding clauses (1) through (5), all Documents of Title, Intangibles, and Instruments;

(7) to the extent relating to any of the items referred to in the preceding clauses (1) through (6) constituting ABL Priority Collateral, all rights under letters of credit and contracts for sale; provided that to the extent any of the foregoing also relates to Term Priority Collateral only that portion related to the items referred to in the preceding clauses (1) through (6) shall be included in the ABL Priority Collateral;

(8) all books, records and information not constituting Term Priority Collateral or Proceeds thereof, and all rights of access to such books, records, and information relating to the items referred to in the preceding clauses (1) through (7) constituting ABL Priority Collateral (including all books, databases, engineer drawings, and records, whether tangible or electronic, which contain any information relating to any of the items referred to in the preceding clauses (1) through (7)); provided that the Term Agent shall be entitled to a copy of all such books, records and information; and

(9) all liens, collateral security, guarantees, rights (including the right of stoppage in transit), remedies, privileges, and insurance policies and certificates with respect to any of the foregoing, all products, Proceeds, substitutions, and accessions of or to any of the foregoing and all cash, cash equivalents, checks, negotiable instruments, money, insurance proceeds (including, without limitation, proceeds of fire and credit insurance, business interruption insurance, refunds, and premium rebates), Instruments, Accounts, Chattel Paper, securities, securities entitlements, financial assets and deposit accounts in each case received as Proceeds of any of the foregoing (such Proceeds, "**ABL Priority Proceeds**").

"**ABL Recovery**" shall have the meaning set forth in Section 5.3(a).

"**ABL Retained Interest**" shall have the meaning set forth in Section 7.4.

**Affiliate** shall mean, any Person which, directly or indirectly, Controls, is Controlled by or is under common Control with any Person.

**Agent(s)** means individually the ABL Agent or the Term Agent and collectively means both the ABL Agent and the Term Agent.

**Aggregate ABL Commitments** shall mean “Aggregate Commitments” as defined in the ABL Credit Agreement as in effect on the date hereof, as such Aggregate Commitments may be increased or reduced in accordance with the terms of the ABL Credit Agreement as in effect on the date hereof.

**Agreement** shall have the meaning assigned to that term in the introduction to this Agreement.

**Availability Reserves** shall mean “Availability Reserves” as defined in the ABL Credit Agreement as in effect on the date hereof, including all component definitions thereof, and, in each case, as may be amended or otherwise modified, subject to, to the extent required under Section 5.2(a) hereof, the consent of the Term Agent.

**Bank Product** shall have the meaning assigned to that term in the ABL Credit Agreement as in effect on the date hereof; provided that, for purposes of this Agreement, all purchase card obligations and credit or debit card obligations shall be deemed to constitute Bank Products and not Cash Management Services.

**Bank Product Cap** shall mean, at any time of calculation, the aggregate amounts due or to become due with respect to Bank Products, but in no event to exceed the sum of (a) \$5,000,000 plus (b) the aggregate amounts due or to become due on account of Bank Products to the extent Bank Product Reserves (as defined in the ABL Credit Agreement) in respect of such Bank Products have been established and maintained by the ABL Agent.

**BIA** shall mean the *Bankruptcy and Insolvency Act* (Canada).

**Borrower** shall mean either of the ABL Borrower and the Term Borrower.

**Borrowing Base Certificate** shall have the meaning assigned to that term in the ABL Credit Agreement.

**Business Day** shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in Toronto, Ontario, Boston, Massachusetts or New York, New York are authorized or required by law to remain closed (or are in fact closed).

**Cash Management Services** shall mean any one or more of the following types of services or facilities provided to any ABL Loan Party by any ABL Credit Party or any of its affiliates: (a) ACH transactions, (b) cash management services, including, without limitation, controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) foreign exchange facilities, and (d) credit card processing services.

**Cash Management Services Agreement** shall mean any agreement pursuant to which an ABL Cash Management Affiliate agrees to provide Cash Management Services; provided that, for purposes of this Agreement, all purchase card obligations shall be deemed to constitute Bank Products and not Cash Management Services.

**CCAA** shall mean the *Companies' Creditors Arrangement Act* (Canada).

**Collateral** shall mean all Property now owned or hereafter acquired by the Borrower or any Guarantor in or upon which a Lien is granted or purported to be granted to the ABL Agent or the Term Agent under any of the ABL Collateral Documents or the Term Collateral Documents, together with all rents, issues, profits, products and Proceeds thereof. For clarity, (i) Collateral does not include, as of the date hereof, any Intellectual Property of any Loan Party or any capital stock or other equity interests of the Borrower or any of its Subsidiaries, and (ii) it is understood and agreed that the Collateral consisting of the ABL First Lien Mortgages is subject to the Loan Parties' right to obtain releases thereof and substitutions therefor to the extent set forth in the ABL Credit Agreement as in effect on the date hereof.

**Commitment Increase** shall have the meaning assigned to such term in the ABL Credit Agreement as in effect on the date hereof.

**Control** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, (whether by contract or otherwise). The terms "Controlling" and "Controlled" have meanings correlative thereto.

**Control Collateral** shall mean any deposit account, Instruments and any other Collateral (a) as to which a Lien may be perfected through possession or control by the secured party, or any agent therefor or (b) subject to a landlord waiver, bailee waiver, freight forwarder agreement, or similar collateral agreement.

**Copyright License** shall mean any written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now or hereafter owned by any Loan Party or that such Loan Party otherwise has the right to license, or granting any right to any Loan Party under any Copyright now or hereafter owned by any third party, and all rights of such Loan Party under any such agreement.

**Copyrights** shall mean all of the following now owned or hereafter acquired by or assigned to any Loan Party: (a) all copyright rights in any work subject to the copyright laws of Canada or any other country, whether as author, assignee, transferee or otherwise, whether registered or unregistered and whether published or unpublished, (b) all registrations and applications for registration of any such copyright in Canada or any other country, including registrations, recordings, supplemental registrations and pending applications for registration in the Canadian Intellectual Property Office and all (i) rights and privileges arising under applicable law with respect to such Loan Party's use of such copyrights, (ii) reissues, renewals, continuations and extensions thereof and amendments thereto, (iii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including damages and payments for past, present or future infringements thereof, (iv) rights

corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof.

“**Credit Card Accounts Receivable**” shall have the meaning given to such term in the ABL Credit Agreement.

“**Credit Documents**” shall mean the ABL Documents and the Term Documents.

“**Credit Parties**” shall mean the ABL Credit Parties and the Term Credit Parties.

“**Debtor Relief Laws**” shall mean the BIA, the CCAA, the *Winding-up and Restructuring Act* (Canada), corporate statutes where such statute is used by a Person to propose an arrangement involving the compromise of the claims of certain creditors, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of Canada or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“**DIP Financing**” shall mean the provision of any debtor in possession financing to any Loan Party in any Insolvency Proceeding of such Loan Party, with the approval of the Court overseeing the Insolvency Proceeding of such Loan Party

“**Discharge of ABL Obligations**” shall mean (a) the payment in full in cash of all outstanding ABL Obligations excluding contingent indemnity obligations with respect to then unasserted claims but including, with respect to (i) amounts available to be drawn under outstanding Letters of Credit issued thereunder (or indemnities or other undertakings issued pursuant thereto in respect of outstanding Letters of Credit), the cancellation of such Letters of Credit or the delivery or provision of money or backstop letters of credit in respect thereof in compliance with the terms of any ABL Credit Agreement, and (ii) all Bank Products and Cash Management Services, the termination of such Bank Products and Cash Management Services and payment of all amounts due thereunder or the delivery or provision of cash collateral in respect thereof as the applicable ABL Bank Product Affiliate or ABL Cash Management Affiliate may require, and (b) the termination of all commitments to extend credit under the ABL Documents. If the Loan Parties enter into any refinancing of the ABL Obligations (including, without limitation by the provision of DIP Financing in any Insolvency Proceeding of the Loan Parties), then the Discharge of ABL Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement.

“**Discharge of Term Obligations**” shall mean the payment in full in cash of all outstanding Term Obligations (other than contingent indemnity obligations with respect to then unasserted claims). If the Loan Parties enter into any refinancing of the Term Obligations (including, without limitation by the provision of DIP Financing in any Insolvency Proceeding of the Loan Parties), then the Discharge of Term Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement.

“**Domain Names**” shall mean all Internet domain names and associated URL addresses in or to which any Loan Party now or hereafter has any right, title or interest.

**“Enforcement Notice”** shall mean a written notice delivered by either the ABL Agent or the Term Agent to the other announcing that an Enforcement Period has commenced.

**“Enforcement Period”** shall mean the period of time following the receipt by either the ABL Agent or the Term Agent of an Enforcement Notice from the other and continuing until the earliest of (a) in case of an Enforcement Period commenced by the Term Agent, the Discharge of Term Obligations (other than any Excess Term Obligations), (b) in the case of an Enforcement Period commenced by the ABL Agent, the Discharge of ABL Obligations (other than any Excess ABL Obligations), or (c) the ABL Agent or the Term Agent (as applicable) terminates, or agrees in writing to terminate, the Enforcement Period.

**“Event of Default”** shall mean an Event of Default as defined in the ABL Credit Agreement or the Term Loan Agreement, as applicable.

**“Excess ABL Obligations”** shall mean ABL Obligations constituting (a) the aggregate outstanding principal amount of loans and outstanding amount of Letters of Credit made, issued or incurred pursuant to the ABL Documents in excess of the Maximum ABL Facility Amount and any interest, fees or reimbursement obligations accrued on or with respect to such excess amounts, and (b) Obligations on account of Bank Products in excess of the Bank Product Cap.

**“Excess Term Obligations”** shall mean Term Obligations constituting the aggregate outstanding principal amount of loans made pursuant to the Term Documents in excess of the Maximum Term Loan Facility Amount and any interest, fees or reimbursement obligations accrued on or with respect to such excess amounts.

**“Exercise of Any Secured Creditor Remedies”** or **“Exercise of Secured Creditor Remedies”** shall mean, except as otherwise provided in the final sentence of this definition:

(a) the taking by any Credit Party of any action to enforce or realize upon any Lien in the Collateral, including, without limitation, the institution of any enforcement proceedings, whether judicial or non-judicial, under applicable law relating to the enforcement of charges, mortgages, deeds of trust or personal property Liens, including the issuance of notices of sale pursuant to the PPSA, the *Mortgages Act* (Ontario) and comparable legislation in effect in other provinces or other applicable law;

(b) the exercise by any Credit Party of any right or remedy provided to a secured creditor on account of a Lien in the Collateral under any of the Credit Documents, under applicable law, in an Insolvency Proceeding or otherwise, including any election to retain any of the Collateral in satisfaction of a Lien;

(c) the taking of any action by any Credit Party or the exercise of any right or remedy by any Credit Party in respect of the collection on, set off against, marshaling of, injunction respecting or enforcement against the Collateral, or the Proceeds thereof, except ordinary course netting and setoff arrangements in connection with periodic settlements but not termination payments with respect to Swap Contracts between any ABL Loan Party and any ABL Bank Product Affiliate and ordinary course offsets of fees and expenses of account banks, chargebacks and collections of checks and similar

arrangements in connection with Cash Management Services Agreements between any ABL Loan Party and any ABL Cash Management Affiliate;

(d) the appointment by a Canadian Court on the application of a Credit Party of a receiver, receiver-manager, trustee, custodian or Person having similar duties in respect all or part of the Collateral;

(e) the sale, lease, license, or other disposition of all or any portion of the Collateral by private or public sale conducted by a Credit Party or any other means at the direction of a Credit Party permissible under applicable law; and

(f) the exercise of any other right of a secured creditor under the PPSA or under other applicable law in respect of the Collateral.

For the avoidance of doubt, none of the following shall be deemed to constitute an Exercise of Secured Creditor Remedies: (i) acceleration by the relevant Credit Parties of the maturity of the ABL Obligations or the Term Obligations, as the case may be, (ii) the filing of a proof of claim in any Insolvency Proceeding, (iii) the maintenance of cash dominion by the ABL Agent or the exercise of rights by the ABL Agent in connection therewith each as provided in the ABL Credit Agreement, including, without limitation, the notification of account debtors, depository institutions or any other Person to deliver Proceeds of Collateral to the ABL Agent solely in connection with such exercise of cash dominion, (iv) the consent by the ABL Agent or the Term Agent to a store closing sale, going out of business sale or other disposition by any Loan Party of any of the Collateral, (v) the reduction of advance rates or sub-limits by the ABL Agent and the ABL Lenders, or (vi) the imposition of Availability Reserves or Inventory Reserves (each as defined in the ABL Credit Agreement) by the ABL Agent or other reserves or limitations on availability provided under the ABL Credit Agreement.

**“Governmental Authority”** shall mean the government of Canada or any other nation, or of any political subdivision thereof, whether provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

**“Guarantor”** shall mean any of the ABL Guarantors or Term Guarantors.

**“Inadvertent Overadvance Amounts”** shall mean the aggregate amount of all Overadvances resulting from any and all Inadvertent Overadvances.

**“Inadvertent Overadvances”** shall mean the funding of any loan or advance under the ABL Credit Agreement or the issuance, renewal or amendment of a Letter of Credit by the L/C Issuing Bank which did not result in an Overadvance when made based upon the most recent Borrowing Base Certificate received by the ABL Agent prior to such funding or issuance, renewal or amendment of a Letter of Credit but which has, on the relevant date of determination, become an Overadvance as the result of circumstances beyond the reasonable control of the ABL Agent or the other ABL Credit Parties (including as the result of the entry of an adverse order by the Canadian Court in any Insolvency Proceeding as to which the ABL Agent, on behalf of the ABL Credit Parties, has contested in good faith), including (i) a decline in the value of the

Collateral included in the ABL Borrowing Base and the Term Loan Borrowing Base, (ii) errors or fraud on a Borrowing Base Certificate, (iii) components of the ABL Borrowing Base and the Term Loan Borrowing Base on any date thereafter being deemed ineligible, (iv) the return of uncollected checks or other items of payment applied to the reduction of Advances (as defined in the ABL Credit Agreement) or other similar involuntary or unintentional actions, (v) the imposition of any reserve or a reduction in advance rates after the funding of any Advance or the issuance, renewal or amendment of a Letter of Credit by the L/C Issuing Bank or (vi) any other circumstance beyond the reasonable control of the ABL Agent, the other ABL Credit Parties, the Term Agent, or the other Term Credit Parties which reduces Excess Availability (as such term is defined in the ABL Credit Agreement as in effect on the date hereof), provided that any repayments with respect to any Overadvances shall be applied first to Inadvertent Overadvances and second to Protective Overadvances.

**“Insolvency Proceeding”** shall mean (a) any case, action or proceeding before any court relating to bankruptcy, reorganization, insolvency, liquidation, administration, arrangement, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors or other similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case covered by clause (a) and (b) undertaken under any Debtor Relief Laws.

**“Intellectual Property”** shall mean all intellectual and similar property of every kind and nature now owned or hereafter acquired by any Loan Party, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, Trade Secrets, Domain Names, confidential and proprietary information, including, without limitation, all trade secrets, technology, ideas, know-how, formulae and customer lists, any and all intellectual property rights in computer software and computer software products (including, without limitation, source codes, object codes, data and related documentation), any and all design rights owned or used by such Loan Party, all other intellectual property rights of every description as set forth in the ABL Documents or the Term Documents as in effect as of the date hereof. For the avoidance of doubt, any Collateral to which Intellectual Property is affixed or applied but does not otherwise constitute intellectual property in accordance with this definition shall not be deemed to be Intellectual Property.

**“Inventory”** shall have the meaning given to such term in the ABL Credit Agreement.

**“L/C Issuing Bank”** shall have the meaning assigned to such term in the ABL Credit Agreement.

**“Lender(s)”** means individually, the ABL Lenders or the Term Lenders and collectively means all of the ABL Lenders and the Term Lenders.

**“Letter of Credit”** shall have the meaning assigned to that term in the ABL Credit Agreement.

**“License”** means any Patent License, Trade Secret License, Trademark License, Copyright License or other license or sublicense agreement to which any Loan Party is a party.

**“Lien”** shall mean, with respect to any asset, any mortgage, deed of trust, security interest, charge, hypothec, pledge, hypothecation, assignment, attachment, deposit arrangement,

encumbrance, lien (statutory, judgment or otherwise), or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale) or other title retention agreement, any capitalized lease, any synthetic lease, any financing lease involving substantially the same economic effect as any of the foregoing and the filing of any financing statement, notice or similar recording under the PPSA or other applicable law of any jurisdiction in respect of the foregoing.

**“Lien Priority”** shall mean with respect to any Lien of the ABL Credit Parties or the Term Credit Parties in the Collateral, the order of priority of such Lien as specified in Section 2.1.

**“Loan Parties”** shall mean the ABL Loan Parties and the Term Loan Parties.

**“Maximum ABL Facility Amount”** shall mean, on any date of determination thereof, the principal amount equal to the sum of (i) the lesser of (A) (x) \$CAN330,000,000 plus (y) other than in the event an Insolvency Proceeding in respect of the Borrower or any of its subsidiaries and affiliates has been commenced and/or an ABL DIP Financing is proposed, the amount of Commitment Increase obtained (and permitted to be incurred under the ABL Credit Agreement as in effect on the date hereof) under Section 2.18 of the ABL Credit Agreement as in effect on the date hereof (provided, however, that the amount described in this clause (A) shall be reduced on a dollar-for-dollar basis for all permanent reductions of the commitments to extend credit under the ABL Documents and for permanent reductions of such commitments required hereunder, so long as any repayments to be made in connection with such commitment reductions have been made), and (B) the ABL Borrowing Base plus (ii) Protective Overadvances in an amount up to five percent (5%) of the ABL Borrowing Base, plus (iii) in addition to the Protective Overadvances described in clause (ii), Protective Overadvance to fund payroll in an amount not to exceed the aggregate amount required (and actually used) to fund payroll requests of the Borrowers and the Guarantors for a two-week period, plus (iv) any Inadvertent Overadvance Amounts, minus (v) the Minimum Excess Availability Amount. For the avoidance of doubt, for purposes of calculating clause (B) hereof, the sum of the Wind-Up Reserve, the Realty Reserves and the Push Down Reserve shall be subtracted therefrom to the extent such reserves have not been deducted within the calculation of the ABL Borrowing Base.

**“Maximum Term Loan Facility Amount”** shall mean the sum of (a) principal amount of \$CAN330,000,000 minus the amount of any principal repayment of the Term Obligations made after the date hereof, plus (b) protective advances which the Term Agent in its reasonable business judgment determines to be necessary or desirable to, directly or indirectly, protect or preserve the value of the Term Priority Collateral, including for the payment of insurance premiums and real estate taxes, plus (c) any interest, fees, costs, premiums and expenses whether paid or payable in cash or in kind and in each case added to the principal balance of the Term Loan (which for greater certainty shall include post-filing interest and all costs incurred by the Term Agent or the Term Credit Parties, in each case to the extent added to the principal balance of the Term Loan).

**“Minimum Excess Availability Amount”** shall mean, on any date of determination, an amount equal to the greater of (i) 12.5% of the lesser of (i) the ABL Borrowing Base and (ii) the

Aggregate ABL Commitments and (ii) the amount of ABL Excess Availability required to be maintained under Section 6.03 of the ABL Credit Agreement.

**“Ontario PPSA”** shall mean the Personal Property Security Act and the regulations made thereunder as from time to time in effect in the Province of Ontario.

**“Overadvance”** shall have the meaning assigned to that term in the ABL Credit Agreement.

**“Party”** shall mean the ABL Agent or the Term Agent, and **“Parties”** shall mean both the ABL Agent and the Term Agent.

**“Patent License”** shall mean any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a Patent, now or hereafter owned by any Loan Party or that any Loan Party otherwise has the right to license, is in existence, or granting to any Loan Party any right to make, use or sell any invention on which a Patent, now or hereafter owned by any third party, is in existence, and all rights of any Loan Party under any such agreement.

**“Patents”** shall mean all of the following now owned or hereafter acquired by any Loan Party: (a) all letters patent of Canada or the equivalent thereof in any other country, all registrations and recordings thereof, and all applications for letters patent of Canada or the equivalent thereof in any other country, including registrations, recordings and pending applications in the Canadian Intellectual Property Office or any similar offices in any other country and (b)(i) rights and privileges arising under applicable law with respect to such Loan Party’s use of any patents, (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and amendments thereto, (iv) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present or future infringements thereof.

**“Person”** shall mean an individual, corporation, limited liability company, partnership, limited liability partnership, trust, other unincorporated association, business, or other legal entity, and any Governmental Authority.

**“PPSA”** shall mean the Ontario PPSA, the *Civil Code of Québec* as in effect in the Province of Quebec or any other applicable Canadian federal or provincial statute pertaining to the granting, perfecting, priority or ranking of security interests, liens or hypothecs on personal property, and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time.

**“Priority Collateral”** shall mean the ABL Priority Collateral or the Term Priority Collateral, as applicable.

**“Professional Fee Estimate”** shall mean, in connection with any Insolvency Proceeding, the amount estimated to be incurred by the Loan Parties with respect to professional fees and

expenses for the Borrower's professionals, including, without limitation, counsel, financial advisors and investment bankers.

**“Property”** shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, moveable or immovable.

**“Protective Overadvances”** shall mean an Overadvance which the ABL Agent in its reasonable business judgment in the performance of its duties under the ABL Credit Agreement, determines to be necessary or desirable to, directly or indirectly, (i) maintain, protect or preserve the value of the Collateral and/or the ABL Agent's rights therein as determined in the discretion of the ABL Agent, including to preserve the Loan Parties' business assets and infrastructure (such as the payment of insurance premiums, taxes, necessary suppliers, rent and payroll), (ii) commence the Exercise of Any Secured Creditor Remedies, (iii) fund an orderly liquidation or wind-down of the Loan Parties' assets or business or an Insolvency Proceeding (whether or not occurring prior to or after the commencement of an Insolvency Proceeding), or (iv) enhance the likelihood of, or maximize the amount of, repayment of the ABL Obligations.

**“Purchase Notice”** shall have the meaning set forth in Section 7.1.

**“Push Down Reserve”** shall mean the “Term Loan Push Down Reserve” as defined in the ABL Credit Agreement as in effect on the date hereof, including all component definitions thereof.

**“Realty Reserves”** shall mean the “Realty Reserves” as defined in the Term Loan Agreement as in effect on the date hereof, including all component definitions thereof.

**“Remedy Standstill Period”** shall mean, whether or not an Insolvency Proceeding has been commenced by or against any Loan Party, (a) with respect to a Term Loan Event of Default, the period commencing on the date of the ABL Agent's receipt of written notice from the Term Agent that a Term Loan Event of Default (provided that no written notice shall be required in the event an Insolvency Proceeding by or against any Loan Parties has been commenced, in which case provisions of Article 6 shall apply) has occurred and is continuing and that the Term Agent intends to commence the Exercise of Secured Creditor Remedies, and ending on earliest to occur of (i) (A) in the event of the commencement of an Insolvency Proceeding by or against any Loan Parties, subject to the provisions of Section 6.3, on the date of commencement of such Insolvency Proceeding, (B) in the event of a Specified Event of Default under the Term Loan Agreement, the date which is thirty (30) days after the receipt of such notice (C) with respect to any other Event of Default under the Term Loan Agreement, the date which is sixty (60) days after receipt of such notice and (ii) the date on which the Discharge of ABL Obligations (other than any Excess ABL Obligations) has occurred, and (b) with respect to an ABL Event of Default, the period commencing on the date of the Term Agent's receipt of written notice from the ABL Agent that an ABL Event of Default (provided that no written notice shall be required in the event an Insolvency Proceeding by or against any Loan Parties has been commenced, in which case provisions of Article 6 shall apply) has occurred and is continuing and that the ABL Agent intends to commence the Exercise of Secured Creditor Remedies, and ending on the earliest to occur of (i) (A) in the event of the commencement of an Insolvency Proceeding by or against any Loan Parties, subject to the provisions of Section 6.3,

on the date of commencement of such Insolvency Proceeding, (B) in the event of a Specified Event of Default under the ABL Credit Agreement, the date which is thirty (30) days after the receipt of such notice (C) with respect to any other Event of Default under the ABL Credit Agreement, the date which is sixty (60) days after receipt of such notice and (ii) the date on which the Discharge of Term Obligations (other than any Excess Term Obligations) has occurred. Such written notice from the Term Agent to the ABL Agent, or from the ABL Agent to the Term Agent, as the case may be, shall reference this Agreement, declare a “Remedy Standstill Period” to commence and certify whether (i) the “Obligations” under and as defined in the Term Loan Agreement or the ABL Credit Agreement, as the case may be, are then due and payable in full (whether as a result of acceleration hereof or otherwise) in accordance with the terms of the Term Loan Agreement or the ABL Credit Agreement, as the case may be, and the Term Agent or the ABL Agent, as the case may be, intends to commence the Exercise of Secured Creditor Remedies or (ii) the Term Agent or the ABL Agent, as the case may be, intends to commence the Exercise of Secured Creditor Remedies.

Notwithstanding the foregoing, a Remedy Standstill Period shall be deemed to be continuing (other than in the event an Insolvency Proceeding by or against any Loan Parties has been commenced, in which case provisions of Article 6 shall apply) if prior to the expiration of the Remedy Standstill Period, and for so long as the Agent with the Lien Priority on such Collateral is diligently pursuing in good faith the exercise of its enforcement rights and remedies against all or a material portion of the ABL Priority Collateral or the Term Priority Collateral, as applicable.

**“Specified Event of Default”** shall mean (a) any ABL Event of Default under Sections 7.01(a) or 7.01(c) pursuant to (i) Section 6.01(j)(iii) for failure to deliver Borrowing Base Certificates of the ABL Credit Agreement or (ii) Section 6.03, and (b) any Term Event of Default under Sections 6.01(a) or 6.01(c) pursuant to (i) Section 5.01(j)(iii) for failure to deliver Borrowing Base Certificates of the Term Loan Agreement or (ii) Section 5.03.

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

**“Swap Contract”** shall have the meaning assigned to that term in the ABL Credit Agreement.

**“Term Agent”** shall have the meaning assigned to that term in the introduction to this Agreement and shall include any successor thereto as well as any Person designated as the “Agent”, “Administrative Agent” or “Collateral Agent” under any Term Loan Agreement.

**“Term Borrower”** shall have the meaning assigned to such terms in the recitals to this Agreement.

**“Term Collateral Documents”** shall mean all “Security Documents” as defined in the Term Loan Agreement, and all other security agreements, mortgages, hypothecs, charges, deeds of trust and other security documents executed and delivered in connection with any Term Loan Agreement, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time.

**“Term Credit Parties”** shall have the meaning assigned to that term in the introduction to this Agreement.

**“Term Documents”** shall mean the Term Loan Agreement, the Term Guaranty, the Term Collateral Documents, those other ancillary agreements as to which any Term Credit Party is a party or a beneficiary and all other related agreements, instruments, documents and certificates, now or hereafter executed by or on behalf of any Term Loan Party or any of its respective Subsidiaries or Affiliates, and delivered to the Term Agent, in connection with any of the foregoing or any Term Loan Agreement, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms hereof.

**“Term Guarantors”** shall mean the collective reference to (i) the Term Borrowers, (ii) the Persons signatory hereto and designated as “Guarantors”, and (iii) any other Person who becomes a guarantor of the Term Obligations.

**“Term Guaranty”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any further guaranty made by a Term Guarantor guaranteeing, *inter alia*, the payment and performance of the Term Obligations.

**“Term Lenders”** shall have the meaning assigned to that term in the introduction to this Agreement, as well as any Person designated as a “Lender” under any Term Loan Agreement.

**“Term Loan Agreement”** shall have the meaning assigned to that term in the recitals to this Agreement and shall include any other agreement extending the maturity of, consolidating, restructuring, refunding, replacing or refinancing all or any portion of the Term Obligations in accordance with the terms hereof, whether by the same or any other agent, lender or group of lenders and whether or not increasing the amount of any indebtedness that may be incurred thereunder.

**“Term Loan Borrowing Base”** shall mean, as of any date of determination thereof, the “Borrowing Base” as defined in the Term Loan Agreement as in effect on the date hereof, including all component definitions thereof, and, in each case, as may be amended or otherwise modified, subject to, to the extent required under Section 5.2(b) hereof, the consent of the ABL Agent.

**“Term Loan Cash Proceeds Notice”** shall mean a written notice delivered by the Term Agent or any Term Credit Party to the ABL Agent (a) stating that an Event of Default has occurred and is continuing under the Term Loan Agreement and specifying the relevant Event of

Default and (b) stating that certain cash proceeds which may be deposited in the Agent's Account (as defined in the ABL Credit Agreement) constitute proceeds of Term Priority Collateral, and reasonably identifying the amount of such proceeds and specifying the origin thereof.

**“Term Loan Event of Default”** shall mean an Event of Default as defined in the Term Loan Agreement.

**“Term Loan Parties”** shall have the meaning assigned to that term in the recitals to this Agreement.

**“Term Loan Priority Accounts”** means any deposit accounts or securities accounts that are intended to solely contain Proceeds of the Term Priority Collateral (it being understood that any property in such deposit accounts or securities accounts which is not Proceeds of Term Priority Collateral shall not be Term Priority Collateral solely by virtue of being on deposit in any such Deposit Account or Securities Account).

**“Term Obligations”** shall mean all obligations (including all “Obligations” under and as defined in the Term Loan Agreement and “Borrower Obligations” and “Guarantor Obligations”, each as defined in the Term Guaranty) of every nature of each Term Loan Party from time to time owed to the Term Credit Parties or any of them, under any Term Document (including any DIP Financing provided by any of the Term Credit Parties), whether for principal, interest, commitment fees, early termination fees, agency fees and other fees, expenses, indemnification obligations and all other amounts owing or due under the terms of the Term Documents (including interest, fees, expenses and other amounts which, but for the filing of an Insolvency Proceeding with respect to such Term Loan Party, would have accrued or been payable on any Term Obligation, whether or not a claim is allowed or allowable against such Term Loan Party for such amount in the related Insolvency Proceeding), as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time.

**“Term Priority Collateral”** shall mean all Collateral, other than ABL Priority Collateral, regardless of when required by the applicable Loan Party (including after the commencement of an Insolvency Proceeding in respect of such Loan Party), including all Equipment, furniture, fixtures, owned real property (other than owned real property subject to the ABL First Lien Mortgages), leased real property, earnest money deposits received in connection with the disposition of any fee owned real estate which constitutes Term Priority Collateral, the Term Loan Priority Accounts, together with all rights, remedies, privileges, and insurance policies and certificates with respect thereto, all products, Proceeds, substitutions, and accessions thereof or thereto and all cash, cash equivalents, checks, negotiable instruments, money, insurance proceeds therefrom, books, records and information in each case received as Proceeds of, or with respect to such books, records and information, relating thereto (such Proceeds, **“Term Priority Proceeds”**).

**“Term Recovery”** shall have the meaning set forth in Section 5.3(b).

**“Trade Secret License”** shall mean any and all agreements, whether written or oral, providing for the grant by or to any Loan Party of any right in or to Trade Secrets, to the extent

that a grant of a security interest in such Trade Secret License is not prohibited by applicable law or the applicable Trade Secret License.

**“Trade Secrets”** shall mean with respect to any Loan Party, all of such Loan Party’s right, title and interest in and to all Canadian and foreign trade secrets, including know how, processes, formulae, compositions, designs, and confidential business and technical information, and all rights of any kind whatsoever accruing thereunder or pertaining thereto, including (a) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including payments under all licenses, non disclosure agreements and memoranda of understanding entered into in connection therewith, and damages and payments for past or future misappropriations thereof, and (b) the right to sue or otherwise recover for past, present or future misappropriations thereof.

**“Trademark License”** shall mean any written agreement, now or hereafter in effect, granting to any third party any right to use any Trademark now or hereafter owned by any Loan Party or that any Loan Party otherwise has the right to license, or granting to any Loan Party any right to use any Trademark now or hereafter owned by any third party, and all rights of any Loan Party under any such agreement.

**“Trademarks”** shall mean all of the following now owned or hereafter acquired by any Loan Party: (a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted, acquired or assigned to, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the Canadian Intellectual Property Office or any similar offices in any Province of Canada or any other country or any political subdivision thereof, and all extensions or renewals thereof and (b) any and all (i) rights and privileges arising under applicable law with respect to such Loan Party’s use of any trademarks, (ii) reissues, continuations, extensions and renewals thereof and amendments thereto, (iii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements thereof, (iv) all goodwill associated therewith and all assets, rights and interests that uniquely reflect or embody such goodwill, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present and future infringements thereof.

**“Use Period”** means the period commencing on the earlier of (i) the date that the ABL Agent (or an ABL Loan Party acting with the consent of the ABL Agent) commences the liquidation and sale of the ABL Priority Collateral in a manner as provided in Section 3.6 (having theretofore furnished the Term Agent with an Enforcement Notice) or (ii) the date which is fifteen (15) days after receipt by the ABL Agent of written notice from the Term Agent of the acceleration of the Term Obligations and the intent of the Term Agent to commence the Exercise of Secured Creditor Remedies, and, in each case, ending 120 days thereafter. Notwithstanding the foregoing, the Use Period for any particular store liquidation shall terminate, as to such location, upon completion of the liquidation and sale of the ABL Priority Collateral at such location. If any stay or other order that prohibits any of the ABL Agent, the other ABL Credit Parties or any ABL Loan Party (with the consent of the ABL Agent) from commencing and

continuing the Exercise of Any Secured Creditor Remedies or to liquidate and sell the ABL Priority Collateral has been entered by a court of competent jurisdiction, such 120-day period shall be tolled during the pendency of any such stay or other order and the Use Period shall be so extended.

**“Wind-Up Reserve”** shall mean the “Wind-Up Reserve” as defined in the ABL Credit Agreement as in effect on the date hereof, including all component definitions thereof.

**Section 1.3.     Rules of Construction.** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the term “including” is not limiting and shall be deemed to be followed by the phrase “without limitation,” and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, schedule and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement to any agreement, instrument, or document shall include all alterations, amendments, changes, restatements, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, restatements, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein); provided that any terms used herein which are defined by reference to the ABL Credit Agreement or the Term Loan Agreement and are subject to the modification restrictions set forth in Section 5.2 of this Agreement shall mean such terms as defined in the ABL Credit Agreement as of the date hereof or the Term Loan Agreement as of the date hereof, as the case may be, without giving effect to any modifications or amendments thereto except to the extent that such definitions have been modified or amended in accordance with this Agreement; and provided further that any such modifications or amendments shall be deemed to be automatically incorporated herein by reference. Any reference herein to any Person shall be construed to include such Person’s successors and assigns. Any reference herein to the repayment in full of an obligation shall mean the payment in full in cash of such obligation, or in such other manner as may be approved in writing by the requisite holders or representatives in respect of such obligation.

## **ARTICLE 2. LIEN PRIORITY**

### **Section 2.1.     Priority of Liens.**

(a) Notwithstanding (i) the date, time, method, manner, or order of grant, attachment, or perfection of any Liens granted to the ABL Agent or the other ABL Credit Parties in respect of all or any portion of the Collateral or of any Liens granted to the Term Agent or the other Term Credit Parties in respect of all or any portion of the Collateral and regardless of how any such Lien was acquired (whether by grant, statute, operation of law, subrogation or otherwise), (ii) the order or time of filing or recordation of any document or instrument for perfecting the Liens in favor of the ABL Agent or the Term Agent (or the other ABL Credit Parties or the other Term Credit Parties) in any Collateral, (iii) whether the ABL Agent or the Term Agent, in each case, either directly or through agents, holds possession of, or has control

over, all or any part of the Collateral, (iv) the date on which the ABL Obligations or the Term Obligations are advanced or made available to the Loan Parties, (vi) the fact that any such Liens in favor of the ABL Agent or the other ABL Credit Parties or the Term Agent or the other Term Credit Parties securing any of the ABL Obligations or Term Obligations, respectively, are contractually subordinated to any Lien securing any obligation of any Loan Party other than the Term Obligations or the ABL Obligations, respectively, the ABL Agent, on behalf of itself and the other ABL Credit Parties, and the Term Agent, on behalf of itself and the other Term Credit Parties, hereby agree that:

(1) any Liens in respect of all or any portion of the ABL Priority Collateral shall have the following Lien Priority:

First, in favor of the ABL Agent or any other ABL Credit Party that secures all or any portion of the ABL Obligations (other than any Excess ABL Obligations);

Second, in favor of the Term Agent or any other Term Credit Party that secures all or any portion of the Term Obligations (other than any Excess Term Obligations);

Third, in favor of the ABL Agent or any other ABL Credit Party that secures any Excess ABL Obligations; and

Fourth, in favor of the Term Agent or any other Term Credit Party that secures any Excess Term Obligations.

(2) any Liens in respect of all or any portion of the Term Priority Collateral shall have the following Lien Priority:

First, in favor of the Term Agent or any other Term Credit Party that secures all or any portion of the Term Obligations (other than any Excess Term Obligations);

Second, in favor of the ABL Agent or any other ABL Credit Party that secures all or any portion of the ABL Obligations (other than any Excess ABL Obligations);

Third, in favor of the Term Agent or any other Term Credit Party that secures any Excess Term Obligations; and

Fourth, in favor of the ABL Agent or any other ABL Credit Party that secures any Excess ABL Obligations.

(b) The Term Agent, for and on behalf of itself and the other Term Credit Parties, acknowledges and agrees that, prior to or concurrently herewith, the ABL Agent, for the benefit of itself and the other ABL Credit Parties, has been, or may be, granted Liens upon all of the Collateral in which the Term Agent has been granted Liens and the Term Agent hereby consents thereto. The ABL Agent, for and on behalf of itself and the other ABL Credit Parties,

acknowledges and agrees that, concurrently herewith, the Term Agent, for the benefit of itself and the other Term Credit Parties, has been, or may be, granted Liens upon all of the Collateral in which the ABL Agent has been granted Liens and the ABL Agent hereby consents thereto. The subordination of Liens by the Term Agent and the ABL Agent in favor of one another as set forth herein shall not be deemed to subordinate the Term Agent's Liens or the ABL Agent's Liens to the Liens of any other Person nor to be affected by the subordination of such Liens to any other Lien.

(c) The Lien subordination provisions contained herein relate solely to the priority of Liens granted to the ABL Agent and the Term Agent by the Loan Parties and shall apply only to the extent that the Liens of the ABL Agent and the Term Agent are valid, perfected, and enforceable. It is the ABL Agent's responsibility to ensure the validity, perfection and enforceability of the Liens granted by the Credit Parties to the ABL Agent for the benefit of itself and the ABL Credit Secured Parties. It is the Term Agent's responsibility to ensure the validity, perfection and enforceability of the Liens granted by the Loan Parties to the Term Agent for the benefit of itself and the Term Credit Parties.

## **Section 2.2. Waiver of Right to Contest Liens.**

(a) The Term Agent, for and on behalf of itself and the other Term Credit Parties, agrees that it and they shall not (and hereby waives any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any Insolvency Proceeding), the validity, priority, enforceability, or perfection of the Liens of the ABL Agent and the other ABL Credit Parties in respect of the Collateral or the provisions of this Agreement. The Term Agent, for itself and on behalf of the other Term Credit Parties, agrees that none of the Term Agent or the other Term Credit Parties will take any action that would interfere with any Exercise of Secured Creditor Remedies undertaken by the ABL Agent or any other ABL Credit Party under the ABL Documents with respect to the ABL Priority Collateral. The Term Agent, for itself and on behalf of the other Term Credit Parties, hereby waives any and all rights it or the other Term Credit Parties may have as a junior lien creditor or otherwise to contest, protest, object to, or interfere with the manner in which the ABL Agent or any ABL Lender seeks to enforce its Liens in any ABL Priority Collateral. The foregoing shall not be construed to prohibit the Term Agent from enforcing the provisions of this Agreement.

(b) The ABL Agent, for and on behalf of itself and the other ABL Credit Parties, agrees that it and they shall not (and hereby waives any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any Insolvency Proceeding), the validity, priority, enforceability, or perfection of the Liens of the Term Agent or the other Term Credit Parties in respect of the Collateral or the provisions of this Agreement. Except to the extent expressly set forth in this Agreement, the ABL Agent, for itself and on behalf of the other ABL Credit Parties, agrees that none of the ABL Agent or the ABL Credit Parties will take any action that would interfere with any Exercise of Secured Creditor Remedies undertaken by the Term Agent or any Term Credit Party under the Term Documents with respect to the Term Priority Collateral. The ABL Agent, for itself and on behalf of the ABL Credit Parties, hereby waives any and all rights it or the ABL Credit Parties may have as a junior lien creditor or

otherwise to contest, protest, object to, or interfere with the manner in which the Term Agent or any Term Credit Party seeks to enforce its Liens in any Term Priority Collateral. The foregoing shall not be construed to prohibit the ABL Agent from enforcing the provisions of this Agreement.

(c) Notwithstanding anything to the contrary herein contained, none of the Parties hereto waives any claim that it may have against a Credit Party on the grounds that any sale, transfer or other disposition or any collection by the Credit Party was not commercially reasonable in every respect as required by the PPSA, any Debtor Relief Laws or any other applicable law.

### **Section 2.3.      Remedies Standstill.**

(a) Following the occurrence of any Term Loan Event of Default and until the expiration of the Remedy Standstill Period, the Term Agent may not commence or continue the Exercise of Any Secured Creditor Remedies in respect of the ABL Priority Collateral provided, however, nothing contained herein shall impair the Term Agent's and the Term Credit Parties' rights to take, in the event that the ABL Agent has declined to take such protective actions within a reasonable time period after the written request by the Term Agent to the ABL Agent to do so, any actions (including the commencement of legal proceedings) that the Term Agent or such Term Credit Party deems necessary to protect and preserve, but not to sell, or realize or foreclose on, the ABL Priority Collateral. After the expiration of the Remedy Standstill Period, and upon five (5) Business Days prior written notice to the ABL Agent (which notice may be delivered to the ABL Agent during the Remedy Standstill Period but in no event more than ten (10) days prior to the expiration thereof), the Term Agent may take, for the benefit of the Term Credit Parties, one or more of the following actions in respect of the Term Loan Event of Default that was the subject of the notice giving rise to such Remedy Standstill Period at the same or different times:

(1) the Exercise of Any Secured Creditor Remedies with respect to the ABL Priority Collateral (including, without limitation, foreclosure upon and taking possession of the ABL Priority Collateral); provided, however, that until the date on which the Discharge of ABL Obligations (other than Excess ABL Obligations) has occurred, the Term Agent will not commence or continue the Exercise of Any Secured Creditor Remedies or seek or continue remedies under the Term Documents on account of the ABL Priority Collateral so long as the ABL Agent is diligently pursuing in good faith the exercise of its enforcement rights and remedies against all or a material portion of the ABL Priority Collateral; and

(2) exercise any and all other remedies under the Term Documents and applicable law available to the Term Credit Parties with respect to the ABL Priority Collateral, including the notification of account debtors or other Persons obligated on ABL Priority Collateral of the assignment of any Loan Party's accounts receivable to the ABL Agent and the Term Agent, all subject to the first proviso in Section 2.3(a)(1) above.

(b) Following the occurrence of any ABL Event of Default and until the expiration of the Remedy Standstill Period, the ABL Agent may not commence or continue the Exercise of Any Secured Creditor Remedies in respect of the Term Priority Collateral provided, however, nothing contained herein shall impair the ABL Agent's and the ABL Credit Parties' rights to take, in the event that the Term Agent has declined to take such protective actions within a reasonable time period after the written request by the ABL Agent to the Term Agent to do so, any actions (including the commencement of legal proceedings) that the ABL Agent or such ABL Credit Party deems necessary to protect and preserve, but not to sell, or realize or foreclose on, the Term Priority Collateral. After the expiration of the Remedy Standstill Period, and upon five (5) Business Days prior written notice to the Term Agent (which notice may be delivered to the Term Agent during the Remedy Standstill Period but in no event more than ten (10) days prior to the expiration thereof), the ABL Agent may take, for the benefit of the ABL Credit Parties, one or more of the following actions in respect of the ABL Event of Default that was the subject of the notice giving rise to such Remedy Standstill Period at the same or different times:

(1) the Exercise of Any Secured Creditor Remedies with respect to the Term Priority Collateral (including, without limitation, foreclosure upon and taking possession of the Term Priority Collateral); provided, however, that until the date on which the Discharge of Term Obligations (other than Excess Term Obligations) has occurred, the ABL Agent will not commence or continue the Exercise of Any Secured Creditor Remedies or seek or continue remedies under the ABL Documents on account of the Term Priority Collateral so long as the Term Agent is diligently pursuing in good faith the exercise of its enforcement rights and remedies against all or a material portion of the Term Priority Collateral; and

(2) the exercise of any and all other remedies under the ABL Documents and applicable law available to the ABL Credit Parties with respect to the Term Priority Collateral, including the notification of account debtors or other Persons obligated on Term Priority Collateral of the assignment of any Loan Party's accounts receivable to the Term Agent and the ABL Agent, all subject to the proviso in Section 2.3(b)(1) above.

(c) All Proceeds of ABL Priority Collateral received by the Term Agent shall be turned over to the ABL Agent for prompt application in accordance with Section 4.1(b) hereof, or, to the extent that the Term Agent is entitled to apply such Proceeds to the Term Obligations pursuant to the terms of this Agreement, applied promptly by the Term Agent in accordance with Section 4.1(c). This Section 2.3 shall not be construed to in any way limit or impair the rights of the Term Agent to join (but not control or object to in any way) any sale, foreclosure or other Exercise of Secured Creditor Remedies with respect to the Collateral initiated by the ABL Agent, so long as it does not delay or interfere in any material respect with the exercise by the ABL Credit Parties of their respective rights as provided in this Agreement.

(d) All Proceeds of Term Priority Collateral received by the ABL Agent shall be turned over to the Term Agent for prompt application in accordance with Section 4.1(c) hereof, or, to the extent that the ABL Agent is entitled to apply such Proceeds to the ABL Obligations pursuant to the terms of this Agreement, applied promptly by the ABL Agent in

accordance with Section 4.1(b). This Section 2.3 shall not be construed to in any way limit or impair the rights of the ABL Agent to join (but not control or object to in any way) any sale, foreclosure or other Exercise of Secured Creditor Remedies with respect to the Collateral initiated by the Term Agent, so long as it does not delay or interfere in any material respect with the exercise by the Term Credit Parties of their respective rights as provided in this Agreement.

(e) Nothing contained herein shall impair the Term Agent's or any Term Credit Party's rights (i) to exercise any remedies against any of the Loan Parties or the Collateral (other than any remedies against any ABL Priority Collateral) pursuant to the Term Documents; (ii) to accelerate any of the Term Obligations; (iii) to make demand upon any Loan Party or any other Person liable on the Term Obligations; (iv) to institute a lawsuit to collect its debt, including the filing, or participation in a filing, of any involuntary bankruptcy petition in respect to any Loan Party; (v) to exercise any of its rights or remedies with respect to the ABL Priority Collateral as and when permitted by Section 2.3(a), (vi) to file a claim or statement of interest with respect to the Term Obligations; (vii) to take any action (not adverse to the priority and perfection status of, and validity and value of, the Liens of the ABL Agent, or the rights of the ABL Agent to exercise remedies in respect thereof) in order to create, perfect, preserve or protect its Lien on the Collateral subject to the other terms of this Agreement; (viii) to file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Term Credit Parties, including, without limitation, any claims secured by the Collateral, if any, in each case not otherwise in contravention of the terms of this Agreement; (ix) to exercise any rights or remedies available to unsecured creditors or file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Loan Parties arising under the Term Documents, any Insolvency Proceeding or applicable law, in each case, not otherwise prohibited by the terms of this Agreement; and (x) to vote on any plan of reorganization, arrangement or compromise or any proposal, file any proof of claim, make other filings and make any arguments and motions in any Insolvency Proceeding that are, in each case, not otherwise prohibited by the terms of this Agreement.

(f) Nothing contained herein shall impair the ABL Agent's or any ABL Credit Party's rights (i) to exercise any remedies against any of the Loan Parties or the Collateral (other than any remedies against any Term Priority Collateral) pursuant to the ABL Documents; (ii) to accelerate any of the ABL Obligations; (iii) to make demand upon any Loan Party or any other Person liable on the ABL Obligations; (iv) to institute a lawsuit to collect its debt, including the filing, or participation in a filing, of any involuntary bankruptcy petition in respect to any Loan Party; (v) to exercise any of its rights or remedies with respect to the Term Priority Collateral as and when permitted by Section 2.3(b), (vi) to file a claim or statement of interest with respect to the ABL Obligations; (vii) to take any action (not adverse to the priority and perfection status of, and validity and value of, the Liens of the Term Agent, or the rights of the Term Agent to exercise remedies in respect thereof) in order to create, perfect, preserve or protect its Lien on the Collateral subject to the other terms of this Agreement; (viii) to file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the ABL Credit Parties, including, without limitation, any claims secured by the Collateral, if any, in each case not otherwise in contravention of the terms of this Agreement; (ix) to exercise any rights or remedies available to unsecured creditors or file any

pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Loan Parties arising under the ABL Documents, any Insolvency Proceeding or applicable law, in each case, not otherwise prohibited by the terms of this Agreement; and (x) to vote on any plan of reorganization, arrangement or compromise or any proposal, file any proof of claim, make other filings and make any arguments and motions in any Insolvency Proceeding that are, in each case, not otherwise prohibited by the terms of this Agreement.

#### **Section 2.4.      Release of Liens.**

(a) In the event of (A) any private or public sale of all or any portion of the ABL Priority Collateral in connection with any Exercise of Secured Creditor Remedies by the ABL Agent or by any of the Loan Parties with the consent of the ABL Agent after the occurrence and during the continuance of an Event of Default under the ABL Documents, or (B) any sale, transfer or other disposition of all or any portion of the ABL Priority Collateral (other than in connection with a refinancing as described in Section 5.2(c)), so long as such sale, transfer or other disposition is then permitted by the ABL Documents or consented to by the requisite ABL Lenders (and, so long as no Event of Default under the ABL Documents has occurred and is continuing, is permitted by the Term Documents without giving effect to any amendments thereof which are more restrictive than those provisions in effect on the date hereof), the Term Agent agrees, on behalf of itself and the Term Lenders that such sale, transfer or other disposition will be free and clear of the Liens on such ABL Priority Collateral securing the Term Obligations, and the Term Agent's and the Term Credit Parties' Liens with respect to the ABL Priority Collateral so sold, transferred, or disposed of shall terminate and be automatically released without further action concurrently with, and to the same extent as, the release of the ABL Credit Parties' Liens on such ABL Priority Collateral; provided that, the ABL Agent shall have furnished the Term Agent with ten days notice of any such disposition; provided further that for the avoidance of doubt, the Term Credit Parties' Liens in respect of the Proceeds of such ABL Priority Collateral so sold, transferred, or disposed of shall continue to exist to the same extent, as the ABL Credit Parties' Liens on such Proceeds, and subject to the relative priorities provided for herein; and provided, further, that to the extent Proceeds are required to repay obligations, such Proceeds shall be applied in accordance with Section 4.1(b). In furtherance of, and subject to, the foregoing, the Term Agent agrees that it will promptly execute any and all Lien releases or other documents reasonably requested by the ABL Agent in connection therewith. The Term Agent hereby appoints the ABL Agent and any officer or duly authorized person of the ABL Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power of attorney to be exercised if the Term Agent does not take such action within five (5) days after written notice, in the place and stead of the Term Agent and in the name of the Term Agent or in the ABL Agent's own name, from time to time, in the ABL Agent's sole discretion, for the purposes of carrying out the terms of this paragraph, to take any and all appropriate action and to execute and deliver any and all documents and instruments as may be necessary or desirable to accomplish the purposes of this paragraph, including any financing statements, endorsements, assignments, releases or other documents or instruments of transfer (which appointment, being coupled with an interest, is irrevocable).

(b) In the event of (A) any private or public sale of all or any portion of the Term Priority Collateral in connection with any Exercise of Secured Creditor Remedies by or

with the consent of the Term Agent after the occurrence and during the continuance of an Event of Default under the Term Documents, or (B) any sale, transfer or other disposition of all or any portion of the Term Priority Collateral (other than in connection with a refinancing as described in Section 5.2(c)), so long as such sale, transfer or other disposition is then permitted by the Term Documents or consented to by the requisite Term Lenders, the ABL Agent agrees, on behalf of itself and the ABL Lenders (and, so long as no Event of Default under the Term Documents has occurred and is continuing, is permitted by the ABL Documents without giving effect to any amendments thereof which are more restrictive than those provisions in effect on the date hereof), that such sale, transfer or disposition will be free and clear of the Liens on such Term Priority Collateral securing the ABL Obligations and the ABL Agent's and the ABL Credit Parties' Liens with respect to the Term Priority Collateral so sold, transferred, or disposed of shall terminate and be automatically released without further action concurrently with, and to the same extent as, the release of the Term Credit Parties' Liens on such Term Priority Collateral; provided that, the Term Agent shall have furnished the ABL Agent with ten days notice of any such disposition; provided further that for the avoidance of doubt, the ABL Agent's and the ABL Credit Parties' Liens in respect of the Proceeds of such Term Priority Collateral so sold, transferred, or disposed of shall continue to exist to the same extent, as the Term Credit Parties' Liens on such Proceeds, and subject to the relative priorities provided for herein; and provided, further, that to the extent Proceeds are required to repay obligations, such Proceeds shall be applied in accordance with Section 4.1(c). In furtherance of, and subject to, the foregoing, the ABL Agent agrees that it will promptly execute any and all Lien releases or other documents reasonably requested by the Term Agent in connection therewith. The ABL Agent hereby appoints the Term Agent and any officer or duly authorized person of the Term Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power of attorney to be exercised if the ABL Agent does not take such action within five (5) days after written notice, in the place and stead of the ABL Agent and in the name of the ABL Agent or in the Term Agent's own name, from time to time, in the Term Agent's sole discretion, for the purposes of carrying out the terms of this paragraph, to take any and all appropriate action and to execute and deliver any and all documents and instruments as may be necessary or desirable to accomplish the purposes of this paragraph, including any financing statements, endorsements, assignments, releases or other documents or instruments of transfer (which appointment, being coupled with an interest, is irrevocable).

**Section 2.5.      No New Liens.** (a) Until the date upon which the Discharge of ABL Obligations shall have occurred, the parties hereto agree that it is the anticipation of the parties, that none of Term Agent or any Term Credit Party shall acquire or hold any Lien on any assets securing any Term Obligations which assets are not also subject to the Lien of ABL Agent under the ABL Documents. If any of Term Agent or Term Credit Party shall nonetheless acquire or hold any Lien on any assets of any Loan Party securing any Term Obligations which assets are not also subject to the Lien of ABL Agent under the ABL Documents, then Term Agent (or the relevant Term Credit Party) shall, without the need for any further consent of any other Term Credit Party or any Loan Party and notwithstanding anything to the contrary in any other Term Document, be deemed to also hold and have held such Lien as agent or bailee for the benefit of ABL Agent and the other ABL Credit Parties as security for the ABL Obligations (subject to the lien priority set forth in Section 2.1 and the other terms hereof) and shall promptly notify ABL Agent in writing of the existence of such Lien upon becoming aware thereof.

(b) Until the date upon which the Discharge of Term Obligations shall have occurred, the parties hereto agree that it is the anticipation of the parties, that none of ABL Agent or any ABL Credit Party shall acquire or hold any Lien on any assets securing any ABL Obligations which assets are not also subject to the Lien of Term Agent under the Term Documents. If any of ABL Agent or ABL Credit Party shall nonetheless acquire or hold any Lien on any assets of any Loan Party securing any ABL Obligations which assets are not also subject to the Lien of Term Agent under the Term Documents, then ABL Agent (or the relevant ABL Credit Party) shall, without the need for any further consent of any other ABL Credit Party or any Loan Party and notwithstanding anything to the contrary in any other ABL Document, be deemed to also hold and have held such Lien as agent or bailee for the benefit of Term Agent and the other Term Credit Parties as security for the Term Obligations (subject to the lien priority set forth in Section 2.1 and the other terms hereof) and shall promptly notify Term Agent in writing of the existence of such Lien upon becoming aware thereof.

(c) To effectuate the foregoing sharing of Liens, each of ABL Agent and Term Agent agrees that the documentation evidencing or perfecting the Collateral granted to it in which the other Agent has not received a direct grant of a Lien shall explicitly include provisions granting each Agent a Lien thereon.

#### **Section 2.6. Waiver of Marshalling.**

(a) Until the Discharge of ABL Obligations (other than Excess ABL Obligations), the Term Agent, on behalf of itself and the Term Credit Parties, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the ABL Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

(b) Until the Discharge of Term Obligations (other than Excess Term Obligations), the ABL Agent, on behalf of itself and the ABL Credit Parties, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Term Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

### **ARTICLE 3. ACTIONS OF THE PARTIES**

**Section 3.1. Certain Actions Permitted.** The Term Agent and the ABL Agent may make such demands or file such claims in respect of the Term Obligations or the ABL Obligations, as applicable, as are necessary to prevent the waiver or bar of such claims under applicable statutes of limitations or other statutes, court orders, or rules of procedure at any time. Nothing in this Agreement shall prohibit the receipt by the Term Agent or any Term Credit Party of the payments of interest, principal, fees, expenses and other amounts owed in respect of the Term Obligations so long as such receipt is not the direct or indirect result of the exercise by the

Term Agent or any Term Credit Party of rights or remedies as a secured creditor (including set-off) with respect to ABL Priority Collateral or enforcement in contravention of this Agreement of any Lien held by any of them. Nothing in this Agreement shall prohibit the receipt by the ABL Agent or any ABL Credit Party of the payments of interest, principal, fees, expenses and other amounts owed in respect of the ABL Obligations so long as such receipt is not the direct or indirect result of the exercise by the ABL Agent or any ABL Credit Party of rights or remedies as a secured creditor (including set-off) with respect to Term Priority Collateral or enforcement in contravention of this Agreement of any Lien held by any of them.

**Section 3.2.      Agent for Perfection.** The ABL Agent, for and on behalf of itself and each ABL Credit Party, and the Term Agent, for and on behalf of itself and each Term Credit Party, as applicable, each acknowledge and agree to hold all Control Collateral in its respective possession, custody, or control (or in the possession, custody, or control of agents or bailees for either, including, without limitation, landlords, freight forwarders and other bailees) as agent for the benefit of, and on behalf of, the other solely for the purpose of perfecting the security interest granted to each in such Collateral, subject to the terms and conditions of this Section 3.2. None of the ABL Agent, the ABL Credit Parties, the Term Agent, or the Term Credit Parties, as applicable, shall have any obligation whatsoever to the others to assure that the Collateral is genuine or owned by the Borrower, any Guarantor, or any other Person or to preserve rights or benefits of any Person. The duties or responsibilities of the ABL Agent and the Term Agent under this Section 3.2 are and shall be limited solely to holding or maintaining control of the Control Collateral as agent for the other Party for purposes of perfecting the Lien held by the Term Agent or the ABL Agent, as applicable. The ABL Agent is not and shall not be deemed to be a fiduciary of any kind for the Term Credit Parties or any other Person. Without limiting the generality of the foregoing, the ABL Credit Parties shall not be obligated to see to the application of any Proceeds of the Term Priority Collateral deposited into any Deposit Account or be answerable in any way for the misapplication thereof. The Term Agent is not and shall not be deemed to be a fiduciary of any kind for the ABL Credit Parties, or any other Person.

**Section 3.3.      Sharing of Information and Access; Notices of Default.**

(a) In the event that the ABL Agent shall, in the exercise of its rights under the ABL Collateral Documents or otherwise, receive possession or control of any books and records of any ABL Loan Party or any Term Loan Party which contain information identifying or pertaining to the Collateral, the ABL Agent shall, upon request from the Term Agent and as promptly as practicable thereafter, either make available to the Term Agent such books and records for inspection and duplication or provide to the Term Agent copies thereof. In the event that the Term Agent shall, in the exercise of its rights under the Term Collateral Documents or otherwise, receive possession or control of any books and records of any ABL Loan Party or any Term Loan Party which contain information identifying or pertaining to any of the Collateral, the Term Agent shall, upon request from the ABL Agent and as promptly as practicable thereafter, either make available to the ABL Agent such books and records for inspection and duplication or provide the ABL Agent copies thereof.

(b) Each Agent shall give to the other Agent concurrently with the giving thereof to any Loan Party (a) a copy of any written notice by such Agent of an ABL Event of Default or a Term Loan Event of Default, as the case may be, or a written notice of demand for

payment from any Loan Party and (b) a copy of any written notice sent by such Agent to any Loan Party stating such Agent's intention to exercise any material enforcement rights or remedies against such Loan Party, including written notice pertaining to any sale of or foreclosure on all or any material part of its Liens or other judicial or non-judicial remedy in respect thereof, and any legal process served or filed in connection therewith; provided that the failure of any Agent to give such required notice shall not result in any liability to such Agent or affect the enforceability of any provision of this Agreement, including the relative priorities of the Liens of the Agents and Credit Parties as provided herein, and shall not affect the validity or effectiveness of any such notice as against any Loan Party or of any action taken pursuant to such notice or in relation to the events giving rise thereto; provided, further, that the foregoing shall not in any way impair any claims that any Agent may have against the other Agent as a result of any failure of such Agent to provide any notice in connection with a foreclosure against the Collateral by such Agent as required under applicable law.

(c) Each Agent shall promptly provide to the other Agent copies of all collateral reports, appraisals, results of field examinations and physical inventories that it receives. Notwithstanding anything to the contrary contained in the Term Documents, as long as the ABL Agent so shares the results of inventory appraisals and field examinations, the Term Agent shall not conduct inventory appraisals or undertake field examinations; provided that to the extent the ABL Agent does not cause an inventory appraisal to be conducted or a commercial finance examination to be undertaken, in each case one time in any six month period, the Term Agent may engage an appraiser or examiner to do so, provided, that upon receipt of such appraisal, the ABL Agent shall in good faith consult with the Term Agent and consider the results of such appraisal in determining the Net Orderly Liquidation Value (as defined in the ABL Credit Agreement as of the date hereof) so long as such Net Orderly Liquidation Value is not higher than the most recent appraisal obtained by the ABL Agent.

**Section 3.4. Insurance.** Proceeds of Collateral include insurance proceeds and, therefore, the Lien Priority shall govern the ultimate disposition of casualty insurance proceeds. The ABL Agent and the Term Agent shall each be named as additional insured or loss payee, as applicable, with respect to all insurance policies relating to the Collateral. Prior to the Discharge of ABL Obligations (other than Excess ABL Obligations), the ABL Agent shall have the sole and exclusive right, as against the Term Agent, to adjust settlement of insurance claims in a commercially reasonable manner in the event of any covered loss, theft or destruction of ABL Priority Collateral. Prior to the Discharge of Term Obligations (other than Excess Term Obligations), the Term Agent shall have the sole and exclusive right, as against the ABL Agent, to adjust settlement of insurance claims in a commercially reasonable manner in the event of any covered loss, theft or destruction of Term Priority Collateral. If any insurance claim includes both ABL Priority Collateral and Term Priority Collateral, the insurer will not settle such claim separately with respect to ABL Priority Collateral and Term Priority Collateral, and if the Parties are unable after negotiating in good faith to agree on the settlement for such claim, either Party may apply to a court of competent jurisdiction to make a determination as to the settlement of such claim, and the court's determination shall be binding upon the Parties. All Proceeds of such insurance shall be remitted to the ABL Agent or the Term Agent, as the case may be, and each of the Term Agent and ABL Agent shall cooperate (if necessary) in a reasonable manner in effecting the payment of insurance proceeds in accordance with Section 4.1 hereof.

**Section 3.5.      No Additional Rights For the Loan Parties Hereunder.**

(a) Except as provided in clause (b) below and in Section 3.6, if any ABL Credit Party or Term Credit Party shall enforce its rights or remedies in violation of the terms of this Agreement, the Loan Parties shall not be entitled to use such violation as a defense to any action by any ABL Credit Party or Term Credit Party, nor to assert such violation as a counterclaim or basis for set off or recoupment against any ABL Credit Party or Term Credit Party.

(b) With respect to any Blocked Account that is subject to a Lien in favor of the ABL Agent pursuant to the ABL Collateral Documents and a Lien in favor of the Term Agent pursuant to the Term Collateral Documents (ranking second behind only the Lien in such Blocked Account granted in favor of the ABL Agent pursuant to the ABL Collateral Documents), in the event that the Lien in favor of the ABL Agent in respect of such Blocked Account is discharged prior to the execution and delivery of a four-way deposit account control agreement with respect to such Blocked Account (each a “DACA”) by and among the applicable Loan Party or Loan Parties, the ABL Agent, the Term Agent and the financial institutions where such Blocked Account is maintained, the ABL Agent hereby agrees to act as agent for the Term Agent by taking such action with respect to such Blocked Account (and any amounts deposited thereto or balances credited thereto) as the Term Agent may reasonably instruct at the time the ABL Agent’s Lien with respect to such Blocked Account is so discharged, provided that (a) the ABL Agent shall take only such actions as are permitted pursuant to the terms of any existing account control agreement relating to such Blocked Account, the ABL Documents and applicable law, and (b) the ABL Agent shall not be liable for any costs or expenses in connection with any such action. In furtherance of the foregoing, the Term Agent agrees to indemnify and save the ABL Agent harmless from any costs, expenses or damages incurred or suffered as a result of taking such action absent gross negligence or willful misconduct on the part of the ABL Agent.

**Section 3.6.      Inspection and Access Rights.** (a) Without limiting any rights the ABL Agent or any other ABL Credit Party may otherwise have under applicable law or by agreement, in the event of any liquidation (including, without limitation, by means of a sale pursuant to court order in any Insolvency Proceeding of a Loan Party) of the ABL Priority Collateral (or any other Exercise of Any Secured Creditor Remedies by the ABL Agent) and whether or not the Term Agent or any other Term Credit Party has commenced and is continuing the Exercise of Any Secured Creditor Remedies of the Term Agent, the ABL Agent or any other Person (including any ABL Loan Party) acting with the consent, or on behalf, of the ABL Agent, shall have the right (i) during normal business hours on any Business Day, to access ABL Priority Collateral that (x) is stored or located in or on, (y) has become an Accession with respect to, or (z) has been commingled with, Term Priority Collateral, and (ii) during the Use Period shall have the right to use the Term Priority Collateral (including, without limitation, fixtures, and real property), each of the foregoing in order to assemble, inspect, copy or download information stored on, take actions to perfect its Lien on, complete a production run of Inventory involving, take possession of, move, prepare and advertise for sale, sell (by public auction, private sale or a “store closing”, “going out of business” or similar sale, whether in bulk, in lots or to customers in the ordinary course of business or otherwise and which sale may include augmented Inventory of the same type sold in any ABL Loan Party’s business), store or

otherwise deal with the ABL Priority Collateral, in each case without the involvement of or interference by any Term Credit Party or liability to any Term Credit Party. In the event that any ABL Credit Party has commenced and is continuing the Exercise of Any Secured Creditor Remedies with respect to any ABL Priority Collateral or any other sale or liquidation of the ABL Priority Collateral has been commenced by an ABL Loan Party (with the consent of the ABL Agent), the Term Agent may not sell, assign or otherwise transfer the related Term Priority Collateral prior to the expiration of the Use Period, unless the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section 3.6.

(b) During the period of actual occupation, use and/or control by the ABL Credit Parties and/or the ABL Agent (or their respective employees, agents, advisers and representatives) of any Term Priority Collateral, the ABL Credit Parties and the ABL Agent shall be obligated to repair at their expense any physical damage (but not any diminution in value) to such Term Priority Collateral resulting directly from such occupancy, use or control, and to leave such Term Priority Collateral in substantially the same condition as it was at the commencement of such occupancy, use or control, ordinary wear and tear excepted. Notwithstanding the foregoing, in no event shall the ABL Credit Parties or the ABL Agent have any liability to the Term Credit Parties and/or to the Term Agent pursuant to this Section 3.6 as a result of any condition (including any environmental condition, claim or liability) on or with respect to the Term Priority Collateral existing prior to the date of the exercise by the ABL Credit Parties (or the ABL Agent, as the case may be) of their rights under this Section 3.6 and the ABL Credit Parties shall have no duty or liability to maintain the Term Priority Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by the ABL Credit Parties, or for any diminution in the value of the Term Priority Collateral that results from ordinary wear and tear resulting from the use of the Term Priority Collateral by the ABL Credit Parties in the manner and for the time periods specified under this Section 3.6. Without limiting the rights granted in this Section 3.6, the ABL Credit Parties and the ABL Agent shall cooperate with the Term Credit Parties and/or the Term Agent in connection with any efforts made by the Term Credit Parties and/or the Term Agent to sell the Term Priority Collateral.

(c) The ABL Agent and the ABL Credit Parties shall not be obligated to pay any amounts to the Term Agent or the Term Credit Parties (or any person claiming by, through or under the Term Credit Parties, including any purchaser of the Term Priority Collateral) or to the ABL Loan Parties, for or in respect of the use by the ABL Agent and the ABL Credit Parties of the Term Priority Collateral or the Effective Date License prior to the termination of the Use Period.

(d) The ABL Credit Parties shall (i) use the Term Priority Collateral in accordance with applicable law; (ii) insure for damage to property and liability to persons, including property and liability insurance for the benefit of the Term Credit Parties; and (iii) indemnify the Term Credit Parties from any claim, loss, damage, cost or liability arising directly from the ABL Credit Parties' use of the Term Priority Collateral (except for those arising from the gross negligence or willful misconduct of any Term Credit Party).

(e) The Term Agent and the other Term Credit Parties shall use commercially reasonable efforts to not hinder or obstruct the ABL Agent and the other ABL Credit Parties from exercising the rights described in Section 3.6(a) hereof.

(f) Subject to the terms hereof, the Term Agent may advertise and conduct public auctions or private sales of the Term Priority Collateral without notice (except as required by applicable law) to any ABL Credit Party, the involvement of or interference by any ABL Credit Party or liability to any ABL Credit Party as long as, in the case of an actual sale, the respective purchaser assumes and agrees to the obligations of the Term Agent and the Term Credit Parties under this Section 3.6.

(g) Without limiting any rights the Term Agent or any other Term Credit Party may otherwise have under applicable law or by agreement, in the event of any liquidation (including, without limitation, by means of a sale pursuant to court order in any Insolvency Proceeding of a Loan Party) of the Term Priority Collateral (or any other Exercise of Any Secured Creditor Remedies by the Term Agent) and whether or not the ABL Agent or any other ABL Credit Party has commenced and is continuing the Exercise of Any Secured Creditor Remedies of the ABL Agent, the Term Agent or any other Person (including any Term Loan Party) acting with the consent, or on behalf, of the Term Agent, shall have the right (i) during normal business hours on any Business Day, to access Term Priority Collateral that (x) is stored or located in or on, (y) has become an Accession with respect to, or (z) has been commingled with, ABL Priority Collateral consisting solely of real property subject to the ABL First Lien Mortgages, and (ii) during the Use Period shall have the right to use such ABL Priority Collateral (including, without limitation, fixtures and real property), each of the foregoing in order to assemble, inspect, copy or download information stored on, take actions to perfect its Lien on, take possession of, move, prepare and advertise for sale, sell (by public auction, private sale or a “store closing”, “going out of business” or similar sale, whether in bulk, in lots or to customers in the ordinary course of business or otherwise), store or otherwise deal with the Term Priority Collateral, in each case without the involvement of or interference by any ABL Credit Party or liability to any ABL Credit Party. In the event that any Term Credit Party has commenced and is continuing the Exercise of Any Secured Creditor Remedies with respect to any Term Priority Collateral or any other sale or liquidation of the Term Priority Collateral has been commenced by a Term Loan Party (with the consent of the Term Agent), the ABL Agent may not sell, assign or otherwise transfer the related ABL Priority Collateral consisting solely of real property subject to the ABL First Lien Mortgages prior to the expiration of the Use Period, unless the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section 3.6.

(h) The Term Agent and the Term Credit Parties shall not be obligated to pay any amounts to the ABL Agent or the ABL Credit Parties (or any person claiming by, through or under the ABL Credit Parties, including any purchaser of the ABL Priority Collateral consisting solely of real property subject to the ABL First Lien Mortgages) or to the Term Loan Parties, for or in respect of the use by the Term Agent and the Term Credit Parties of the ABL Priority Collateral consisting solely of real property subject to the ABL First Lien Mortgages prior to the termination of the Use Period.

(i) The Term Credit Parties shall (i) use the ABL Priority Collateral consisting solely of real property subject to the ABL First Lien Mortgages in accordance with applicable law; (ii) insure for damage to property and liability to persons, including property and liability insurance for the benefit of the ABL Credit Parties; and (iii) indemnify the ABL Credit Parties from any claim, loss, damage, cost or liability arising directly from the Term Credit

Parties' use of the ABL Priority Collateral consisting solely of real property subject to the ABL First Lien Mortgages (except for those arising from the gross negligence or willful misconduct of any ABL Credit Party).

(j) The ABL Agent and the other ABL Credit Parties shall use commercially reasonable efforts to not hinder or obstruct the Term Agent and the other Term Credit Parties from exercising the rights described in Section 3.6(g) hereof.

(k) Subject to the terms hereof, the ABL Agent may advertise and conduct public auctions or private sales of the ABL Priority Collateral without notice (except as required by applicable law) to any Term Credit Party, the involvement of or interference by any Term Credit Party or liability to any Term Credit Party as long as, in the case of an actual sale of ABL Priority Collateral consisting solely of real property subject to the ABL First Lien Mortgages, the respective purchaser assumes and agrees to the obligations of the ABL Agent and the ABL Credit Parties under this Section 3.6.

**Section 3.7. Tracing of and Priorities in Proceeds.** The ABL Agent, for itself and on behalf of the ABL Credit Parties, and the Term Agent, for itself and on behalf of the Term Credit Parties, further agree that any Proceeds of Collateral, whether or not deposited in deposit accounts subject to control agreements, which are used by any Loan Party to acquire other property which is Collateral shall not (solely as between the Agents and the Credit Parties) be treated as Proceeds of Collateral for purposes of determining the relative priorities in the Collateral which was so acquired. Unless and until all Obligations shall have been paid in full, (a) any payment received in contravention of this Agreement or (b) any Collateral or proceeds thereof not constituting its Priority Collateral received by any Agent in connection with the Exercise of Secured Creditor Remedies shall be segregated and held in trust and forthwith paid over to the applicable Agent in accordance with the provisions of Section 2.1, in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the ABL Agent is hereby permitted to deem all collections and payments deposited in any deposit account (other than Term Loan Priority Account), lockbox, securities accounts, commodity accounts, Blocked Accounts or the Agent' Account to be proceeds of ABL Priority Collateral and no such funds credited to and such account shall be subject to disgorgement or be deemed to be held in trust by the ABL Agent for the benefit of the Term Agent and other Term Credit Parties; provided that with respect to any such funds that are proceeds of Term Priority Collateral credited to any such account (i) which funds are known by a loan officer of the ABL Agent to be proceeds of Term Priority Collateral prior to the application of such funds by the ABL Agent to the ABL Obligations and a subsequent credit extension under the ABL Credit Agreement, or (ii) which are identified in a Term Loan Cash Proceeds Notice (which shall be effective with respect to the cash proceeds identified therein) received by the ABL Agent prior to the application of such funds by the ABL Agent to the ABL Obligations and a subsequent credit extension under the ABL Credit Agreement, to the extent permitted by applicable law, the ABL Agent shall turn over any misdirected proceeds of the Term Priority Collateral to the Term Agent.

### **Section 3.8.      Payments Over.**

(a) So long as the Discharge of Term Obligations (other than any Excess Term Obligations) has not occurred, any Term Priority Collateral or Proceeds thereof not constituting ABL Priority Collateral received by the ABL Agent or any other ABL Credit Party in connection with the exercise of any right or remedy (including set off) relating to the Term Priority Collateral shall be segregated and held in trust and forthwith paid over to the Term Agent for the benefit of the Term Credit Parties in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Term Agent is hereby authorized to make any such endorsements as agent for the ABL Agent or any such other ABL Credit Parties. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

(b) So long as the Discharge of ABL Obligations (other than any Excess ABL Obligations) has not occurred, any ABL Priority Collateral or Proceeds thereof not constituting Term Priority Collateral received by the Term Agent or any Term Credit Parties in connection with the exercise of any right or remedy (including set off) relating to the ABL Priority Collateral shall be segregated and held in trust and forthwith paid over to the ABL Agent for the benefit of the ABL Credit Parties in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The ABL Agent is hereby authorized to make any such endorsements as agent for the Term Agent or any such Term Credit Parties. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

**Section 3.9.      Legends.** The ABL Agent acknowledges with respect to the ABL Collateral Documents entered into on or after the date hereof, on the one hand, and the Term Agent acknowledges with respect to the Term Collateral Documents, on the other hand, that such documents will contain the following legend:

Intercreditor Agreement. The Loan Parties, the [Lender][Agent] and the other Credit Parties acknowledge that the exercise of certain of the [Lender's][Agent's] rights and remedies hereunder may be subject to, and restricted by, the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall control. The [Lender][Agent], on behalf of itself and the other Credit Parties, acknowledges and agrees that it and the other Credit Parties shall be bound by the terms and conditions of the Intercreditor Agreement.

## **ARTICLE 4.** **APPLICATION OF PROCEEDS**

### **Section 4.1.      Application of Proceeds.**

(a) **Revolving Nature of ABL Obligations.** The Term Agent, for and on behalf of itself and the Term Credit Parties, expressly acknowledges and agrees that (i) the ABL Credit Agreement includes a revolving commitment, that in the ordinary course of business the

ABL Agent and the ABL Lenders will apply payments and make advances thereunder, and that no application of any Collateral or the release of any Lien pursuant to Section 2.4 by the ABL Agent upon any portion of the ABL Priority Collateral in connection with a permitted disposition by the ABL Loan Parties under any ABL Credit Agreement shall constitute the Exercise of Secured Creditor Remedies under this Agreement; (ii) the amount of the ABL Obligations that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, and that, subject to Article 6 hereof, the terms of the ABL Obligations may be modified, extended or amended from time to time, and that the aggregate amount of the ABL Obligations may be increased, replaced or refinanced (up to the Maximum ABL Facility Amount), in each event, without notice to or consent by the Term Credit Parties and without affecting the provisions hereof; and (iii) all ABL Priority Collateral received by the ABL Agent may be applied, reversed, reapplied, credited, or reborrowed, in whole or in part, to the ABL Obligations at any time; provided, however, that from and after the date on which the ABL Agent (or any ABL Credit Party) or the Term Agent (or any Term Credit Party) commences the Exercise of Any Secured Creditor Remedies, all amounts received by the ABL Agent or any ABL Lender shall be applied as specified in this Section 4.1. The Lien Priority shall not be altered or otherwise affected by any such amendment, modification, supplement, extension, repayment, reborrowing, increase, replacement, renewal, restatement or refinancing of either the ABL Obligations or the Term Obligations, or any portion thereof.

(b) **Application of Proceeds of ABL Priority Collateral.** Subject to the provisions of Section 2.1(c), the ABL Agent and the Term Agent hereby agree that all ABL Priority Collateral, ABL Priority Proceeds and all other Proceeds thereof, received by either of them (i) in connection with any Exercise of Secured Creditor Remedies with respect to the ABL Priority Collateral, (ii) in connection with the exercise of any right or remedy (including set off) relating to the ABL Priority Collateral, or (iii) following the commencement of any Insolvency Proceeding, in each case, shall be applied,

first, to the payment of reasonable costs and expenses of the ABL Agent in connection with such Exercise of Secured Creditor Remedies,

second, to the payment of the ABL Obligations (other than any Excess ABL Obligations) in accordance with the ABL Documents until the Discharge of ABL Obligations (other than any Excess ABL Obligations) shall have occurred,

third, to the payment of the Term Obligations (other than any Excess Term Obligations) in accordance with the Term Documents until the Discharge of Term Obligations (other than any Excess Term Obligations) shall have occurred,

fourth, to the payment of any Excess ABL Obligations in accordance with the ABL Documents until the Discharge of ABL Obligations shall have occurred,

fifth, to the payment of any Excess Term Obligations in accordance with the Term Documents until the Discharge of Term Obligations shall have occurred, and

sixth, the balance, if any, to the Loan Parties or as a court of competent jurisdiction may direct.

(c) **Application of Proceeds of Term Priority Collateral.** Subject to the provisions of Section 2.1(c), the ABL Agent and the Term Agent hereby agree that all Term Priority Collateral, Term Priority Proceeds and all other Proceeds thereof, received by either of them (i) in connection with any Exercise of Secured Creditor Remedies with respect to the Term Priority Collateral, (ii) in connection with the exercise of any right or remedy (including set off) relating to the Term Priority Collateral, or (iii) following the commencement of any Insolvency Proceeding, in each case, shall be applied,

first, to the payment of reasonable costs and expenses of the Term Agent in connection with such Exercise of Secured Creditor Remedies,

second, to the payment of the Term Obligations (other than any Excess Term Obligations) in accordance with the Term Documents until the Discharge of Term Obligations (other than any Excess Term Obligations) shall have occurred,

third, to the payment of the ABL Obligations (other than any Excess ABL Obligations) in accordance with the ABL Documents until the Discharge of ABL Obligations (other than any Excess ABL Obligations) shall have occurred,

fourth, to the payment of any Excess Term Obligations in accordance with the Term Documents until the Discharge of Term Obligations shall have occurred,

fifth, to the payment of any Excess ABL Obligations in accordance with the ABL Documents until the Discharge of ABL Obligations shall have occurred, and

sixth, the balance, if any, to the Loan Parties or as a court of competent jurisdiction may direct.

(d) **Limited Obligation or Liability.** In exercising remedies, whether as a secured creditor or otherwise, the ABL Agent shall have no obligation or liability to the Term Agent or to any Term Credit Party, and the Term Agent shall have no obligation or liability to the ABL Agent or any ABL Credit Party, regarding the adequacy of any Proceeds or for any action or omission, except solely for an action or omission that breaches the express obligations undertaken by each Party under the terms of this Agreement. Notwithstanding anything to the contrary herein contained, none of the Parties hereto waives any claim that it may have against a Credit Party on the grounds that any sale, transfer or other disposition or any collection by the Credit Party was not commercially reasonable in every respect as required by the PPSA, any Debtor Relief Laws or other applicable laws.

(e) **Turnover of Collateral After Discharge.** Upon the Discharge of ABL Obligations (other than any Excess ABL Obligations), the ABL Agent shall deliver to the Term Agent or shall execute such documents as the Term Agent may reasonably request (at the expense of the Term Borrowers) to enable the Term Agent to have control over any Control Collateral still in the ABL Agent's possession, custody, or control in the same form as received with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. Upon the Discharge of Term Obligations (other than any Excess Term Obligations), the Term Agent shall deliver to the ABL Agent or shall execute such documents as the ABL Agent may reasonably request (at the expense of the relevant Loan Parties) to enable the ABL Agent to have

control over any Control Collateral still in the Term Agent's possession, custody or control in the same form as received with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct.

**Section 4.2.     Specific Performance.** Each of the ABL Agent and the Term Agent is hereby authorized to demand specific performance of this Agreement, whether or not any relevant Borrower or any Guarantor shall have complied with any of the provisions of any of the Credit Documents, at any time when the other Party shall have failed to comply with any of the provisions of this Agreement applicable to it. Each of the ABL Agent, for and on behalf of itself and the ABL Credit Parties, and the Term Agent, for and on behalf of itself and the Term Credit Parties, hereby irrevocably waives any defense based on the adequacy of a remedy at law that might be asserted as a bar to such remedy of specific performance.

**ARTICLE 5.  
INTERCREDITOR ACKNOWLEDGEMENTS AND WAIVERS**

**Section 5.1.     Notice of Acceptance and Other Waivers.**

(a) All ABL Obligations at any time made or incurred by the Borrower or any Guarantor shall be deemed to have been made or incurred in reliance upon this Agreement, and the Term Agent, on behalf of itself and the Term Credit Parties, hereby waives notice of acceptance, or proof of reliance by the ABL Agent or any ABL Credit Party of this Agreement, and notice of the existence, increase, renewal, extension, accrual, creation, or non-payment of all or any part of the ABL Obligations. All Term Obligations at any time made or incurred by the Borrower or any Guarantor shall be deemed to have been made or incurred in reliance upon this Agreement, and the ABL Agent, on behalf of itself and the ABL Credit Parties, hereby waives notice of acceptance, or proof of reliance, by the Term Agent or any Term Credit Party of this Agreement, and notice of the existence, increase, renewal, extension, accrual, creation, or non-payment of all or any part of the Term Obligations.

(b) None of the ABL Agent, any ABL Credit Party, or any of their respective Affiliates, directors, officers, employees, or agents shall be liable for failure to demand, collect, or realize upon any of the Collateral or any Proceeds, or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral or Proceeds thereof or to take any other action whatsoever with regard to the Collateral or any part or Proceeds thereof, except as specifically provided in this Agreement. If the ABL Agent or any ABL Credit Party honors (or fails to honor) a request by the Borrower for an extension of credit pursuant to any ABL Credit Agreement or any of the other ABL Documents, whether the ABL Agent or any ABL Credit Party has knowledge that the honoring of (or failure to honor) any such request would constitute a default under the terms of any Term Loan Agreement or any other Term Document or an act, condition, or event that, with the giving of notice or the passage of time, or both, would constitute such a default, or if the ABL Agent or any ABL Credit Party otherwise should exercise any of its contractual rights or remedies under any ABL Documents (subject to the terms and conditions hereof), neither the ABL Agent nor any ABL Credit Party shall have any liability whatsoever to the Term Agent or any Term Credit Party as a result of such action, omission, or exercise (so long as any such exercise does not breach the terms and provisions of this Agreement). The ABL Agent and the ABL Credit Parties shall be entitled to manage and

supervise their loans and extensions of credit under any ABL Credit Agreement and any of the other ABL Documents as they may, in their sole discretion, deem appropriate, and may manage their loans and extensions of credit without regard to any rights or interests that the Term Agent or any of the Term Credit Parties have in the Collateral, except as otherwise expressly set forth in this Agreement. The Term Agent, on behalf of itself and the Term Credit Parties, agrees that neither the ABL Agent nor any ABL Credit Party shall incur any liability as a result of a sale, lease, license, application, or other disposition of all or any portion of the Collateral or Proceeds thereof, pursuant to the ABL Documents, so long as such disposition is conducted in accordance with mandatory provisions of applicable law and does not breach the provisions of this Agreement.

(c) None of the Term Agent, any Term Credit Party or any of their respective Affiliates, directors, officers, employees, or agents shall be liable for failure to demand, collect, or realize upon any of the Collateral or any Proceeds, or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral or Proceeds thereof or to take any other action whatsoever with regard to the Collateral or any part or Proceeds thereof, except as specifically provided in this Agreement. If the Term Agent or any Term Credit Party honors (or fails to honor) a request by the Borrower for an extension of credit pursuant to any Term Loan Agreement or any of the other Term Documents, whether the Term Agent or any Term Credit Party has knowledge that the honoring of (or failure to honor) any such request would constitute a default under the terms of any ABL Credit Agreement or any other ABL Document or an act, condition, or event that, with the giving of notice or the passage of time, or both, would constitute such a default, or if the Term Agent or any Term Credit Party otherwise should exercise any of its contractual rights or remedies under the Term Documents (subject to the terms and conditions hereof), neither the Term Agent nor any Term Credit Party shall have any liability whatsoever to the ABL Agent or any ABL Credit Party as a result of such action, omission, or exercise (so long as any such exercise does not breach the terms and provisions of this Agreement). The Term Agent and the Term Credit Parties shall be entitled to manage and supervise their loans under the Term Documents as they may, in their sole discretion, deem appropriate, and may manage their loans without regard to any rights or interests that the ABL Agent or any ABL Credit Party has in the Collateral, except as otherwise expressly set forth in this Agreement. The ABL Agent, on behalf of itself and the ABL Credit Parties, agrees that none of the Term Agent or the Term Credit Parties shall incur any liability as a result of a sale, lease, license, application, or other disposition of the Collateral or any part or Proceeds thereof, pursuant to the Term Documents, so long as such disposition is conducted in accordance with mandatory provisions of applicable law and does not breach the provisions of this Agreement.

## **Section 5.2.      Modifications and Covenants with respect to ABL Documents and Term Documents.**

(a) The ABL Agent and the ABL Credit Parties may at any time and from time to time and without the consent of or notice to the Term Agent or any Term Credit Party, without incurring any liability to the Term Agent or any Term Credit Party and without impairing or releasing any rights or obligations hereunder or otherwise, amend, restate, supplement, modify, waive, substitute, renew, refinance, or replace any or all of the ABL Documents; provided, however, that without the consent of the Term Agent, the ABL Credit

Parties, prior to and during any Insolvency Proceeding, shall not amend, restate, supplement, modify, waive, substitute, renew, refinance or replace any or all of the ABL Documents to:

- (1) increase the rates of interest set forth in the definition of "Applicable Margin" as defined in the ABL Credit Agreement by more than 3.00% per annum at any level of the pricing grid applicable thereto (other than any increase occurring because of fluctuations in underlying rate indices or the imposition of the default rate of interest (as set forth in Section 2.08(b) of the ABL Credit Agreement) in accordance with the terms of the ABL Credit Agreement), or increase the percentage set forth in Section 2.08(b) of the ABL Credit Agreement by more than 3.00% per annum above the rate applicable thereto (other than any increase occurring because of fluctuations in underlying rate indices), or increase the percentage set forth in Section 2.05(a) ("Commitment Fee") of the ABL Credit Agreement by more than 0.75% per annum above the rate applicable thereto (other than any increase occurring because of fluctuations in underlying rate indices);
- (2) shorten the scheduled maturity of the ABL Obligations;
- (3) change any conditions, covenants, defaults or events of default thereunder that expressly restricts any Loan Party from making payments of the Term Obligations that would otherwise be permitted under the ABL Credit Agreement as in effect on the date hereof (other than as expressly provided herein);
- (4) increase the sum of the then outstanding aggregate principal amount of the loans and outstanding Letters of Credit made, issued or incurred under the ABL Credit Agreement and any DIP Financing in excess of the amount of the Maximum ABL Facility Amount;
- (5) change the definitions of "Availability Reserves" and any component definition thereof, "Excess Availability", "Borrowing Base" and any component definition thereof or any advance rates in respect thereof, "Cash Dominion Event" and any component definition thereof, "Covenant Compliance Event", "Fixed Charge Coverage Ratio", "Fixed Charges", "Line Cap", "Net Real Estate Value", "Overadvance," "Pension Wind-up Deficit", "Permitted Overadvance", "Priority Payable Reserve", "Term Loan Push-Down Reserve", "Uncapped Availability", "Wind-up Reserve", "Wind-up Reserve Period" each as set forth in the ABL Credit Agreement, in a manner which would effect an increase in the ABL Borrowing Base, the Term Loan Borrowing Base or any component thereof;
- (6) fail to establish and maintain (i) any reserve in effect on the date hereof (provided that, other than as set forth in clause (ii) below, in each case the amount of such reserves may be adjusted based on changes in the facts or circumstances that gave rise thereto (as long as the methodology for the calculation thereof is not modified), and the foregoing shall not limit the discretion of the ABL Agent to establish, eliminate and adjust the amount of any other reserves not in effect on the date hereof) or (ii) the Push-Down Reserve, the Wind-Up Reserve or the Realty Reserves as and when required under

the ABL Credit Agreement as in effect on the date hereof or the Term Credit Agreement as in effect on the date hereof;

(7) [Reserved];

(8) extend the dates on which Borrowing Base Certificates are required to be delivered by the Borrower, provided that the foregoing shall not limit the discretion of the ABL Agent to require more frequent reporting;

(9) [Reserved]; or

(10) amend the ABL Documents in any manner which would have the effect of contravening the terms of this Agreement;

provided, however, the provisions of this Section 5.2(a) shall not limit, restrict or impair the discretionary rights and ability of the ABL Agent to (1) subject to Section 5.2(d) below, modify, reduce, increase or eliminate any and all other reserves under the ABL Credit Agreement, or (2) determine the eligibility of Collateral for inclusion in the calculation of the ABL Borrowing Base, in each case, as provided in the ABL Credit Agreement.

(b) The Term Agent and the Term Credit Parties may at any time and from time to time and without consent of or notice to the ABL Credit Parties, without incurring any liability to the ABL Credit Parties and without impairing or releasing any rights or obligations hereunder or otherwise, amend, restate, supplement, modify, waive, substitute, renew, refinance or replace any or all of the Term Documents; provided, however, that without the consent of the ABL Agent, the Term Agent and the Term Credit Parties, prior to and during any Insolvency Proceeding, shall not amend, restate, supplement, modify, waive, substitute, renew, refinance or replace any or all of the Term Documents to:

(1) increase the aggregate outstanding principal amount of the Term Obligations to an amount in excess of the Maximum Term Loan Facility Amount;

(2) modify the definition of "Applicable Margin" or increase the rate of interest set forth in Section 2.08 of the Term Loan Agreement by more than 3.00% per annum (other than any increase occurring because of fluctuations in underlying rate indices or the imposition of the default rate of interest (as set forth in Section 2.08(b) of the Term Loan Agreement), or increase the percentage with respect to the default rate set forth in Section 2.08(b) of the Term Loan Agreement by more than 3.00% per annum above the rate applicable thereto on the date hereof (other than any increase occurring because of fluctuations in underlying rate indices);

(3) increase the percentages set forth in the definition of "Prepayment Premium" in excess of 4.00% with respect to each such percentage as in effect on the date hereof;

(4) shorten the scheduled maturity of the Term Obligations;

(5) require any mandatory prepayments or scheduled repayments of the Term Obligations except as provided in the Term Documents as in effect on the date hereof or require that any payment on the Term Obligations be made earlier than the date originally scheduled for such payment; provided that if the Term Agent consents to a sale of any stores and the assets located therein which is not permitted under the Term Documents as of the date hereof, such consent may be conditioned upon the Term Agent's receipt of any net cash proceeds received from such sale in excess of the maximum amounts which could be advanced (as calculated pursuant to the ABL Borrowing Base) against the assets so sold, and the imposition of such condition shall not be deemed to violate the provisions of this clause (5); provided further that the provisions of the first proviso hereto shall not apply if an Event of Default under the ABL Documents is continuing (in which event the provisions of Sections 2.4(a) and 4.1(b) hereof shall apply);

(6) change the definitions of "Availability Reserves", "Excess Availability", "Push Down Reserve", "Wind-Up Reserve", "Realty Reserves" or "Borrowing Base" or "ABL Borrowing Base" contained in the Term Loan Agreement and any component definition thereof in a manner which would effect a decrease in the ABL Borrowing Base or Excess Availability under the ABL Credit Agreement;

(7) change any conditions, covenants, defaults or events of default thereunder that expressly restricts any Loan Party from making payments of the ABL Obligations that would otherwise be permitted under the Term Documents as in effect on the date hereof; or

(8) amend the Term Documents in any manner which would have the effect of contravening the terms of this Agreement;

(c) Subject to Sections 5.2(a) and (b) above, the ABL Obligations and the Term Obligations may be refinanced, in whole or in part, in each case, without notice to, or the consent (except to the extent a consent is required to permit the refinancing transaction under any ABL Document or any Term Document) of the ABL Agent, the ABL Credit Parties, the Term Agent or the Term Credit Parties, as the case may be, all without affecting the Lien Priorities provided for herein or the other provisions hereof, provided, however, that the holders of such refinancing indebtedness (or an authorized agent or trustee on their behalf) execute and deliver to the ABL Agent or the Term Agent, as the case may be, an intercreditor agreement in form and substance reasonably acceptable to the ABL Agent or the Term Agent, as the case may be, and any such refinancing transaction shall be in accordance with any applicable provisions of both the ABL Documents and the Term Documents (to the extent such documents survive the refinancing).

(d) The ABL Agent acknowledges and agrees that it shall immediately implement and continue to maintain the Push Down Reserve and the Wind-Up Reserve as and when required by the ABL Credit Agreement as in effect on the date hereof, and shall immediately upon notice from the Term Agent implement the Realty Reserves and Availability Reserves with respect to Term Priority Collateral. The ABL Agent's implementation of any Push Down Reserve, Wind-up Reserve or Realty Reserves, as applicable, is not an exercise of the

ABL Agent's Permitted Discretion under the ABL Credit Agreement in imposing such reserves against the ABL Borrowing Base, and such reserves cannot be waived or otherwise changed or eliminated (other than as permitted pursuant to the methodology in place on the date hereof under the ABL Credit Agreement) without the prior written consent of the Term Agent unless the facts or circumstances that gave rise thereto have changed to warrant such elimination or adjustment. In addition the foregoing, the ABL Agent shall not eliminate or adjust (to make more credit available to the ABL Loan Parties) any other Availability Reserves in effect on the date hereof (other than as permitted pursuant to the methodology in place on the date hereof under the ABL Credit Agreement) unless the facts or circumstances that gave rise thereto have changed to warrant such elimination or adjustment.

(e) The ABL Agent acknowledges and agrees that neither it nor any ABL Credit Party shall make any extensions of credit to the Borrower with respect to Eligible In-Transit Inventory under the ABL Credit Agreement.

### **Section 5.3. Reinstatement and Continuation of Agreement.**

(a) If the ABL Agent or any ABL Credit Party is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of the Borrower, any Guarantor, or any other Person any payment made in satisfaction of all or any portion of the ABL Obligations (an "**ABL Recovery**"), then the ABL Obligations shall be reinstated to the extent of such ABL Recovery. If this Agreement shall have been terminated prior to such ABL Recovery, this Agreement shall be reinstated in full force and effect in the event of such ABL Recovery, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the Parties from such date of reinstatement, but such reinstatement shall not impose an obligation on the Term Agent or Term Credit Parties to disgorge payments previously made, including from the Proceeds of ABL Priority Collateral. All rights, interests, agreements, and obligations of the ABL Agent, the Term Agent, the ABL Credit Parties, and the Term Credit Parties under this Agreement shall remain in full force and effect and shall continue irrespective of the commencement of, or any discharge, confirmation, conversion, or dismissal of, any Insolvency Proceeding by or against the Borrower or any Guarantor or any other circumstance which otherwise might constitute a defense available to, or a discharge of the Borrower or any Guarantor in respect of the ABL Obligations or the Term Obligations. No priority or right of the ABL Agent or any ABL Credit Party shall at any time be prejudiced or impaired in any way by any act or failure to act on the part of the Borrower or any Guarantor or by the noncompliance by any Person with the terms, provisions, or covenants of any of the ABL Documents, regardless of any knowledge thereof which the ABL Agent or any ABL Credit Party may have.

(b) If the Term Agent or any Term Credit Party is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of the Borrower, any Guarantor, or any other Person any payment made in satisfaction of all or any portion of the Term Obligations (a "**Term Recovery**"), then the Term Obligations shall be reinstated to the extent of such Term Recovery. If this Agreement shall have been terminated prior to such Term Recovery, this Agreement shall be reinstated in full force and effect in the event of such Term Recovery, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the Parties from such date of reinstatement, but such reinstatement shall

not impose an obligation on the ABL Agent or ABL Credit Parties to disgorge payments previously made, including from Proceeds of Term Priority Collateral. All rights, interests, agreements, and obligations of the ABL Agent, the Term Agent, the ABL Credit Parties, and the Term Credit Parties under this Agreement shall remain in full force and effect and shall continue irrespective of the commencement of, or any discharge, confirmation, conversion, or dismissal of, any Insolvency Proceeding by or against the Borrower or any Guarantor or any other circumstance which otherwise might constitute a defense available to, or a discharge of the Borrower or any Guarantor in respect of the ABL Obligations or the Term Obligations. No priority or right of the Term Agent or any Term Credit Party shall at any time be prejudiced or impaired in any way by any act or failure to act on the part of the Borrower or any Guarantor or by the noncompliance by any Person with the terms, provisions, or covenants of any of the Term Documents, regardless of any knowledge thereof which the Term Agent or any Term Credit Party may have.

## **ARTICLE 6. INSOLVENCY PROCEEDINGS**

### **Section 6.1.      Enforceability.**

(a) This Agreement shall be applicable as to Collateral and the Proceeds thereof in existence both before and after the commencement of any Insolvency Proceeding and any succeeding cases in respect thereof. The relative rights of the Credit Parties in or to any distributions from or in respect of any such Collateral or Proceeds thereof, shall continue after the commencement of any Insolvency Proceeding. Accordingly, the provisions of this Agreement are intended to be and shall be enforceable as a subordination agreement in any Insolvency Proceeding.

(b) Subject to the other provisions of this Article 6, each of the ABL Agent on behalf of itself and the ABL Credit Parties, and the Term Agent on behalf of itself and the Term Credit Parties, agrees that it shall endeavor to reasonably cooperate and communicate in good faith with each other (and each party's respective counsel) in respect of and in an effort to reach agreement on, as applicable, (i) any decisions by any ABL Loan Party or any Term Loan Party to seek protection under any Insolvency Proceeding, (ii) in the event that a DIP Financing (as defined herein) is required by any Loan Party, the terms of DIP Financing (as defined herein), (iii) any sale or investment solicitation process with respect to all or any of the Collateral, and (iv) matters related to the payment of any interest, fees or expenses of any of the Credit Parties in connection with any Insolvency Proceeding; provided, however that (i) nothing in this paragraph 6.1(b) shall obligate any such party to ultimately agree with any of the other such parties on the matters described in this paragraph 6.1(b), and (ii) in no event shall any such discussions or communications in respect of any of the foregoing be binding on any of the ABL Agent, the ABL Credit Parties, the Term Agent or the Term Credit Parties unless the parties so agree.

### **Section 6.2.      DIP Financing.**

(a) If any Loan Party shall be subject to any Insolvency Proceeding at any time and requires any debtor-in-possession financing (a "**DIP Financing**") in such Insolvency Proceeding, if the ABL Agent or any of the ABL Credit Parties shall seek to provide a Loan

Party with, or consent to a third party providing any DIP Financing, with such DIP Financing to be secured by all or any portion of the Collateral, then the Term Agent, on behalf of itself and the Term Credit Parties, agrees that it will raise no objection and will not support any objection to such DIP Financing or to the Liens securing the same on any basis, and will raise no objection and will not support any objection to the use of proceeds of such DIP Financing to pay items contained in the budget which is a component of the DIP Financing, which may include pre-petition claims and unsecured or administrative claims that do not have priority over the ABL Obligations or the Term Obligations, so long as (i) the Term Agent retains its Lien on the Collateral to secure the Term Obligations (in each case, including Proceeds thereof arising after the commencement of any Insolvency Proceeding) and, as to the Term Priority Collateral only, such Lien has the same priority as existed prior to the commencement of any Insolvency Proceeding and any Lien on the Term Priority Collateral securing such DIP Financing is junior and subordinate to the Lien of the Term Agent on the Term Priority Collateral, (ii) all Liens on ABL Priority Collateral securing any such DIP Financing shall be senior to or pari passu with the Liens of the ABL Agent and the ABL Credit Parties securing the ABL Obligations on ABL Priority Collateral (including Proceeds arising therefrom), (iii) the aggregate principal amount of loans and letter of credit accommodations outstanding under any such DIP Financing, together with the aggregate outstanding principal amount of loans and outstanding amount of letters of credit made, issued or incurred pursuant to the ABL Documents, does not exceed the sum of (x) the Maximum ABL Facility Amount, plus (y) the amount of any Professional Fee Estimate (which shall be taken by the ABL Agent as a reserve against any DIP Financing provided by the ABL Agent to the extent such amount would prime the Lien of the ABL Agent pursuant to any applicable Debtor Relief Law) (iv) such DIP Financing is on customary market terms, and (v) such DIP Financing shall not require the Loan Parties to seek confirmation of a specific plan of reorganization or arrangement for which all or substantially all of the material terms are set forth in the documentation evidencing such DIP Financing.

(b) If the Term Agent or any of the Term Credit Parties shall seek to provide a Loan Party with, or consent to a third party providing any DIP Financing, with such DIP Financing to be secured by all or any portion of the Collateral, then the ABL Agent, on behalf of itself and the ABL Credit Parties, agrees that it will raise no objection and will not support any objection to such DIP Financing or to the Liens securing the same on any basis, and will raise no objection and will not support any objection to the use of proceeds of such DIP Financing to pay items contained in the budget which is a component of the DIP Financing, which may include pre-petition claims and unsecured or administrative claims that do not have priority over the Term Obligations or the ABL Obligations, so long as (i) the ABL Agent retains its Lien on the Collateral to secure the ABL Obligations (in each case, including Proceeds thereof arising after the commencement of any Insolvency Proceeding) and, as to the ABL Priority Collateral only, such Lien has the same priority as existed prior to the commencement of any Insolvency Proceeding and any Lien on the ABL Priority Collateral securing such DIP Financing is junior and subordinate to the Lien of the ABL Agent on the ABL Priority Collateral, (ii) all Liens on Term Priority Collateral securing any such DIP Financing shall be senior to or pari passu with the Liens of the Term Agent and the Term Credit Parties securing the Term Obligations on Term Priority Collateral (including Proceeds arising therefrom), (iii) the aggregate principal amount of loans outstanding under any such DIP Financing, together with the aggregate outstanding principal amount of loans made or incurred pursuant to the Term Documents, does not exceed the sum of (x) the Maximum Term Loan Facility Amount and (y) the amount of any Professional

Fee Estimate, (iv) such DIP Financing is on customary market terms, and (v) such DIP Financing shall not require the Loan Parties to seek confirmation of a specific plan of reorganization or arrangement for which all or substantially all of the material terms are set forth in the documentation evidencing such DIP Financing.

(c) The Term Agent and the Term Credit Parties hereby agree that they shall not offer, and shall not permit any Affiliate of any of them to offer, to provide any DIP Financing to the Loan Parties in any Insolvency Proceeding or endorse the provision of any DIP Financing to the Loan Parties in any Insolvency Proceeding pursuant to which Liens that are senior or pari passu in priority to the Liens securing the ABL Obligations are granted on the ABL Priority Collateral. The ABL Agent and the ABL Credit Parties hereby agree that they shall not offer, and shall not permit any Affiliate of any of them to offer, to provide any DIP Financing to the Loan Parties in any Insolvency Proceeding or endorse the provision of any DIP Financing to the Loan Parties in any Insolvency Proceeding pursuant to which Liens that are senior or pari passu in priority to the Liens securing the Term Obligations are granted on the Term Priority Collateral.

**Section 6.3. Relief From Stay.** Until the Discharge of ABL Obligations (other than any Excess ABL Obligations) has occurred, the Term Agent, on behalf of itself and the Term Credit Parties, agrees not to seek relief from the stay of proceedings in any Insolvency Proceeding in respect of any portion of the ABL Priority Collateral without the ABL Agent's express written consent, which may be withheld in the ABL Agent's sole discretion. Until the Discharge of Term Obligations (other than any Excess Term Obligations) has occurred, the ABL Agent, on behalf of itself and the ABL Credit Parties, agrees not to seek relief from the stay of proceedings in any Insolvency Proceeding in respect of any portion of the Term Priority Collateral without the Term Agent's express written consent, which may be withheld in the Term Agent's sole discretion. In addition, neither the Term Agent nor the ABL Agent shall seek any relief from the automatic stay with respect to any Collateral without providing three (3) days' prior written notice to the other, unless such period is agreed by both the ABL Agent and the Term Agent to be modified or unless the ABL Agent or Term Agent, as applicable, makes a good faith determination that either (A) the ABL Priority Collateral or the Term Priority Collateral, as applicable, will decline speedily in value or (B) the failure to take any action will have a reasonable likelihood of endangering the ABL Agent's or the Term Agent's ability to realize upon its Collateral.

**Section 6.4. No Contest.** The Term Agent, on behalf of itself and the Term Credit Parties, agrees that, prior to the Discharge of ABL Obligations, none of them shall contest (or support any other Person contesting) any proposed provision of DIP Financing by the ABL Agent and some or all of the ABL Credit Parties consistent with Section 6.2.

**Section 6.5. Asset Sales.** The Term Agent agrees, on behalf of itself and the Term Secured Parties, that it will not oppose (as a secured creditor) any sale consented to by the ABL Agent of any ABL Priority Collateral under court order in any Insolvency Proceeding under any Debtor Relief Laws, so long as the Proceeds of such sale are applied in accordance with this Agreement. The ABL Agent agrees, on behalf of itself and the ABL Credit Parties, that it will not oppose (as a secured creditor) any sale consented to by the Term Agent of any Term Priority Collateral under court order in any Insolvency Proceeding under any Debtor Relief Laws, so

long as the Proceeds of such sale are applied in accordance with this Agreement. Each of Term Secured Parties and the ABL Credit Parties shall retain any rights that an unsecured creditor may have to object to any such sale. If such sale of Collateral includes both ABL Priority Collateral and Term Priority Collateral, the parties agree that they will support the debtor in obtaining a bid from a nationally recognized liquidator. The allocation of purchase price contained in any purchase agreement relating to such sale shall not control such allocation, unless agreed to by the ABL Agent and the Term Agent. The Borrower, for and on behalf of itself and each of the Loan Parties, the ABL Agent, for and on behalf of itself and each of the ABL Credit Parties, and the Term Agent, for and on behalf of itself and each of the Term Credit Parties, hereby agree and confirm that the fact that any such nationally recognized liquidator may be one of the Credit Parties (or affiliated with one of the Credit Parties) shall not be the sole basis upon which any one of them can oppose or object to such Person being appointed as a liquidator as set forth in this Section 6.5, so long as such appointment is made as a result of a competitive bidding process conducted by an independent third party such as a court appointed monitor appointed in such Insolvency Proceeding.

**Section 6.6.      Allowance of Claims.**

(a) Neither the Term Agent nor any Term Credit Party shall oppose or seek to challenge any claim by the ABL Agent or any ABL Credit Party for allowance in any Insolvency Proceeding of ABL Obligations consisting of post-filing interest, fees or expenses to the extent of the value of the Lien securing any ABL Credit Party's claim, without regard to the existence of the Lien of the Term Agent on behalf of the Term Credit Parties on the ABL Priority Collateral.

(b) Neither the ABL Agent nor any other ABL Credit Party shall oppose or seek to challenge any claim by the Term Agent or any Term Credit Party for allowance in any Insolvency Proceeding of Term Obligations consisting of post-filing interest, fees or expenses to the extent of the value of the Lien securing any Term Credit Party's claim, without regard to the existence of the Lien of the ABL Agent on behalf of the ABL Credit Parties on the Term Priority Collateral.

**Section 6.7    Separate Grants of Security and Separate Classification.** Each Term Credit Party and each ABL Credit Party acknowledges and agrees that (i) the grants of Liens pursuant to the ABL Collateral Documents and the Term Collateral Documents constitute two separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Collateral, the Term Obligations are fundamentally different from the ABL Obligations and must be separately classified in any plan of reorganization (or other plan of similar effect under any Debtor Relief Laws) proposed or adopted in an Insolvency Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the ABL Credit Parties and the Term Credit Parties in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then the ABL Credit Parties and the Term Credit Parties hereby acknowledge and agree that all distributions shall be made as if there were separate classes of ABL Obligation claims and Term Obligation claims against the Loan Parties, with the effect being that, to the extent that the aggregate value of the ABL Priority Collateral or Term Priority Collateral is sufficient (for this purpose ignoring all claims held by the other Credit Parties), the ABL Credit Parties or the

Term Credit Parties, respectively, shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-filing interest and other claims, all amounts owing in respect of post-filing interest that is available from each pool of Priority Collateral for each of the ABL Credit Parties and the Term Credit Parties, respectively, before any distribution is made in respect of the claims held by the other Credit Parties from such Priority Collateral, with such other Credit Parties hereby acknowledging and agreeing to turn over to the ABL Credit Parties and the Term Credit Parties, as the case may be, amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the aggregate recoveries.

**Section 6.8 ABL Obligations Unconditional.** All rights of the ABL Agent hereunder, and all agreements and obligations of the Term Agent and the Loan Parties (to the extent applicable) hereunder, shall remain in full force and effect irrespective of any change in the time, place or manner of payment of, or in any other term of, all or any portion of the ABL Obligations, or any amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of any ABL Document in accordance with the terms hereof.

**Section 6.9 Term Obligations Unconditional.** All rights of the Term Agent hereunder, all agreements and obligations of the ABL Agent and the Loan Parties (to the extent applicable) hereunder, shall remain in full force and effect irrespective of any change in the time, place or manner of payment of, or in any other term of, all or any portion of the Term Obligations, or any amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of any Term Document in accordance with the terms hereof.

**Section 6.10 Plan of Reorganization.** Subject to the ability of the ABL Credit Parties and the Term Credit Parties, as applicable, to support or oppose confirmation or approval of any plan of reorganization or arrangement as provided herein, if, in any Insolvency Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization, both on account of ABL Obligations and on account of Term Obligations, then, to the extent the debt obligations distributed on account of the ABL Obligations and on account of the Term Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the debt obligations so distributed, to the Liens securing such debt obligations and the distribution of Proceeds thereof. Each of the ABL Agent (for itself and on behalf of the other ABL Credit Parties) and the Term Agent (for itself and on behalf of the other Term Credit Parties) agrees that none of the ABL Credit Parties or the Term Credit Parties shall propose or support any plan of reorganization that is inconsistent with the priorities or other provisions of this Agreement.

**Section 6.11 Rights as Unsecured Creditors.** Except as expressly provided in this Agreement, nothing contained herein shall affect the rights or claims of any Agent or any Credit Party as an unsecured creditor in any Insolvency Proceeding, and the Agents and the Credit Parties shall retain all such rights and claims.

## **ARTICLE 7.** **PURCHASE OPTION**

**Section 7.1.     Purchase Notice.** If (i) all of the ABL Obligations shall have been accelerated and/or terminated, (ii) the ABL Agent delivers a notice of its intent to Exercise of Any Secured Creditor Remedies with respect to all or a material portion of the ABL Priority Collateral, or (iii) an Insolvency Proceeding occurs with respect to any of the Loan Parties, then, in any such case, any one or more of Term Credit Parties (acting in their individual capacity or through one or more affiliates) shall have the right, but not the obligation (each Term Credit Party having a ratable right to make the purchase, with each Term Credit Party's right to purchase being automatically proportionately increased by the amount not purchased by another Term Credit Party), upon three (3) Business Days' advance written notice from such Term Credit Party (a "Purchase Notice") to the ABL Agent, for the benefit of the ABL Credit Parties, to acquire from the ABL Credit Parties all (but not less than all) of the right, title, and interest of the ABL Credit Parties in and to the ABL Obligations (which for greater certainty shall include post-filing interest and all costs incurred by the ABL Agent or the ABL Credit Parties), the Aggregate ABL Commitments (if no ABL Obligations are then outstanding) and the ABL Documents. The Purchase Notice, if given, shall be irrevocable. Upon receipt of such notice, the ABL Agent and the Term Agent shall not Exercise Any Secured Creditor Remedies (or shall discontinue the exercise of such remedies), shall not release its Liens on any Collateral, or consent to any Disposition (as defined in the ABL Credit Agreement).

**Section 7.2.     Sale of ABL Obligations.** On the date specified by the Term Agent in the Purchase Notice (which shall not be more than five (5) Business Days after the receipt by the ABL Agent of the Purchase Notice), the ABL Credit Parties shall sell to the purchasing Term Credit Parties and the purchasing Term Credit Parties shall purchase from the ABL Credit Parties, the ABL Obligations (which for greater certainty shall include post-filing interest and all costs incurred by the ABL Agent or the ABL Credit Parties) or the Aggregate ABL Commitments, as applicable.

**Section 7.3.     Purchase Price.** On the date of such purchase and sale, the purchasing Term Credit Parties shall (i) pay to the ABL Agent, for the benefit of the ABL Credit Parties, as the purchase price for all the ABL Obligations or Aggregate ABL Commitments, as applicable, the full amount of all the ABL Obligations (which for greater certainty shall include post-filing interest and all costs incurred by the ABL Agent or the ABL Credit Parties, excluding any Excess ABL Obligations and excluding ABL Obligations cash collateralized in accordance with clause (ii) below) then outstanding and unpaid, (ii) furnish cash collateral to the ABL Agent in such amounts as the ABL Agent determines is reasonably necessary to secure the ABL Agent and the other ABL Credit Parties in connection with (A) any outstanding L/C Obligations (as defined in the ABL Credit Agreement) (but not in any event in an amount greater than 105% of the aggregate outstanding amount of such L/C Obligations, (B) to the extent not terminated and paid in cash, Obligations with respect to Bank Products (other than amounts in excess of the Bank Product Cap) and Cash Management Services, and (C) any indemnity obligations for claims that have been asserted at the time of purchase, and (iii) agree to reimburse the ABL Agent and the other ABL Credit Parties for all expenses thereafter incurred by any of them and not included in the ABL Obligations at the time of purchase, but only to the extent such would have been due and payable in accordance with the ABL Documents (including, without

limitation, the reimbursement of reasonable legal expenses, commercial finance examination expenses, and appraisal fees). Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall occur if the amounts so paid by the purchasing Term Credit Parties to the bank account designated by the ABL Agent are received in such bank account prior to 2:00 p.m., Toronto time, and interest shall be calculated to and including such Business Day if the amounts so paid by purchasing Term Credit Parties to the bank account designated by the ABL Agent are received in such bank account later than 2:00 p.m., Toronto time.

#### **Section 7.4.      Treatment of Excess ABL Obligations.**

In the event that any one or more of the Term Credit Parties exercises and consummates the purchase option set forth in this Article 7, (i) the ABL Credit Parties shall retain their indemnification and reimbursement rights under the ABL Credit Agreement for actions or other matters arising on or prior to the date of such purchase, and (ii) and in the event that, at the time of such purchase, there exist Excess ABL Obligations, the consummation of such purchase option shall not include (nor shall the purchase price be calculated with respect to) such Excess ABL Obligations (clauses (i) and (ii), the “**ABL Retained Interest**”). In the event that an ABL Retained Interest exists, each ABL Credit Party shall, at the request of the purchasing Term Credit Parties, execute an amendment to the ABL Credit Agreement acknowledging that such ABL Retained Interest consisting of Excess ABL Obligations is a last-out tranche, payable after payment in full of all ABL Obligations and payment in full of all of the Term Obligations. Interest with respect to such ABL Retained Interest consisting of Excess ABL Obligations shall continue to accrue and be payable in accordance with the terms of the ABL Documents, the ABL Retained Interest shall continue to be secured by the Collateral, and the ABL Retained Interest shall be paid (or cash collateralized, as applicable) in accordance with the terms of the ABL Credit Agreement and this Agreement. Each ABL Credit Party shall continue to have all rights and remedies of a lender under the ABL Credit Agreement and the other ABL Documents; provided, that no ABL Credit Party shall have any right to vote on or otherwise consent to any amendment, waiver, departure from, or other modification of any provision of any ABL Document except that the consent of ABL Agent shall be required for (i) those matters that require the agreement of all lenders under the ABL Credit Agreement to reduce interest or principal and (ii) matters in contravention of the provisions and priorities set forth in this Agreement with respect to the ABL Retained Interest.

#### **Section 7.5.      Limitation on Representations and Warranties by ABL Credit Parties.**

**Such purchase shall be expressly made without representation or warranty of any kind by the ABL Agent and the other ABL Credit Parties as to the ABL Obligations or Aggregate ABL Commitments so purchased or otherwise and without recourse to the ABL Agent or any other ABL Credit Party, except that each ABL Credit Party shall represent and warrant:** (i) that the amount quoted by such ABL Credit Party as its portion of the purchase price represents the amount shown as owing with respect to the claims transferred as reflected on its books and records, (ii) it owns, or has the right to transfer to the purchasing Term Credit Parties, the rights being transferred, and (iii) such transfer will be free and clear of Liens.

#### **Section 7.6.      ABL Agent; L/C Issuing Bank.** In the event that any one or more of the Term Credit Parties exercises and consummates the purchase option set forth in this Article 7, (i) the ABL Agent and the L/C Issuing Bank shall have the right, but not the

obligation, to immediately resign under the ABL Credit Agreement, and (ii) the purchasing Term Credit Parties shall have the right, but not the obligation, to require the ABL Agent and the L/C Issuing Bank to immediately resign under the ABL Credit Agreement.

**Section 7.7. Survival of ABL Obligations.** Notwithstanding the foregoing purchase of the ABL Obligations or the Aggregate ABL Commitments, as applicable, by the purchasing Term Credit Parties, the ABL Credit Parties shall retain the right to indemnification from the Loan Parties under Section 9.04 of the ABL Credit Agreement and other obligations of the Loan Parties under the ABL Documents which by their express terms would survive any repayment of the ABL Obligations.

## **ARTICLE 8. MISCELLANEOUS**

**Section 8.1. Rights of Subrogation.** The Term Agent, for and on behalf of itself and the Term Credit Parties, agrees that no payment to the ABL Agent or any ABL Credit Party pursuant to the provisions of this Agreement shall entitle the Term Agent or any Term Credit Party to exercise any rights of subrogation in respect thereof until the Discharge of ABL Obligations (other than any Excess ABL Obligations) shall have occurred. Following the Discharge of ABL Obligations (other than any Excess ABL Obligations), the ABL Agent agrees to execute such documents, agreements, and instruments as the Term Agent or any Term Credit Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the ABL Obligations resulting from payments to the ABL Agent by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by the ABL Agent are paid by such Person upon request for payment thereof. The ABL Agent, for and on behalf of itself and the ABL Credit Parties, agrees that no payment to the Term Agent or any Term Credit Party pursuant to the provisions of this Agreement shall entitle the ABL Agent or any ABL Credit Party to exercise any rights of subrogation in respect thereof until the Discharge of Term Obligations (other than any Excess Term Obligations) shall have occurred. Following the Discharge of Term Obligations (other than any Excess Term Obligations), the Term Agent agrees to execute such documents, agreements, and instruments as the ABL Agent or any ABL Credit Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the Term Obligations resulting from payments to the Term Agent by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by the Term Agent are paid by such Person upon request for payment thereof.

**Section 8.2. Further Assurances.** The Parties will, at their own expense and at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that either Party may reasonably request, in order to protect any right or interest granted or purported to be granted hereby or to enable the ABL Agent or the Term Agent to exercise and enforce its rights and remedies hereunder; provided, however, that no Party shall be required to pay over any payment or distribution, execute any instruments or documents, or take any other action referred to in this Section 8.2, to the extent that such action would contravene any law, order or other legal requirement or any of the terms or provisions of this Agreement, and in the event of a controversy or dispute, such Party may interplead any payment or distribution in any court of

competent jurisdiction, without further responsibility in respect of such payment or distribution under this Section 8.2.

**Section 8.3. Representations.** The Term Agent represents and warrants to the ABL Agent that it has the requisite power and authority under the Term Documents to enter into, execute, deliver, and carry out the terms of this Agreement on behalf of itself and the Term Credit Parties and that this Agreement shall be binding obligations of the Term Agent and the Term Credit Parties, enforceable against the Term Agent and the Term Credit Parties in accordance with its terms. The ABL Agent represents and warrants to the Term Agent that it has the requisite power and authority under the ABL Documents to enter into, execute, deliver, and carry out the terms of this Agreement on behalf of itself and the ABL Credit Parties and that this Agreement shall be binding obligations of the ABL Agent and the ABL Credit Parties, enforceable against the ABL Agent and the ABL Credit Parties in accordance with its terms.

**Section 8.4. Amendments.** No amendment or waiver of any provision of this Agreement nor consent to any departure by any Party hereto shall be effective unless it is in a written agreement executed by the Term Agent and the ABL Agent and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that this Agreement may be amended from time to time, without the consent of either Agent, to add additional Loan Parties, whereupon such Person will be bound by the terms hereof to the same extent as if it had executed and delivered this Agreement as of the date hereof.

**Section 8.5. Addresses for Notices.** Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied, sent electronically in pdf or similar format or sent by overnight express courier service or United States mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a telecopy or electronic transmission or five (5) days after deposit in the United States mail (certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto (until notice of a change thereof is delivered as provided in this Section) shall be as set forth below or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

ABL Agent: Wells Fargo Capital Finance Corporation Canada  
One Boston Place, 18<sup>th</sup> Floor  
Boston, Massachusetts 02108  
Attention: Joseph Burt  
joseph.burt@wellsfargo.com

Term Agent: GACP Finance Co., LLC  
11100 Santa Monica Blvd., Suite 800  
Los Angeles, CA 90025  
Attention: Robert A. Louzan  
rlouzan@gacapitalpartners.com

**Section 8.6.     No Waiver; Remedies.** No failure on the part of any Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**Section 8.7.     Continuing Agreement, Transfer of Secured Obligations.** This Agreement is a continuing agreement and shall (a) remain in full force and effect until the Discharge of ABL Obligations and the Discharge of Term Obligations shall have occurred, (b) be binding upon the Parties and their successors and assigns, and (c) inure to the benefit of and be enforceable by the Parties and their respective successors, transferees and assigns. Nothing herein is intended, or shall be construed to give, any other Person any right, remedy or claim under, to or in respect of this Agreement or any Collateral. All references to any Loan Party shall include any Loan Party as debtor-in-possession and any monitor, receiver or trustee for such Loan Party in any Insolvency Proceeding. Without limiting the generality of the foregoing clause (c), the ABL Agent, any ABL Credit Party, the Term Agent, or any Term Credit Party may assign or otherwise transfer all or any portion of the ABL Obligations or the Term Obligations, as applicable, to any other Person (other than the Borrower, any Guarantor or any Affiliate of the Borrower or any Guarantor and any Subsidiary of the Borrower or any Guarantor), and such other Person shall thereupon become vested with all the rights and obligations in respect thereof granted to the ABL Agent, the Term Agent, any ABL Credit Party, or any Term Credit Party, as the case may be, herein or otherwise. The ABL Credit Parties and the Term Credit Parties may continue, at any time and without notice to the other parties hereto, to extend credit and other financial accommodations, lend monies and provide indebtedness to, or for the benefit of, any Loan Party on the faith hereof.

**Section 8.8.     Governing Law; Entire Agreement.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF. This Agreement constitutes the entire understanding among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

**Section 8.9.     Counterparts.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

**Section 8.10.     No Third Party Beneficiaries.** This Agreement is solely for the benefit of the ABL Agent, the ABL Credit Parties, the Term Agent and the Term Credit Parties. No other Person (including the Borrower, any Guarantor or any Affiliate of the Borrower or any Guarantor, or any Subsidiary of the Borrower or any Guarantor) shall be deemed to be a third party beneficiary of this Agreement.

**Section 8.11. Headings.** Section headings herein are included for convenience of reference only and shall not affect the interpretation of this Agreement.

**Section 8.12. Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (b) the Lien Priorities of application of Proceeds and other priorities set forth in this Agreement shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 8.13. VENUE; JURY TRIAL WAIVER.**

(a) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS IN ANY COURT IN TORONTO. 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.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY OTHER PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

**Section 8.14. Intercreditor Agreement.** This Agreement is the Intercreditor Agreement referred to in the ABL Credit Agreement and the Term Loan Agreement. Nothing in this Agreement shall be deemed to subordinate the obligations due to (i) any ABL Credit Party to the obligations due to any Term Credit Party or (ii) any Term Credit Party to the obligations due to any ABL Credit Party (in each case, whether before or after the occurrence of an Insolvency Proceeding), it being the intent of the Parties that this Agreement shall effectuate a subordination of Liens but not a subordination of the payment of the ABL Obligations or the Term Obligations.

**Section 8.15. No Warranties or Liability.** The Term Agent and the ABL Agent acknowledge and agree that neither has made any representation or warranty with respect to the execution, validity, legality, completeness, collectability or enforceability of any other ABL Document or any Term Document. Except as otherwise provided in this Agreement, the Term Agent and the ABL Agent will be entitled to manage and supervise their respective extensions of credit to any Loan Party in accordance with law and their usual practices, modified from time to time as they deem appropriate.

**Section 8.16. Conflicts.** In the event of any conflict between the provisions of this Agreement and the provisions of any ABL Document or any Term Document, the provisions of this Agreement shall govern.

**Section 8.17. Information Concerning Financial Condition of the Loan Parties.**

Each of the Term Agent and the ABL Agent hereby assumes responsibility for keeping itself informed of the financial condition of the Loan Parties and all other circumstances bearing upon the risk of nonpayment of the ABL Obligations or the Term Obligations. The Term Agent and the ABL Agent hereby agree that no party shall have any duty to advise any other party of information known to it regarding such condition or any such circumstances. In the event the Term Agent or the ABL Agent, in its sole discretion, undertakes at any time or from time to time to provide any information to any other party to this Agreement, (a) it shall be under no obligation (i) to provide any such information to such other party or any other party on any subsequent occasion except as required pursuant to Section 3.3, (ii) to undertake any investigation not a part of its regular business routine, or (iii) to disclose any other information, or (b) it makes no representation as to the accuracy or completeness of any such information and shall not be liable for any information contained therein, and (c) the Party receiving such information hereby to hold the other Party harmless from any action the receiving Party may take or conclusion the receiving Party may reach or draw from any such information, as well as from and against any and all losses, claims, damages, liabilities, and expenses to which such receiving Party may become subject arising out of or in connection with the use of such information.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the ABL Agent, for and on behalf of itself and the ABL Credit Parties, and the Term Agent, for and on behalf of itself and the Term Credit Parties, have caused this Agreement to be duly executed and delivered as of the date first above written.

**WELLS FARGO CAPITAL FINANCE  
CORPORATION CANADA**, in its capacity as the  
ABL Agent

By:

Name:

Title:

  
\_\_\_\_\_  
David G. Phillips  
Senior Vice President  
Credit Officer, Canada  
Wells Fargo Capital Finance  
Corporation Canada

**GACP FINANCE CO.**, in its capacity as the Term  
Agent

By:

Name: John Ahn  
Title: President

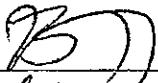
A handwritten signature in black ink that reads "John Ahn".

ACKNOWLEDGMENT

The Borrower and each Guarantor hereby acknowledges that it has received a copy of this Agreement and consents thereto, agrees to recognize all rights granted thereby to the ABL Agent, the ABL Credit Parties, the Term Agent, and the Term Credit Parties and will not do any act or perform any obligation which is not in accordance with the agreements set forth in this Agreement. The Borrower and each Guarantor further acknowledges and agrees that it is not an intended beneficiary or third party beneficiary under this Agreement and (i) as between the ABL Credit Parties, the Borrowers and the Guarantors, the ABL Documents remain in full force and effect as written and are in no way modified hereby, and (ii) as between the Term Credit Parties, the Borrowers and the Guarantors, the Term Documents remain in full force and effect as written and are in no way modified hereby.

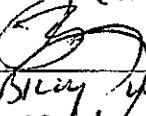
**SEARS CANADA INC.**

By:

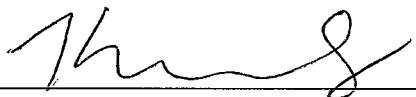
  
Name: Billy Wong  
Title: Chief Financial Officer

**CORBEIL ÉLECTRIQUE INC.**

By:

  
Name: Billy Wong  
Title: Tre Hansen

**THIS IS EXHIBIT "K" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 22<sup>nd</sup> DAY OF JUNE, 2017.**



---

A commissioner for taking Affidavits

**SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION  
AMENDED AND RESTATED CREDIT AGREEMENT**

Dated as of June 22, 2017

among

**SEARS CANADA INC.,**  
as Borrower,

and

**THE LENDERS NAMED HEREIN,**

and

**THE L/C ISSUING BANK NAMED HEREIN,**

and

**WELLS FARGO CAPITAL FINANCE CORPORATION CANADA,**  
as Administrative Agent, Collateral Agent and Swingline Lender

## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE I</b>	
<b>DEFINITIONS AND ACCOUNTING TERMS</b>	
SECTION 1.01. Certain Defined Terms.....	1
SECTION 1.02. Computation of Time Periods.....	33
SECTION 1.03. Accounting Terms.....	33
SECTION 1.04. Other Interpretive Provisions.....	33
<b>ARTICLE II</b>	
<b>AMOUNTS AND TERMS OF THE ADVANCES</b>	
SECTION 2.01. The Revolving Advances.....	34
SECTION 2.02. Making the Revolving Advances.....	34
SECTION 2.03. The Swingline Advances .....	35
SECTION 2.04. Making the Swingline Advances .....	36
SECTION 2.05. Fees .....	37
SECTION 2.06. Optional Termination or Reduction of the Commitments.....	37
SECTION 2.07. Repayment of Advances. ....	37
SECTION 2.08. Interest on Advances.....	37
SECTION 2.09. Interest Rate Determination. ....	39
SECTION 2.10. Optional Conversion of Revolving Advances.....	39
SECTION 2.11. Optional and Mandatory Prepayments of Advances.....	39
SECTION 2.12. Increased Costs. ....	40
SECTION 2.13. Illegality. ....	41
SECTION 2.14. Payments and Computations.....	41
SECTION 2.15. Taxes.....	42
SECTION 2.16. Sharing of Payments, Etc .....	44
SECTION 2.17. Use of Proceeds of Advances.....	44
SECTION 2.18. Reserved.....	44
SECTION 2.19. Permitted Overadvances. ....	44
SECTION 2.20. Wind-Up Reserve.....	45
<b>ARTICLE III</b>	
<b>AMOUNT AND TERMS OF THE LETTERS OF CREDIT</b>	
SECTION 3.01. L/C Commitment. ....	46
SECTION 3.02. Procedure for Issuance of Letter of Credit.....	46
SECTION 3.03. Fees and Other Charges .....	47
SECTION 3.04. Letter of Credit Participations.....	47
SECTION 3.05. Reimbursement Obligation of the Borrower.....	48
SECTION 3.06. Obligations Absolute .....	48
SECTION 3.07. Letter of Credit Payments .....	48
SECTION 3.08. Applications .....	49
SECTION 3.09. Use of Letters of Credit.....	49
SECTION 3.10. Currency Equivalents Generally. ....	49

## ARTICLE IV CONDITIONS TO EFFECTIVENESS

SECTION 4.01. Conditions Precedent to Effectiveness.....	49
SECTION 4.02. Conditions Precedent to Initial Extension of Credit.....	51
SECTION 4.03. Conditions Precedent to Each Extension of Credit .....	52
SECTION 4.04. Effective Date .....	52
SECTION 4.05. Waiver of Conditions.....	52

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

SECTION 5.01. Representations and Warranties of the Borrower .....	53
--	----

## ARTICLE VI

### COVENANTS

SECTION 6.01. Affirmative Covenants.....	56
SECTION 6.02. Negative Covenants. ....	67
SECTION 6.03. Financial Covenant .....	69

## ARTICLE VII

### EVENTS OF DEFAULT

SECTION 7.01. Events of Default .....	69
---------------------------------------	----

## ARTICLE VIII

### THE AGENT

SECTION 8.01. Appointment .....	73
SECTION 8.02. Delegation of Duties .....	74
SECTION 8.03. Exculpatory Provisions .....	74
SECTION 8.04. Reliance by Agent.....	74
SECTION 8.05. Notice of Default.....	74
SECTION 8.06. Non-Reliance on Agents and Other Lenders.....	75
SECTION 8.07. Reports and Financial Statements .....	75
SECTION 8.08. Indemnification.....	76
SECTION 8.09. Agent in Its Individual Capacity .....	76
SECTION 8.10. Successor Agent.....	76
SECTION 8.11. Documentation Agent and Syndication Agent.....	76
SECTION 8.12. Defaulting Lenders.....	76
SECTION 8.13. Collateral Agent as Fondé de Pouvoir.....	77
SECTION 8.14. References to Collateral Agent .....	78

## ARTICLE IX

### MISCELLANEOUS

SECTION 9.01. Amendments, Etc.....	78
SECTION 9.02. Notices, Etc.....	78
SECTION 9.03. No Waiver; Remedies .....	79
SECTION 9.04. Costs and Expenses.....	79
SECTION 9.05. Right of Set-off .....	81
SECTION 9.06. Binding Effect; Effectiveness .....	81

SECTION 9.07. Assignments and Participations .....	81
SECTION 9.08. Confidentiality .....	83
SECTION 9.09. Governing Law .....	83
SECTION 9.10. Execution in Counterparts.....	83
SECTION 9.11. Jurisdiction, Etc. ....	83
SECTION 9.12. WAIVER OF JURY TRIAL.....	84
SECTION 9.13. Release of Collateral or Guarantee Obligation .....	84
SECTION 9.14. Proceeds of Crime Act .....	84
SECTION 9.15. Integration .....	84
SECTION 9.16. Replacement of Lenders .....	85
SECTION 9.17. No Advisory or Fiduciary Capacity. ....	85
SECTION 9.18. Press Releases. ....	86
SECTION 9.19. Judgment Currency .....	86
SECTION 9.20. Reserved.....	87
SECTION 9.21. Language.....	87

## ARTICLE X

### ACKNOWLEDGEMENT AND RESTATEMENT

SECTION 10.01. Existing Obligations.....	87
SECTION 10.02. Acknowledgment of Security Interests. ....	87
SECTION 10.03. Existing Credit Agreement.....	87
SECTION 10.04. Amendment and Restatement. ....	87

## SCHEDULES

Schedule 1.01	Lenders; Commitments
Schedule 1.01A	Business Optimization Plan
Schedule 1.01B	DIP Budget
Schedule 1.01C	List of Store Closures
Schedule 5.01(l)	Canadian Pension Plans
Schedule 5.01(n)	[Reserved]
Schedule 5.01(r)	Labor Matters
Schedule 6.01(j)	Financial and Collateral Reports
Schedule 6.01(m)(i)(B)	Blocked Account Banks
Schedule 6.02(k)(ii)	Investment Policy

## EXHIBITS

Exhibit A	Form of Notice of Borrowing
Exhibit B	Form of Assignment and Acceptance
Exhibit C	Form of Borrowing Base Certificate
Exhibit D	[Reserved]
Exhibit E	Form of Credit Card Notification
Exhibit F	Form of Customs Broker Agreement
Exhibit G	Form of Compliance Certificate

AMENDED AND RESTATED CREDIT AGREEMENT (this “Agreement”) dated as of June 22, 2017, among SEARS CANADA INC., a corporation organized under the federal laws of Canada (the “Borrower”), the banks, financial institutions and other institutional lenders listed on the signature pages hereof (the “Lenders”), the L/C ISSUING BANK party hereto and WELLS FARGO CAPITAL FINANCE CORPORATION CANADA (“WFCFC”), as administrative agent (in such capacity, the “Agent”), collateral agent (in such capacity, the “Collateral Agent”) and Swingline Lender.

The Borrower, the Agent and the Lenders are party to that certain revolving credit agreement dated as of September 10, 2010 (as amended to the date hereof, the “Existing Credit Agreement”) pursuant to which (i) the Lenders have made the Prepetition Advances (as defined below) to the Borrower and (ii) the L/C Issuing Bank (as defined below) has issued the Prepetition L/Cs (as defined below) on behalf of the Borrower, in each case on the terms and conditions set forth therein.

The Borrower has advised the Term DIP Agent and the Term DIP Lenders that the Borrower and the other Loan Parties have commenced or intend to commence voluntary proceedings under the CCAA (the “CCAA Proceedings”) in the Ontario Superior Court of Justice (Commercial List) (the “CCAA Court”) and that such Loan Parties will continue to operate their respective businesses pursuant to the CCAA.

The Borrower has requested that the Lenders continue to extend financing to it during the pendency of the CCAA Proceedings.

The Borrower, the Agent and the Lenders have agreed to modify, amend and restate the Existing Credit Agreement on the terms and conditions set out herein, and acknowledge and reaffirm the obligations, liabilities, undertakings and agreements of the Borrower and the Guarantors under the Existing Credit Agreement and the Loan Documents delivered in connection therewith.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“ABL First Lien Mortgages” has the meaning specified in the Intercreditor Agreement.

“ACH” means automated clearing house transfers.

“Acceptable Excess Amount” means an amount equal to the sum of (i) the amount by which the Total Extensions of Credit exceed the Line Cap as at the end of each week ending between the Effective Date and the Final Availability Date as set out in the DIP Budget plus (ii) CAN\$5,000,000.

“Acceptable Liquidator” means a liquidator engaged by the Borrower and acceptable to the Agent and the Lenders in their sole and absolute discretion.

“Acquisition” means, with respect to any Person (a) a purchase of a controlling interest in, the equity interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, or (c) any amalgamation, merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a controlling interest in the equity

interests, of any Person, in each case in any transaction or group of transactions which are part of a common plan.

“Actuarial Report” means the actuarial report required to be filed by the Borrower under the Pension Benefits Act (Ontario), or such other pension standards laws as may from time to time apply, with respect to the defined benefit provisions of its Canadian Pension Plans or such other report of the Borrower’s actuaries as may be approved by the Collateral Agents.

“Additional GA Collateral” means, at the time of determination, all property of the Loan Parties now owned or hereafter acquired, that is subject to a Lien created or to be created by the DIP Term Loan Documents in favour of the DIP Term Agent but that is not Collateral at such time.

“Additional Term Loan Availability Reserve” means an amount equal to the Net Proceeds from the sale of a real property subject to an ABL First Lien Mortgage and applied to the reduction of the Obligations minus the amount of the DIP Term Loan Borrowing Base attributable by the DIP Term Lenders to such real property pursuant to the DIP Term Loan Agreement.

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

“Administration Charge” means an administration charge granted by the CCAA Court on all present and future assets and property of the Loan Parties, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of a Loan Party, in an aggregate amount not to exceed CAN\$5,000,000 and shall have a priority pursuant to the Initial Order and any other CCAA Court Order acceptable to the Agent and the Lenders in their sole and absolute discretion.

“Advance” means (i) each Prepetition Advance and (ii) any Revolving Advance by a Lender to the Borrower as part of a Borrowing on or after the Effective Date.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term “control” (including the terms “controlling”, “controlled by” and “under common control with”) of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person by contract or otherwise, .

“Agent” has the meaning provided in the Preamble, and includes any successor thereto.

“Agent’s Account” means, collectively, the accounts of the Agent maintained by the Agent at TD Canada Trust, Account Nos. 0690-5388221 (with respect to payments made to such account in Canadian Dollars) and 0690-7387637 (with respect to payments made to such account in Dollars).

“Aggregate Commitments” means the aggregate of the Commitments of all the Lenders. As of the Effective Date, the Aggregate Commitments are CAN\$300,000,000.

“Applicable Lending Office” means, with respect to each Lender, the office of such Lender specified as its “Lending Office” on the signature pages hereof or in the Assignment and Acceptance pursuant to which it became a Lender, or such other office of such Lender as such Lender may from time to time specify in writing to the Borrower and the Agent.

**“Applicable Margin”** means, as of the Effective Date, (a) 4.50% per annum for BA Rate Advances, LIBOR Rate Advances and Standby L/C Fees, (b) 3.50% per annum for Base Rate Advances, Prime Rate Advances, and (c) 4.00% per annum for Commercial L/C Fees.

**“Application”** means an application, in such form as the L/C Issuing Bank may specify from time to time, requesting the L/C Issuing Bank to open a Letter of Credit.

**“Approved Foreign Vendor”** means a Foreign Vendor which (a) is located in any country acceptable to the Agent in its Permitted Discretion, (b) has received timely payment or performance of all obligations owed to it by the Loan Parties, and (c) has not asserted and has no right to assert any reclamation, repossession, diversion, stoppage in transit, Lien or title retention rights in respect of such Inventory.

**“Approved Fund”** means any Fund 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.

**“Assignment and Acceptance”** means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Agent, in substantially the form of Exhibit B hereto.

**“Authorized Officer”** means, as to the Borrower or any other Loan Party, its president, chief executive officer, chief financial officer, vice president and controller, vice president and treasurer, vice president, finance, executive vice president, finance or any other person designated by it and acceptable to the Agent. Any document delivered hereunder that is signed by an Authorized Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership, trust and/or other action on the part of such Loan Party and such Authorized Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

**“Availability Reserves”** means, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Agent from time to time determines in its Permitted Discretion as being appropriate (a) to reflect the impediments to the Agent’s ability to realize upon the Collateral, (b) to reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or (d) to reflect that a Default or an Event of Default then exists. Without limiting the generality of the foregoing, Availability Reserves may include, in the Agent’s Permitted Discretion (but are not limited to) reserves based on: (i) customs duties, and other costs to release Inventory which is being imported into Canada, (ii) to reflect the Agent’s estimate of the amount of any Priority Payables Reserve (provided that, following the Final Availability Date, the Agent’s estimate of the amount of Priority Payables Reserve shall only include those items that may rank ahead of the DIP Charge), (iii) reasonably anticipated changes in the Net Orderly Liquidation Value between appraisals, (iv) warehousemen’s or bailees’ charges and other Permitted Liens which may have priority over the interests of the Agent in the Collateral, (v) after the occurrence and during the continuance of a Cash Dominion Event, Cash Management Reserves, (vi) after the occurrence and during the continuance of a Cash Dominion Event, Bank Products Reserves, (vii) after the occurrence and during the continuance of a Cash Dominion Event, amounts due to vendors on account of consigned goods and commissions due to Persons which operate Dealer Stores, (viii) until the Final Availability Date only, rent expense at leased Stores and DC locations, (ix) royalties payable to non-Loan Parties in respect of licensed merchandise, (x) the Gift Card Liability Reserve, (xi) Customer Deposits Reserve, (xii) the DIP Term Loan Push-Down Reserve, (xiii) until the Final Availability Date only, the Wind-Up Reserve, (xiv) the amount of any Court Charges that rank ahead of the Obligations (including the Prepetition Obligations), (xv) the Additional Term Loan Push Down Reserve and (xvi) after the occurrence and during the continuance of a Cash Dominion Event, amounts due to any province’s lottery commission or other equivalent agency, authority or entity, or to any other Governmental Authority involved in the administration or regulation of lotteries.

**“Available Commitment”** means as to any Lender at any time, an amount equal to the excess, if any, of (a) such Lender’s Commitment then in effect over (b) such Lender’s Extensions of Credit then outstanding; provided, that in calculating any Lender’s Extensions of Credit for the purpose of determining such Lender’s Available Commitment pursuant to Section 2.05(a), (x) the aggregate principal amount of Swingline Advances then outstanding shall be deemed to be zero and (y) the face amount of any Prepetition L/C that has been cash collateralized in accordance with Section 3.11) shall be excluded from such calculation.

**“BA Rate”** means, for the Interest Period of each BA Rate Loan, the rate determined by the Agent by reference to the actual discount rates for bankers’ acceptances for such Interest Period quoted by the Canadian Reference Bank at or about 10:00 a.m. (Toronto time) on the first day of the applicable Interest Period, provided that if the rate so reported is less than zero (0%), such rate shall be deemed to be zero (0%).

**“BA Rate Advance”** means an Advance in Canadian Dollars that bears interest as provided in Section 2.08(a)(ii).

**“Bank Products”** means any services or facilities provided to any Loan Party by any Lender or any of its Affiliates on account of (a) each Swap Contract that is entered into after the Effective Date with any counterparty that is a Credit Party at the time such Swap Contract is entered into, (b) leasing (but only to the extent that the Borrower and the Credit Party furnishing such lease notify the Agent in writing that such leases are to be deemed Bank Products hereunder), (c) factoring arrangements, but excluding Cash Management Services, and (d) the foreign exchange hedging facility entered into by the Borrower and Canadian Imperial Bank of Commerce prior to, and in effect as of, the Effective Date.

**“Bank Product Reserves”** means such reserves as the Agent may from time to time determine in its Permitted Discretion as being appropriate to reflect the liabilities and obligations of the Loan Parties with respect to Bank Products then provided or outstanding; provided that in the event that any counterparty to a Swap Contract requires that the Loan Parties provide cash collateral to secure such Swap Contract, the amount of the Bank Product Reserve imposed by the Agent with respect to such Swap Contract shall take into consideration the amount of such cash collateral.

**“Bankruptcy Sale”** means (i) the sale of all or substantially all of the equity or the assets of any Loan Party whether in one or a series of transactions, (ii) a transaction through which the tax attributes of any Loan Party are directly or indirectly potentially made available for deduction by another Person or (iii) any other Disposition, in each case pursuant to a sale approved by the CCAA Court.

**“Base Rate”** means, for Advances denominated in CAN\$ for any day, a fluctuating interest rate per annum in effect from time to time, which rate per annum shall at all times be equal to the higher of (a) the rate of interest announced publicly by the Canadian Reference Bank, from time to time, as its prime rate, and (b) 1.5% per annum above the BA Rate in effect at the time of determination for a 30-day Interest Period. Any change in the prime rate or such BA Rate shall take effect at the opening of business on the date of such change. Notwithstanding the foregoing, if the rate reported under item (a) is less than zero such rate shall be deemed to be zero.

**“Base Rate Advance”** means an Advance made in CAN\$ that bears interest as provided in Section 2.08(a)(i).

**“BIA”** means the *Bankruptcy and Insolvency Act* (Canada).

**“Blocked Accounts”** means the Blocked Accounts described in Section 6.01(m)(i) and any additional deposit accounts that become subject to Blocked Account Agreements pursuant to Section 6.01(i)(iv).

**“Blocked Account Agreement”** means with respect to a Blocked Account established by a Loan Party, an agreement, in form and substance reasonably satisfactory to the Agent, establishing control of such account by the Agent and whereby the bank maintaining such account agrees, upon the occurrence and during the continuance of a Cash Dominion Event, to comply only with the instructions originated by the Agent without the further consent of any other Person.

**“Blocked Account Bank”** means each of Bank of Montreal, Royal Bank of Canada, Canadian Imperial Bank of Commerce and Bank of Nova Scotia, and each other bank with whom deposit accounts are maintained in which funds of any of the Loan Parties are concentrated and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

**“Borrower Information”** has the meaning specified in Section 9.08.

**“Borrower”** has the meaning provided in the Preamble .

**“Borrowing”** means a borrowing consisting of simultaneous Advances of the same Type made by each of the applicable Lenders pursuant to Section 2.01 or Section 2.03.

**“Borrowing Base”** means, at any time, an amount equal to (a) 85% of the aggregate outstanding Eligible Credit Card Accounts Receivable at such time plus (b) the lesser of (i) 85% of the Net Eligible Inventory at such time and (ii) 85% of the Net Orderly Liquidation Value at such time, minus (d) 100% of the then Availability Reserves, minus (e) following the Final Availability Date, the aggregate unpaid balance of all Prepetition Term Loan Obligations. The Agent may, in its Permitted Discretion after the expiration of the Reserve Notice Period, adjust Availability Reserves and Inventory Reserves used in computing the Borrowing Base.

**“Borrowing Base Certificate”** means a certificate, signed by an Authorized Officer of the Borrower, substantially in the form of Exhibit C or another form which is reasonably acceptable to the Agent in its Permitted Discretion.

**“Business Day”** means a day of the year on which banks are not required or authorized by law to close in Toronto, Ontario or Boston, Massachusetts, and, if the applicable Business Day relates to LIBOR Rate Advances, a day of the year on which dealings are carried on in the London interbank market.

**“Business Optimization Plan”** means the business optimization plan to optimize the business of the Loan Parties, including store closures, staffing adjustments and disclaimer of certain leases annexed hereto as Schedule 1.01A with such modifications, supplements, amendments and adjustments as are acceptable to the Agent and the Lenders in their sole and absolute discretion.

**“Canadian Defined Benefit Pension Plan”** means a Canadian Pension Plan which contains a “defined benefit provision” as defined in subsection 147.1(1) of the ITA.

**“Canadian Defined Benefit Pension Termination Event”** means (a) the filing of a notice of intent with the applicable Governmental Authority to wholly or partially terminate a Canadian Defined Benefit Pension Plan; (b) the filing of an amendment with the applicable Governmental Authority which wholly or partially terminates a Canadian Defined Benefit Pension Plan; (c) the institution of proceedings, including, without limitation, the sending of a notice of intent, by any Governmental Authority to wholly or partially terminate a Canadian Defined Benefit Pension Plan; (d) the appointment by any Governmental Authority of a replacement administrator or trustee to wholly or partially Wind-up a Canadian Defined Benefit Pension Plan; or (e) the taking of any corporate or other action by a Loan Party to wholly or partially terminate a Canadian Defined Benefit Pension Plan.

**“Canadian Dollars”** and **“CAN\$”** refers to lawful money of Canada.

**“Canadian Pension Plans”** means each of the Canadian pension plans, if any, whether or not registered in accordance with the ITA, which the Borrower or any Subsidiary Guarantor sponsors, maintains or administers or into which the Borrower or any Subsidiary Guarantor makes or is obligated to make contributions at any time.

**“Canadian Reference Bank”** means The Toronto-Dominion Bank, or its successors and assigns, or such other bank listed in Schedule I to the Bank Act (Canada) as the Agent may from time to time designate.

**“Capital Expenditures”** means, with respect to any Person for any period, all cash expenditures made or costs incurred for the acquisition or improvement of fixed or capital assets of such Person, in each case that are (or should be) set forth as capital expenditures in a consolidated statement of cash flows of such Person for such period, in each case prepared in accordance with GAAP.

**“Capital Lease Obligations”** means, with respect to any Person for any period, 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 liabilities on a balance sheet of such Person under GAAP and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP.

**“Cash Dominion Event”** means either (a) the occurrence and continuance of an Event of Default, or (b) Excess Availability at any time is less than 15% of the Combined Borrowing Base. For purposes hereof, the occurrence of a Cash Dominion Event shall be deemed continuing at the Agent’s option (i) so long as such Event of Default is continuing, and/or (ii) if the Cash Dominion Event arises as a result of the Borrower’s failure to achieve Excess Availability in the amount described in the preceding sentence, until Excess Availability has exceeded such amount for thirty (30) consecutive days, in which case a Cash Dominion Event shall no longer be deemed to be continuing for purposes of this Agreement; *provided that* a Cash Dominion Event shall be deemed continuing (even if Excess Availability exceeds such amount for thirty (30) consecutive days) after a Cash Dominion Event has occurred on two (2) occasions during any twelve month period after the Effective Date if the first such Cash Dominion Event has been discontinued and shall continue until the expiration of the twelve month period ending after the commencement of the second Cash Dominion Event. The termination of a Cash Dominion Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Cash Dominion Event in the event that the conditions set forth in this definition again arise.

**“Cash Equivalents”** means investments of the Borrower and its Subsidiaries recorded as cash or cash equivalents in accordance with GAAP.

**“Cash Management Reserves”** means such reserves as the Agent, from time to time, determines in its Permitted Discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Loan Parties with respect to Cash Management Services then provided or outstanding.

**“Cash Management Services”** means any one or more of the following types of services or facilities provided to any Loan Party by any Lender or any of its Affiliates: (a) ACH transactions, (b) cash management services, including, without limitation, controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) foreign exchange facilities, (d) credit card processing services, (e) credit or debit cards and (f) purchase cards (but only to the extent that, prior to the occurrence and continuance of any Default or Event of Default, the Borrower and the Credit Party issuing such purchase cards notify the Agent in writing that such purchase cards are to be deemed Cash Management Services hereunder).

**“CCAA”** means the *Companies’ Creditors Arrangement Act* (Canada)..

**“CCAA Court”** has the meaning provided in the Preamble.

"CCAA Court Orders" means, collectively, the court orders made by the CCAA Court in the CCAA Proceedings, including the Initial Order, and "CCAA Court Order" means any one of such orders.

"CCAA Proceeding" has the meaning provided in the Preamble.

"Collateral Agent" has the meaning provided in the Preamble and includes any successor thereto.

"Collateral" means all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by the Initial Order and/or any Security Document excluding (a) the last day of the term of any lease or agreement to lease, but the applicable Loan Party shall stand possessed of such last day in trust for and assign it to such person as Agent shall direct, (b) any consumer goods, and (c) any right, title or interest in or to any contract or agreement to the extent such contract or agreement is not assignable pursuant to applicable law or its terms or provisions (except to the extent that any such terms or provisions are not effective at law (including pursuant to the Initial Order or any other CCAA Court Order) to limit or restrict the grant of a security interest) or requires the consent of a third party to its assignment and such consent has not been obtained, provided, that the applicable Loan Party shall to the extent permitted under applicable law hold such right, title or interest in trust for the Agent.

"Combined Borrowing Base" means an amount equal to the aggregate amount of the Line Cap and the Comeback Term DIP Loan Line Cap (as such term is defined in the DIP Term Loan Agreement).

"Comeback Motion" has the meaning as defined in clause (a) of the definition of "Final Availability Date".

"Commercial L/C" means a commercial documentary Letter of Credit under which the L/C Issuing Bank agrees to make payments in Dollars or Canadian Dollars for the account of the Borrower, on behalf of any Group Member, in respect of obligations of such Group Member in connection with the purchase of goods or services in the ordinary course of business.

"Commitment" means, as to any Lender, the obligation of such Lender to make Revolving Advances and participate in Swingline Advances and Letters of Credit in an aggregate principal amount and/or face amount up to (a) the amount set forth opposite such Lender's name on Schedule 1.01 or (b) if such Lender has entered into any Assignment and Acceptance, the amount set forth for such Lender in the Register maintained by the Agent pursuant to Section 9.07(d), as such amount may be reduced or increased pursuant to Section 2.06 or Section 2.18.

"Commitment Fee Rate" means 0.375% per annum.

"Commitment Percentage" means, as to any Lender at any time, the percentage which such Lender's Commitment then constitutes of the Aggregate Commitments or, at any time after all of the Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender's Advances then outstanding plus such Lender's participation in Swingline Advances and L/C Obligations constitutes of the aggregate principal amount of the Advances, Swingline Advances and L/C Obligations then outstanding.

"Consolidated" refers to the consolidation of accounts of the Borrower and its Subsidiaries, in accordance with GAAP and as presented on a GAAP basis.

"Convert", "Conversion" and "Converted" each refers to a conversion of Advances of one Type into Advances of another Type pursuant to Section 2.09 or 2.10.

"Corbeil" means Corbeil Électrique Inc., a corporation organized under the laws of Quebec.

**Court Charges** collectively means the DIP Charges, the Administration Charge, the FA Charge, the D&O Charge and the KERP Charge, in each case in such amounts and having such priority as is acceptable to the Agent and the Lenders in their sole and absolute discretion.

**Covenant Compliance Event** means Excess Availability at any time is less than or equal to the greater of (i) \$40,000,000 and (ii) ten percent (10%) of the Combined Borrowing Base. The termination of a Covenant Compliance Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Covenant Compliance Event in the event that the conditions set forth in this definition again arise.

**Credit Card Accounts Receivable** means each Account (as defined in the PPSA) together with all income, payments and proceeds thereof, owed by a credit card payment processor or an issuer of credit cards to a Loan Party resulting from charges by a customer of a Group Member on credit cards issued by such issuer in connection with the sale of goods by a Group Member, or services performed by a Group Member, in each case in the ordinary course of its business.

**Credit Card Notification** has the meaning specified in Section 6.01(m)(i)(A).

**Credit Card Processors** has the meaning specified in Section 6.01(m)(i)(A).

**Credit Party** or **Credit Parties** means (a) individually, (i) each Lender and its Affiliates, (ii) the Agent, (iii) the L/C Issuing Bank, (iv) the Arranger, and (v) the successors and assigns of each of the foregoing, and (b) collectively, all of the foregoing.

**Customer Deposits Reserve** shall mean, at any time, a reserve equal to the aggregate outstanding amount of customer deposits of the Loan Parties at such time.

**Customs Broker Agreement** means an agreement in substantially the form attached hereto as Exhibit E, or such other form as the Agent may reasonably agree, among a Loan Party, a customs broker or other carrier, and the 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 Agent and agrees, upon notice from the Agent (which shall not be furnished unless an Event of Default is continuing), to hold and dispose of the subject Inventory solely as directed by the Agent.

**D&O Charge** means a charge granted by the CCAA Court on all present and future assets and property of the Loan Parties, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of a Loan Party, in an aggregate amount not to exceed CAN\$63,500,000 provided for in the Initial Order, securing an indemnity in favour of the Loan Parties' directors and officers against any obligations or liabilities that they may incur as directors and officers of the Loan Parties on or after the Petition Date, and shall (i) as to CAN\$44,000,000, rank in priority to the DIP Charges and (ii) as to CAN\$19,500,000 rank below and junior to the DIP Charges, in each case pursuant to the Initial Order and any other CCAA Court Order acceptable to the Agent and the Lenders in their sole and absolute discretion.

**DC** means any distribution center owned or leased and operated by any Loan Party.

**DDA** means each chequing, savings or other demand deposit account maintained by any of the Loan Parties.

**Dealer Store** means any store constituting a "Sears Authorized Dealer Store", independently owned and operated by a Person (other than a Loan Party or any of its Subsidiaries) pursuant to a "Sears Canada Inc. Authorized Dealer Agreement".

**“Debt”** of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money (excluding interest payable thereon unless such interest has been accrued and added to the principal amount of such indebtedness), (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments (other than performance, surety and appeals bonds arising in the ordinary course of business and other than the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business) or in respect of bankers’ acceptances or letters of credit, (d) all obligations of such Person 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), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all direct recourse payment obligations of such Person in respect of any accounts receivable sold by such Person, (g) all Debt of others referred to in clauses (a) through (f) above or clause (h) below and other payment obligations guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (1) to pay or purchase such Debt or to advance or supply funds for the payment or purchase of such Debt, (2) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Debt or to assure the holder of such Debt against loss, (3) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (4) otherwise to assure a creditor against loss, and (h) all Debt referred to in clauses (a) through (g) above secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Debt.

**“Default”** means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

**“Defaulting Lender”** means any Lender (as reasonably determined by the Agent) that (a) has failed to fund any portion of the Advances, participations in Letters of Credit or participations in Swingline Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, (b) has otherwise failed to pay over to the Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, (c) has failed, within three (3) Business Days after request by the Agent, to confirm that it will comply with the terms of this Agreement relating to its Commitments, provided that such Lender shall cease to be a Defaulting Lender under this clause (c) upon the Agent’s receipt of such confirmation, or (d) has been declared insolvent by any Governmental Authority pursuant to a court order or become the subject of a bankruptcy or insolvency proceeding.

**“Deteriorating Lender”** means any Defaulting Lender or any Lender as to which (a) any of the L/C Issuing Bank or the Swingline Lender has a good faith belief that such Lender or its Subsidiary has defaulted in fulfilling its obligations under one or more other syndicated credit facilities, or (b) such Lender or a Person that controls such Lender has been declared insolvent by any Governmental Authority pursuant to a court order or become the subject of a bankruptcy, insolvency or similar proceeding; provided that a Lender shall not be a Deteriorating Lender solely by virtue of the ownership or acquisition of any equity interest in such Lender or the Person controlling such Lender by a Governmental Authority.

**“DIP Budget”** means the financial projections prepared by the Loan Parties covering the period commencing on the week ended June 3, 2017 and ending on the week ending October 28, 2017, on a weekly basis, which projections shall include, at a minimum, cash receipts, operating disbursements, payroll disbursements, a reasonably detailed professional fee budget, non-operating disbursements (including, for the avoidance of doubt, professional fees) and inventory for the period covered thereby, all of which shall be in form and substance reasonably satisfactory to the Agent, as such Budget may be

amended, modified and otherwise updated from time to time, each of which amendments, modifications and updates shall require the approval of the Agent and the Lenders in their sole and absolute discretion. The Agent acknowledges and agrees that the DIP Budget attached hereto as Schedule 1.01B and in effect as of the date of this Agreement is in form and substance satisfactory to the Agent.

“DIP Charges” means, collectively, the Lender DIP Charge and the Term DIP Charge.

“DIP Term Facility” means that certain term loan facility evidenced by the DIP Term Loan Documents.

“DIP Term Lenders” means the lenders under the DIP Term Facility.

“DIP Term Loan Agent” means GACP Finance Co., LLC, and any successor agent under the DIP Term Facility.

“DIP Term Loan Agreement” means the debtor-in-possession term loan agreement dated as of the date hereof among the Borrower and each Guarantor, on the one hand, and the DIP Term Loan Agent and the lenders party thereto, on the other hand, as in effect on the Effective Date and as the same may be amended restated or otherwise modified as permitted by the Intercreditor Agreement.

“DIP Term Loan Borrowing Base” has the meaning given to the term “Borrowing Base” set forth in the DIP Term Loan Agreement as in effect on the Effective Date; provided that after payment in full and termination of the DIP Term Facility, the DIP Term Loan Borrowing Base shall be deemed to be “zero” for all purposes hereunder.

“DIP Term Loan Documents” means the “Loan Documents” (as defined in the DIP Term Loan Agreement).

“DIP Term Loan Obligations” means the outstanding principal balance of the loans made under the DIP Term Facility and all accrued interest and all other outstanding obligations under the DIP Term Facility.

“DIP Term Loan Push-Down Reserve” means the amount, as of any date of determination, equal to the difference, if a positive number, between the DIP Term Loan Outstandings and the DIP Term Loan Borrowing Base.

“Disposition” means any sale or transfer of property other than goods held for sale in the ordinary course of business.

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

“Effective Date” means the date on which the conditions precedent set forth in Section 4.01 shall have been satisfied.

“Eligible Assignee” means (a) a commercial bank or any other Person engaged in the business of or capable of making asset based or commercial loans, which bank or Person, together with its Affiliates, has a combined capital and surplus in excess of CAN\$300,000,000 and which bank or Person is approved by the Agent, (b) an existing Lender or an Affiliate of an existing Lender or an Approved Fund, or (c) any Permitted Holder Lender; provided that neither the Borrower nor an Affiliate of the Borrower (other than a Permitted Holder Lender) shall qualify as an Eligible Assignee.

“Eligible Credit Card Accounts Receivable” means at the time of any determination thereof, each Credit Card Account Receivable that satisfies the following criteria at the time of its creation and continues to meet the same at the time of such determination: such Credit Card Account Receivable (i) has been

earned and represents the bona fide amounts due to a Loan Party from a credit card payment processor and/or credit card issuer, and in each case originated in the ordinary course of business of the applicable Loan Party and (ii) is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (j), inclusive, below. Without limiting the foregoing, to qualify as an Eligible Credit Card Account Receivable, an Account shall indicate no person other than a Loan Party as payee or remittance party. In determining the amount to be so included, the face amount of an Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges, credit card processor fees or other allowances (including any amount that the applicable Loan Party may be obligated to rebate to a customer, a credit card payment processor, or credit card issuer pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by the applicable Loan Party to reduce the amount of such Credit Card Account Receivable. Unless otherwise approved from time to time in writing by the Agent in its Permitted Discretion, no Credit Card Account Receivable shall be an Eligible Credit Card Account Receivable if, without duplication:

- (a) such Credit Card Account Receivable is not owned by a Loan Party and such Loan Party does not have good or marketable title to such Credit Card Account Receivable;
- (b) such Credit Card Account Receivable does not constitute an “Account” (as defined in the PPSA) or such Credit Card Account Receivable has been outstanding for more than three (3) Business Days;
- (c) the issuer or payment processor of the applicable credit card with respect to such Credit Card Account Receivable is the subject of any bankruptcy or insolvency proceedings, or has otherwise suspended its business or made an assignment for the benefit of its creditors;
- (d) such Credit Card Account Receivable is not the valid, legally enforceable obligation of the applicable issuer with respect thereto;
- (e) such Credit Card Account Receivable is subject to any Lien whatsoever other than Liens in favor of the Agent and Permitted Liens;
- (f) such Credit Card Account Receivable is not subject to a valid and perfected Lien in favor of the Agent, for the benefit of the Credit Parties, senior in priority to all other Liens other than Permitted Liens which have priority over the Liens of the Agent by operation of applicable law and Liens of the type specified in clause (g) of the definition of Permitted Liens;
- (g) the Credit Card Account Receivable does not conform to all representations, warranties, covenants or other provisions in the Loan Documents relating to Credit Card Accounts Receivable;
- (h) such Credit Card Account Receivable is subject to risk of set-off, non-collection or not being processed due to unpaid and/or accrued credit card processor fee balances, limited to the lesser of the balance of Credit Card Account Receivable or unpaid credit card processor fees;
- (i) such Credit Card Account Receivable does not meet such other reasonable eligibility criteria for Credit Card Accounts Receivable as the Agent may determine from time to time in its Permitted Discretion; or
- (j) such Credit Card Receivable did not arise from merchandise sold or services rendered by the applicable Loan Party in the ordinary course of its business;

**“Eligible In-Transit Inventory”** means, as of any date of determination thereof, without duplication of other Eligible Inventory, In-Transit Inventory:

- (a) which has been shipped from a location outside of Canada for receipt by a Loan Party, but which has not yet been delivered to such Loan Party, which In-Transit Inventory has been in transit for sixty (60) days or less from the date of shipment of such Inventory;
- (b) for which the purchase order is in the name of a Loan Party and title has passed to such Loan Party;
- (c) for which the document of title reflects a Loan Party as consignee or, if requested by the Agent, names the Collateral Agent as consignee, and in each case as to which the Collateral Agent has control over the documents of title which evidence ownership of the subject Inventory (such as, if requested by the Agent, by the delivery of a Customs Broker Agreement and a control agreement with a carrier or freight forwarder);
- (d) which is insured to the reasonable satisfaction of the Agent (including, without limitation, marine cargo insurance);
- (e) the Foreign Vendor with respect to such In-Transit Inventory is an Approved Foreign Vendor;
- (f) for which (i) payment of the purchase price has been made by the applicable Loan Party to the vendor of such Inventory and evidence of such payment has been received by the Agent or (ii) the purchase price is supported by a Commercial L/C, in which event an Inventory Reserve equal to 25% of the Inventory Value of such Inventory shall be established; and
- (g) which otherwise would not be excluded from the definition of Eligible Inventory by any of clauses (a), (d) through (g), inclusive, or (i) through (s), inclusive, thereof;

provided that the Agent may, in its Permitted Discretion, exclude any particular Inventory from the definition of “Eligible In-Transit Inventory” in the event the Agent determines that such Inventory is subject to any Person’s right or claim which is senior to, or pari passu with, the Lien of the Collateral Agent (such as, without limitation, a right of stoppage in transit) or may otherwise adversely impact the ability of the Collateral Agent to realize upon such Inventory.

**“Eligible Inventory”** means, at any time, without duplication, (i) after such time following the Effective Date as the Agent has completed its review to its reasonable satisfaction of the Borrower’s and the other Loan Parties’ In-Transit Inventory, Eligible In-Transit Inventory, and (ii) items of Inventory of any Loan Party that are held for retail sale to the public in the ordinary course of business, merchantable, and readily saleable to the public in the ordinary course of business, that is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (s) below. Without limiting the foregoing, to qualify as “Eligible Inventory” no Person other than the Loan Parties shall have any direct or indirect ownership, interest or title to such Inventory and no Person other than the Loan Parties shall be indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein. Unless otherwise from time to time approved in writing by the Agent in its Permitted Discretion, no Inventory shall be deemed Eligible Inventory if, without duplication:

- (a) the Loan Parties do not have sole and good, valid and unencumbered title thereto (except for Liens of the type described in clauses (a), (b), (c), (d), (e) and (q) of the definition of Permitted Liens); or
- (b) it is not located in Canada (other than Eligible In-Transit Inventory); or

(c) it is not located at property owned or leased by the Loan Parties (except to the extent such Inventory is (i) Eligible In-Transit Inventory, (ii) in transit between such locations, or (iii) located at a Dealer Store, *provided that* the amount of Inventory located at all Dealer Stores which may constitute Eligible Inventory shall not exceed the lesser of CAN\$100,000,000 or ten percent (10%) of the Inventory Value of all Eligible Inventory in the aggregate, or (iii) is deemed eligible pursuant to clause (g)) or is located at a third party warehouse or is located at a closed Store (except pursuant to clause (f)) or is located at a closed DC; or

(d) it is not subject to a valid and perfected Lien in favor of the Agent for the benefit of the Credit Parties, senior in priority to all other Liens other than Permitted Liens which have priority over the Liens of the Agent by operation of applicable law, including Liens of the types described in clauses (a) through (c), inclusive, of the definition of Permitted Liens; or

(e) it is subject to any Lien whatsoever other than Liens in favor of the Agent, and Permitted Liens; or

(f) it is Inventory located at a Store which is being closed; provided, however that such Inventory will be deemed eligible for the first six (6) weeks after the commencement of the Store Closure Sale for that Store, provided further that the Inventory Value of such Inventory shall be reduced by the “closed store reserve” established by the Borrower with respect to such Inventory consistent with past practices; or

(g) it is consigned from a vendor or is at a customer location but still accounted for in the applicable Loan Party’s inventory balance; or

(h) it is in-transit from a vendor and has not yet been received into a DC or Store (other than Eligible In-Transit Inventory); or

(i) it is identified in the stockledger of the applicable Loan Party as any of the following departments or consists of Inventory which is ordinarily classified by such Loan Party consistent with its historical practices as the following: floral; gasoline; live plants; miscellaneous or other as classified on the Loan Party’s stockledger; produce; books; magazines; restaurant operations; or seafood; or it is identified per the applicable Loan Party’s stockledger as candy; or

(j) it is Inventory that has been packed-away and stored for more than 12 months at a DC or a Store for future sale; or

(k) it is identified as wholesaler freight fees; or

(l) it is Inventory on layaway or is Inventory which has been sold but not delivered or as to which any Loan Party has accepted a deposit from a third party; or

(m) it is identified per the Loan Parties’ stockledger as Inventory that is in a leased department, including digital imaging, photofinishing and 1 hour lab; or

(n) it is otherwise deemed ineligible by the Agent in its Permitted Discretion after the expiration of the Reserve Notice Period; or

(o) it is (i) operating supplies, packaging or shipping materials, cartons, labels or other such materials not considered used for sale in the ordinary course of business by the Agent in its Permitted Discretion, (ii) work-in-process, raw materials, (iii) not in material compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, or (iv) bill and hold goods; or

(p) it is Inventory which exhibits, includes or is identified by any trademark, trademark or other Intellectual Property right which trademark, trademark or other Intellectual Property right (i) is subject to a restriction that could reasonably be expected to adversely affect the Agent's ability to liquidate such Inventory or (ii) the relevant Loan Party does not have the right to use in connection with the sale of such Inventory, either through direct ownership or through a written license or sublicense; or

(q) it is Inventory that is not insured in compliance with the provisions of Section 6.01(c), or

(r) it is Inventory that does not conform to all representations, warranties, covenants or other provisions in the Loan Documents relating to Inventory.

**"Environmental Action"** means any action, suit, demand, demand letter, claim, notice of noncompliance or violation, notice of liability or potential liability, investigation, proceeding, consent order or consent agreement relating in any way to any Environmental Law, Environmental Permit or Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment, including (a) by any governmental or regulatory authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any governmental or regulatory authority or any third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

**"Environmental Law"** means any federal, provincial, local or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, health, safety or natural resources, including those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

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

**"Environmental Permit"** means any permit, approval, identification number, license or other authorization required under any Environmental Law.

**"Events of Default"** has the meaning specified in Section 7.01.

**"Excess Availability"** means, at any time, an amount equal to (a) the Line Cap, minus (b) the Total Extensions of Credit.

**"Excluded Accounts"** means payroll, trust and tax withholding accounts funded in the ordinary course of business, and accounts which contain only cash and Cash Equivalents subject to a Lien permitted pursuant to clause (k) of the definition of Permitted Liens and Liens permitted pursuant to Section 6.02(a)(ii).

**"Extensions of Credit"** means as to any Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Advances held by such Lender then outstanding, (b) such Lender's Commitment Percentage of the aggregate principal amount of Swingline Advances then outstanding and (c) such Lender's Commitment Percentage of the L/C Obligations then outstanding.

**“FA Charge”** means a charge granted by the CCAA Court on all present and future assets and property of the Loan Parties, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of a Loan Party, to secure payment of the fees of the Financial Advisor in an aggregate amount not to exceed CAN\$3,300,000, and shall have a priority pursuant to the Initial Order and any other CCAA Court Order acceptable to the Agent and the Lenders in their sole and absolute discretion.

**“Federal Funds Rate”** means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day on such transactions received by the Agent from three Federal funds brokers of recognized standing reasonably selected by it. Notwithstanding the foregoing, in no event shall the Federal Funds Rate at any time be less than zero (0%).

**“Fee Letter”** means the Fee Letter dated as of the date hereof between the Borrower and WFCFC, as amended from time to time.

**“Final Availability Date”** means the date on which the following shall have occurred:

(a) the CCAA Court shall have heard the comeback motion for the Initial Order (the **“Comeback Motion”**) and the Initial Order shall not have been amended, restated, supplemented or otherwise modified as a result of the Comeback Motion or otherwise without the consent of the Agent and the Required Lenders; provided that the CCAA Court shall have issued an order amending, restating, supplementing or otherwise modifying the Initial Order, as necessary, to (x) approve service and/or substitute service on all secured creditors likely to be affected by the Court Charges and on all other necessary or appropriate parties as agreed between the Loan Parties and the Agent; (ii) approve full availability of the Commitments on the terms of this Agreement; and (iii) provide for the DIP Charges;

(b) the Initial Order (as permitted herein to be amended, restated, supplemented or otherwise modified at the Comeback Motion) shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been further amended, restated, supplemented or otherwise modified without the prior written consent of the Agent and the Lenders (not to be unreasonably withheld); and

(c) all appeal periods with respect to the Initial Order shall have expired and no notice of appeal, or motion to vary, amend, stay, reverse or otherwise affect such orders shall have been filed and pending.

**“Financial Advisor”** means BMO Nesbitt Burns Inc. in its capacity as financial advisor to the Loan Parties, or any successor thereto acceptable to the Agent and the Required Lenders.

**“FSCO”** means the Financial Services Commission of Ontario and any Person succeeding to the functions thereof and includes the Superintendent under such statute and any other Governmental Authority empowered or created by the *Supplemental Pensions Act* (Québec) or the *Pension Benefits Act* (Ontario) or any Governmental Authority of any other Canadian jurisdiction exercising similar functions in respect of any Canadian Pension Plan of the Loan Parties or any of their Subsidiaries and any Governmental Authority succeeding to the functions thereof.

**“Foreign Vendor”** means a Person that sells In-Transit Inventory to a Loan Party.

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

**“GAAP”** has the meaning specified in Section 1.03.

**“Gift Card Liability Reserve”** shall mean, at any time, and without duplication of any other Availability Reserves or Inventory Reserves, a reserve equal to the aggregate remaining value at such time of outstanding gift certificates and gift cards of the Loan Parties entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory.

**“Governmental Authority”** means any nation or government, any provincial or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

**“Group Members”** means, collectively, the Borrower and its Subsidiaries.

**“Guarantee and Collateral Agreement”** means the Amended and Restated Guarantee and Collateral Agreement dated as of April 20, 2017 executed and delivered by the Borrower and Corbeil, as supplemented by any joinder or assumption thereto by each of the other Loan Parties after the Effective Date, and includes any additional Guarantee and Collateral Agreement substantially in the form thereof delivered by any Loan Party from time to time.

**“Hazardous Materials”** means (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

**“IFRS”** means the International Financial Reporting Standards, namely, the standards, interpretations and the framework for the preparation and presentation of financial statements (in the absence of a standard or interpretation) adopted by the International Accounting Standards Board.

**“Insolvency Legislation”** means the CCAA, BIA or such other federal, provincial state or other insolvency, restructuring, reorganization or any other statute addressing corporate or debt compromise or reorganization.

**“In-Transit Inventory”** means Inventory of a Loan Party which is in the possession of a common carrier and is in transit from a Foreign Vendor of a Loan Party from a location outside of Canada to a location of a Loan Party that is within Canada.

**“Initial Order”** means an order issued and entered by the CCAA Court and any amendments or supplements thereto, in form and substance acceptable to the Agent and the Lenders in their sole and absolute discretion, which shall stay all proceedings against the Loan Parties and which shall, *inter alia*, approve the Loan Parties’ entering into and performing their respective obligations under this Agreement and the other Loan Documents and provide for such Court Charges in such amounts and with such priority as are acceptable to the Agent and the Lenders in their sole and absolute discretion.

**“Intellectual Property”** has the meaning set forth in the Guarantee and Collateral Agreement.

**“Intercreditor Agreement”** means that certain Intercreditor Agreement dated as of the Sixth Amendment Effective Date between the “Agent” under the Prepetition Term Loan Agreement and the Agent and acknowledged by the “Loan Parties” as same may be amended or restated from time to time in

accordance with the provisions thereof, as may be modified by the Initial Order, provided that in the event of any conflict between the Initial Order and the Intercreditor Agreement, the Initial Order shall govern.

“Interest Period” means, for each BA Rate Advance and LIBOR Rate Advance comprising part of the same Borrowing of Revolving Advances, the period commencing on the date of such BA Rate Advance or LIBOR Rate Advance or the date of the Conversion of any Base Rate Advance or Prime Rate Advance into such BA Rate Advance or LIBOR Rate Advance, as applicable, and ending on the last day of the period selected by the Borrower pursuant to the provisions below and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by the Borrower pursuant to the provisions below. The duration of each such Interest Period shall be one, two or three months, as the Borrower may, upon notice received by the Agent not later than 12:00 noon on the third Business Day prior to the first day of such Interest Period, select; provided, however, that:

- (a) the Borrower may not select any Interest Period that ends after the Termination Date;
- (b) Interest Periods commencing on the same date for BA Rate Advances or LIBOR Rate Advances comprising part of the same Borrowing shall be of the same duration;
- (c) with respect to LIBOR Rate Advances (and BA Rate Advances, to the extent applicable), whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day; provided, however, that, if such extension would cause the last day of such Interest Period of one month or longer to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day; and
- (d) with respect to LIBOR Rate Advances, whenever the first day of any Interest Period occurs on a day of a calendar month for which there is no numerically corresponding day in the calendar month that succeeds such initial calendar month by the number of months equal to the number of months in such Interest Period, such Interest Period shall end on the last Business Day of such succeeding calendar month.

“Inventory” as defined in the PPSA.

“Inventory Reserves” means, as of the Effective Date, reserves for shrink, consignment inventory, Corbeil franchise floor plan inventory, and damaged inventory; and thereafter such reserves as the Agent may establish in its Permitted Discretion.

“Inventory Shortfall Amount” has the meaning specified in Section 6.01(y)(ii).

“Inventory Value” shall mean, with respect to any Inventory of the Loan Parties, the value of such Inventory valued at the lower of cost or market value on a basis consistent with the Loan Parties’ current and historical accounting practice in effect on the Effective Date, per the stockledger (without giving effect to LIFO reserves and general ledger reserves for discontinued inventory, markdowns, intercompany profit, rebates and discounts, any cut off adjustments, revaluation adjustments, purchase price adjustments or adjustments with respect to the capitalization of buying, occupancy, distribution and other overhead costs reflected on the balance sheet of the Loan Parties in respect of Inventory). The value of the Inventory as set forth above will, without duplication for any Inventory Reserves, be calculated net of the reserve established by the Loan Parties on a basis consistent with the Loan Parties’ current and historical practice, in effect on the Effective Date, in respect of lost, misplaced or stolen Inventory at such time.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of equity interests of another Person, (b)

a loan, advance or capital contribution to, guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) any Acquisition.

**“ITA”** means the *Income Tax Act* (Canada).

**“KERP Charge”** means a charge granted by the CCAA Court on all present and future assets and property of the Loan Parties, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of a Loan Party, in an aggregate amount of CAN\$9,200,000 and which shall be approved by the Monitor and the CCAA Court, that secures the obligations of the Loan Parties to make payments to key employees in certain circumstances under a key employee retention plan, which charge and key employee retention plan shall be approved by the Agent and the Lenders, and shall (i) as to CAN\$4,600,000, rank in priority to the DIP Charges and (ii) as to CAN\$4,600,000 rank below and junior to the DIP Charges, in each case pursuant to the Initial Order and any other CCAA Court Order acceptable to the Agent and the Lenders in their sole and absolute discretion.

**“L/C Collateral Account”** has the meaning specified in Section 3.11.

**“L/C Issuing Bank”** means any bank or financial institution acceptable to Agent in its sole discretion, from time to time, it being understood that with the consent of the Borrower (not to be unreasonably withheld) the L/C Issuing Bank may arrange for one or more Letters of Credit to be issued by Affiliates of the L/C Issuing Bank, in which case the term “L/C Issuing Bank” shall include any such affiliate with respect to Letters of Credit issued by such Affiliate.

**“L/C Commitment”** means CAN\$150,000,000.

**“L/C Obligations”** means at any time, an amount equal to the sum of (a) the aggregate then undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit that have not then been reimbursed or discharged pursuant to Section 3.05 (after giving effect to the proviso thereof).

**“Lender DIP Charge”** means the super-priority debtor-in-possession charge granted by the CCAA Court pursuant to the Initial Order in favour of the Agent and the Lenders over all of the present and future assets and property of the Loan Parties, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of a Loan Party, to secure the Obligations (other than the Prepetition Obligations).

**“Lender FA”** means Alvarez & Marsal Canada ULC and any successor thereto, as financial advisor to the Agent and the Lenders and to the DIP Term Loan Agent.

**“Lenders”** means, collectively, the Persons signatory hereto as a Lender, and each Person that shall become a party hereto as a lender pursuant to Section 9.07.

**“Letters of Credit”** means the collective reference to Commercial L/Cs and Standby L/Cs; individually, a **“Letter of Credit”**, and includes the Prepetition L/Cs, provided that, for greater certainty, the L/C Obligations under the Prepetition L/Cs shall form part of the Prepetition Obligations while the Reimbursement Obligations with respect to the Prepetition L/Cs drawn on or after the Effective Date shall form part of the Obligations secured by the Lender DIP Charge.

**“LIBOR Rate”** means for any Interest Period with respect to a LIBOR Rate Advance, the rate per annum equal to the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the

“LIBOR Rate” for such Interest Period shall be the rate per annum determined by the Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBOR Rate Advance being made, continued or converted and with a term equivalent to such Interest Period would be offered to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period. Notwithstanding the foregoing, in no event shall the LIBOR Rate at any time be less than zero (0%).

“LIBOR Rate Advance” means an Advance that bears interest at a rate based on the Adjusted LIBOR Rate.

“Lien” means any lien, security interest, hypothec or other charge or encumbrance of any kind or any other type of preferential arrangement, including the lien or retained security title of a conditional vendor, and any easement, right of way or other encumbrance on title to real property, but excluding consignments or bailments of goods of third parties and the interests of lessors under operating leases.

“Line Cap” means, at any time of determination, the lesser of (i) the Aggregate Commitments, and (ii) the Borrowing Base.

“Liquidation” means the exercise by the Agent of those rights and remedies accorded to the Agent under the Loan Documents and applicable law as a creditor of the Loan Parties with respect to the realization on the Collateral, including (after the occurrence and continuation of an Event of Default) the conduct by the Loan Parties acting with the consent of the Agent, of any public, private or “going-out-of-business”, “store closing” or other similar sale or any other disposition of the Collateral for the purpose of liquidating the Collateral.

“Loan Documents” means this Agreement, the Security Documents, the Notes, the Fee Letter, the Intercreditor Agreement, any Application, and any amendment, waiver, supplement or other modification to any of the foregoing.

“Loan Parties” means “(i) each Group Member party to a Loan Document prior to the Effective Date, (ii) any Affiliate of the Borrower which is an applicant in the CCAA Proceedings or that has the benefit of the protections under the CCAA Proceedings (including Sears Connect LP) and (ii) any other Affiliate of the Borrower that is a party to a Loan Document.

“Material Adverse Effect” means any event, circumstance, occurrence or change which results, or which would reasonably be expected to result, in a material adverse change on (a) the business, condition (financial or otherwise), operations or assets of the Borrower and its Subsidiaries taken as a whole, or (b) the ability of the Loan Parties taken as a whole or the ability of any Loan Party to perform their obligations under this Agreement, any other Loan Document or any CCAA Court Order, or the ability of any Loan Party to complete the SISP, the Business Optimization Plan or a Plan, (c) the validity or enforceability of the Loan Documents or the rights and remedies of the Agent or the Lenders thereunder or (d) the validity or enforceability of any of the Lender DIP Charge or the ranking of any of the Liens granted thereby or the rights or remedies intended or purported to be granted to the Agent and the Lenders under or pursuant to the Lender DIP Charge or under any Loan Document.

“Material Contract” means, with respect to the Loan Parties, (i) the Agreement dated January 26, 1987 between the Borrower and Sears, Roebuck and Co. relating to the use by the Borrower, in the ordinary course of the Borrower’s business, of certain trademarks and other intellectual property owned by Sears, Roebuck and Co., and any successor agreement thereto, and (ii) any other agreement, the failure of which to maintain would reasonably be expected to have a Material Adverse Effect.

“Milestones” has the meaning specified in Section 6.01(aa).

**“Minimum Inventory Amount”** has the meaning specified in Section 6.01(y)(ii).

**“Monitor”** means FTI Consulting Canada Inc., or any successor thereto acceptable to the Agent and the Required Lenders, as monitor in the CCAA Proceedings.

**“Mortgage”** means any deed of trust, mortgage, fixed charge, debenture, immoveable hypothec or other document creating a Lien on real property or any interest in real property (for greater certainty and notwithstanding anything to the contrary set forth in any Mortgage, the Lenders and the Agent agree that no Lien on personal property has been created thereby and no personal property security may be perfected or realized upon or pursuant to any Mortgage).

**“Net Eligible Inventory”** means, at any time, an amount equal to the Inventory Value of Eligible Inventory less Inventory Reserves.

**“Net Proceeds”** means, (a) with respect to any Disposition by any Loan Party or any of its Subsidiaries of any property or any casualty or condemnation of such property, the excess, if any, of (i) the sum of cash and Cash Equivalents received in such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Debt that is secured by the applicable asset by a Lien permitted hereunder which is senior to the Agent’s Lien, if any, on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Debt under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by such Loan Party or such Subsidiary in connection with such transaction (including, without limitation, attorneys’ fees, accountants’ fees, investment banking fees, appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by any Loan Party to third parties (other than Affiliates), (C) transfer Taxes paid as a result thereof, and (b) the excess of (i) the sum of the cash and Cash Equivalents received in connection with the issuance of any equity interests of any Loan Party or any Permitted Refinancing Debt over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Loan Party in connection therewith.

**“Net Orderly Liquidation Value”** means the product of (i) Net Recovery Rate and (ii) the Net Eligible Inventory.

**“Net Real Estate Value”** means the (i) value of the Qualifying Real Estate as set out in the most recent appraisal delivered to the Collateral Agent, less (ii) the amount of any Debt secured by a Lien on such Qualifying Real Estate ranking in priority to the Liens granted to the Agent therein.

**“Net Recovery Rate”** means the appraised orderly liquidation value (on an “as is, where is” basis) of each Loan Party’s Eligible Inventory, net of costs and expenses estimated to be incurred in connection with such liquidation, which value is expressed as a percentage of the Inventory Value of Eligible Inventory and shall be determined by the Agent from time to time based on the most recent appraisal provided by an independent third party appraiser retained by the Agent in consultation with the Borrower.

**“Non-Consenting Lender”** has the meaning specified in Section 9.16.

**“Note”** means a promissory note of the Borrower payable to the order of any Lender evidencing the Commitment of such Lender.

**“Notice of Borrowing”** has the meaning specified in Section 2.02(a).

**“Obligations”** has the meaning set forth in the Guarantee and Collateral Agreement including, for greater certainty, all Prepetition Obligations.

**“Operating Net Cash Flow”** means the operating net cash flow of the Loan Parties, after restructuring fees (any professional fees paid to advisors to the Agent and the Lenders and the DIP Term Agent and the DIP Term Lenders, including legal counsel and the Lenders’ FA) but before financing fees, as set out in the DIP Budget and the updated cash flows required to be delivered pursuant to Section 6.01(j), as applicable, which shall exclude: (i) proceeds from the sale of any assets not contemplated in the DIP Budget including, without limitation, Dispositions of owned and leased real estate, unless consented to by the Agent and the Lenders, acting reasonably; (ii) proceeds from the liquidation of Inventory from any stores other than those stores specifically designated for closing in the DIP Budget and set out on Schedule 1.01C as of the Effective Date; and (iii) any other extraordinary or non-recurring proceeds, including proceeds from insurance and other casualty events (other than proceeds of insurance in respect of Inventory).

**“Other Taxes”** has the meaning specified in Section 2.15.

**“Overadvance”** means any Advance to the extent that, immediately after its having been made, Excess Availability is less than zero.

**“Parent”** means Sears Holdings Corporation.

**“Pension Wind-up Deficit”** means the deficit that would arise upon the termination and wind-up of all of the defined benefit provisions of all Canadian Pension Plans of the Group Members.

**“Perfection Certificate”** means a certificate or certificates with respect to the Borrower and the other Loan Parties in form reasonably satisfactory to the Agent.

**“Permitted Debt”** means each of the following as long as no Default or Event of Default exists at the time of incurrence thereof or would arise from the incurrence thereof:

(a)      Debt outstanding on the date hereof and listed in the Perfection Certificate;

(b)      [reserved];

(c)      [reserved];

(d)      [reserved];

(e)      [reserved];

(f)      [reserved];

(g)      the Obligations;

(h)      [reserved];

(i)      [reserved];

(j)      Debt in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(k)      Debt arising from overdraft facilities and/or the honoring by a bank or other financial institution of a cheque, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services (including, but not limited to, intraday, ACH and purchasing

card/T&E services) in the ordinary course of business; provided, that (x) such Debt (other than credit or purchase cards) is extinguished within ten Business Days of notification to the applicable Loan Party of its incurrence and (y) such Debt in respect of credit or purchase cards is extinguished within 60 days from its incurrence;

(l) [reserved];

(m) Debt consisting of the financing of insurance premiums in the ordinary course of business, consistent with past practice;

(n) Debt under the Prepetition Term Facility, provided, that such Debt is subject at all times to the Intercreditor Agreement; and

(o) Debt under the DIP Term Facility, provided, that such Debt is subject at all times to the Intercreditor Agreement.

**“Permitted Discretion”** means a determination made in good faith and in the exercise of commercially reasonable business judgment.

**“Permitted Dispositions”** means any of the following:

(a) transfers and Dispositions of Inventory in the ordinary course of business consistent with past practice;

(b) transfers and Dispositions among the Loan Parties;

(c) transfers and Dispositions by any Subsidiary of the Borrower which is not a Loan Party to any Loan Party;

(d) [reserved];

(e) [reserved];

(f) the sale of surplus, obsolete or worn out equipment or other property in the ordinary course of business by the Borrower or any Subsidiary;

(g) [reserved];

(h) [reserved];

(i) [reserved];

(j) [reserved];

(k) the sale or Disposition of defaulted receivables and the compromise, settlement and collection of receivables in the ordinary course of business or in bankruptcy or other proceedings concerning the other account party thereon and not as part of an accounts receivable financing transaction, provided that no Dispositions under this clause (k) shall be made to any Permitted Holder;

(l) leases, licenses or subleases or sublicenses of any real or personal property not constituting Collateral in the ordinary course of business; provided that any such licenses or sublicenses of Intellectual Property shall be subject to the Agent’s rights to utilize same in connection with the realization upon any Collateral, provided; further; that no Dispositions under this clause (l) shall be made to any Permitted Holder;

(m) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind (other than, in each case, with respect to rights to license the Related Intellectual Property, unless the limited license granted to the Agent in such Related Intellectual Property pursuant to the Loan Documents remains in effect and is acknowledged by the licensee) to the extent that any of the foregoing could not reasonably be expected to have a Material Adverse Effect;

(n) [reserved]; and

(o) Dispositions contemplated under the SISP and the Business Optimization Plan, provided that, with respect to any Disposition resulting in Net Proceeds in excess of \$2,000,000 whether in a single transaction or a series of related transactions, the terms of such Disposition shall be acceptable to the Agent and the Lenders.

**“Permitted Holder”** means Parent or any Subsidiary of Parent, Edward Lampert or ESL Investments, Inc., and any of its Affiliates, other than a Loan Party.

**“Permitted Holder Lender”** means ESL Investments, Inc. and any of its Affiliates other than a Group Member, provided, that, such Person executes a waiver in form and substance reasonably satisfactory to the Agent that it shall have no right whatsoever with respect to that portion of the Commitments which it holds (a) to consent to any amendment, modification, waiver, consent or other such action with respect to any of the terms of any Loan Document, (b) otherwise to vote on any matter related to any Loan Document, (c) to require the Agent or any Lender to undertake any action (or refrain from taking any action) with respect to any Loan Document, (d) to attend any meeting with the Agent or any Lender or receive any information from the Agent or any Lender, (e) to the benefit of any advice provided by counsel to the Agent or the other Lenders or to challenge the attorney-client privilege of the communications between the Agent, such other Lenders and such counsel, or (f) make or bring any claim, in its capacity as Lender, against the Agent with respect to the fiduciary duties of the Agent or Lenders and the other duties and obligations of the Agent hereunder; except, that, no amendment, modification or waiver to any Loan Document shall, without such Permitted Holder Lender’s consent, deprive any Permitted Holder Lender of its pro rata share of any payments to which the Lenders as a group are otherwise entitled hereunder or otherwise single out, or intentionally discriminate against the Permitted Holder Lender, as such.

**“Permitted Investments”** means each of the following as long as no Default or Event of Default exists at the time of the making such of Investment or would arise from the making of such Investment and provided that such Investment is set out in the DIP Budget:

(a) Investments existing on, or contractually committed as of, the Effective Date, and set forth in the Perfection Certificate;

(b) (i) Investments by any Loan Party and its Subsidiaries in their respective Subsidiaries outstanding on the Effective Date, (ii) Investments by any Loan Party and its Subsidiaries in Loan Parties, and (iii) Investments by Subsidiaries that are not Loan Parties in Holdings or any Subsidiary;

(c) [reserved];

(d) [reserved];

(e) [reserved];

(f) [reserved];

(g) [reserved];

(h) [reserved];

(i) to the extent not prohibited by applicable law, advances to officers, directors and employees and consultants of the Loan Parties made for ordinary business purposes, including travel, entertainment and relocation in an amount not to exceed \$250,000 in the aggregate;

(j) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, customers and suppliers, in each case in the ordinary course of business or Investments acquired by any Group Member as a result of a foreclosure by any Loan Party with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(k) [reserved];

(l) [reserved];

(m) accounts receivable, security deposits and prepayments arising and trade credit granted in the ordinary course of business consistent with past practice;

(n) [reserved];

(o) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the applicable Loan Party;

(p) [reserved];

(q) [reserved];

(r) [reserved];

(s) [reserved]; and

(t) other Investments consented to in writing by the Required Lenders.

“Permitted Liens” means:

(a) Liens for taxes, assessments and governmental charges or levies not yet due and payable or to the extent such taxes, assessments or governmental charges are being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained;

(b) (x) Liens imposed by law, such as materialmen’s, builder’s, construction’s, mechanics’, carriers’, workmen’s and repairmen’s Liens and other similar Liens arising in the ordinary course of business securing obligations (i) that are not overdue for a period of more than 30 days, that are being contested in good faith by appropriate proceedings and as to which appropriate reserves are being maintained or (ii) the enforcement of which is stayed pursuant to the CCAA Proceedings, (y) the provisions of applicable laws, including zoning, land use and building restrictions, by-laws and regulations and (z) Liens of any nature claimed or held by Her Majesty the Queen in Right of Canada or Her Majesty the Queen in Right of any province;

(c) (x) landlords’ Liens arising in the ordinary course of business securing (i) rents not yet due and payable, (ii) rent for Stores in an amount not to exceed the monthly base rent due for the immediately preceding calendar month and (iii) rents for Stores in excess of the amount set forth in the preceding clause (ii) so long as such amounts are being contested in good faith by appropriate proceedings and as to which appropriate reserves are being maintained, (y) in respect of real property located in the

Province of Quebec, landlords' Liens securing the payment and performance of all obligations owing under any lease in respect of such property in favor of the landlord thereof; provided that such Liens are limited to the assets located at such leased property, and (z) (A) any ground lease, emphyteutic lease, head lease or other lease which is superior to the leasehold real estate of the Borrower or any Subsidiary, or rights in favour of the applicable landlord contained in any such superior lease, (B) Liens in favour of the landlords and Liens which the leases, subleases or other occupancy agreements subject to leasehold real estate of the Borrower or any Subsidiary are stated to be subject to or bound pursuant to the terms of such leases, subleases or other occupancy agreements, (C) in respect of the leasehold real estate outside of the Province of Quebec, Liens encumbering the freehold interest in such leasehold real estate, and (D) leases, sublease, licenses, concessions or other occupancy agreements relating to leasehold real estate of the Borrower or any Subsidiary;

- (d) any attachment or judgment lien not constituting an Event of Default under Section 7.01(f);
- (e) Liens presently existing or hereafter created in favor of the Agent, on behalf of the Credit Parties;
- (f) [reserved];
- (g) [reserved];
- (h) Liens incurred or deposits made by any Group Member in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, customs and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money);
  - (i) (A) easements, servitudes, rights-of-way, covenants, conditions, restrictions (including zoning restrictions), restrictive covenants, rights of expropriation or access, declarations, licenses, permit limitations, reservations (including pursuant to any original grant of real property from the applicable Governmental Authority), licences, encroachments, rights of reverter, minor defects or irregularities in title and other similar charges or encumbrances, whether or not of record, that do not, in the aggregate, interfere in any material respect with the ordinary course of business; (B) all Liens included as exceptions to any title insurance policies provided for any real estate of the Borrower or any Subsidiary provided that such exceptions constitute either Permitted Liens pursuant to this Agreement, or if not Permitted Liens, are title encumbrances, defects or irregularities which do not, in the aggregate, materially and adversely impair the use or marketability of such real estate for the purpose for which it is presently held as reasonably determined by the Agent; (C) subdivision agreements, site plan control agreements, cost sharing agreements, development agreements, servicing agreements, reciprocal agreements and other similar agreements and related rights which do not, in the aggregate, materially and adversely impair the use or marketability of such real estate for the purpose for which it is presently held as reasonably determined by the Agent; and (D) Liens registered on title to any such real estate as of the date that is one (1) Business Day prior to the date of this Agreement;
  - (j) any interest or title of a lessor or sublessor under, and Liens arising from precautionary PPSA financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, leases and subleases permitted by this Agreement;
  - (k) Liens on cash and Cash Equivalents securing obligations in respect of standby or trade letters of credit entered into in the ordinary course of business to the extent that such letters of credit are to be issued in a currency other than Canadian Dollars or Dollars or are not otherwise available to be issued as Letters of Credit hereunder, or trade-related bank guarantees;

- (l) normal and customary rights of setoff upon deposits of cash or other Liens originating solely by virtue of any statutory or common law provision relating to bankers' liens, rights of setoff or similar rights in favor of banks or other depository institutions;
- (m) Liens granted to consignors who have properly perfected on consigned Inventory owned by such consignors and created in the ordinary course of business;
- (n) Liens on premium rebates securing financing arrangements with respect to insurance premiums;
- (o) deposits and other customary Liens to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory and regulatory obligations, surety, customs and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature incurred in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;
- (p) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Debt or (ii) relating to pooled deposit or sweep accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary;
- (q) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (r) [reserved];
- (s) [reserved];
- (t) Liens on cash and Cash Equivalents securing Swap Contracts incurred in the ordinary course of business; and
- (u) Liens granted in connection with equipment financing arrangements or leases on Inventory not constituting goods held by the Borrower or any of its Subsidiaries for sale, but only to the extent such Inventory is provided by the secured party and is related to the equipment subject to such financing arrangement or lease;
- (v) valid and perfected Liens existing prior to the Effective Date to the extent that such Liens would have constituted "Permitted Liens" (as such term is defined in the Existing Credit Agreement);
- (w) Liens on the Collateral to secure the Prepetition Term Facility and evidenced by the Prepetition Term Loan Documents, provided, that such Liens shall be subject to the Intercreditor Agreement;
- (x) Liens on the Collateral to secure the DIP Term Facility and evidenced by the DIP Term Loan Documents, provided, that such Liens shall be subject to the Intercreditor Agreement;
- (y) the Court Charges; and
- (z) Liens created under federal or provincial pension legislation in Canada for the benefit of the beneficiaries of the Canadian Pension Plans.

“Permitted Net Cash Variance Amount” means, as of the date of determination, (i) CAN\$25,000,000 minus (ii) the cumulative amount of all Inventory Shortfall Amounts during each Testing Period (if any) ending prior to the date of determination.

“Permitted Overadvance” means an Overadvance made by the Agent, in its Permitted Discretion, which:

- (a) is made to maintain, protect or preserve the Collateral and/or the Credit Parties’ rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties;
- (b) is made to enhance the likelihood of, or to maximize the amount of, repayment of the Obligations;
- (c) is made to pay any other amount chargeable to any Loan Party hereunder; and
- (d) together with all other Permitted Overadvances then outstanding, shall not (i) exceed five percent (5%) of the Borrowing Base at any time or (ii) unless a Liquidation is occurring, remain outstanding for more than thirty (30) consecutive Business Days, unless in each case, the Required Lenders otherwise agree;

provided, however, that the foregoing shall not (i) modify or abrogate any of the provisions of Article III regarding any Lender’s obligations with respect to Letters of Credit, or (ii) result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for “inadvertent Overadvances” (i.e. where an Overadvance results from changed circumstances beyond the control of the Agent (such as a reduction in the collateral value)), and such “inadvertent Overadvances” shall not reduce the amount of Permitted Overadvances allowed hereunder, and further, provided, that in no event shall the Agent make an Overadvance, if after giving effect thereto, the principal amount of the Extensions of Credit would exceed the Aggregate Commitments (as in effect prior to any termination of the Commitments pursuant to Section 2.06 hereof).

“Permitted Priority Liens” means:

- (a) the Administration Charge, the FA Charge, the D&O Charge (solely with respect to the portion thereof intended to rank ahead of the DIP Charges as provided in the definition thereof) and the KERP Charge (solely with respect to the portion thereof intended to rank ahead of the DIP Charges as provided in the definition thereof);
- (b) any properly perfected purchase-money security interest under the PPSA in favour of any Person, that has not been served with notice of the application for the Initial Order (except for any such Person subsequently served with the Comeback Motion);
- (c) Permitted Liens of the type described in clauses (a), (b), (i)(A), (i)(B), (i)(C), (l) or (q) of the definition of “Permitted Liens” (solely to the extent any such permitted Liens were incurred and valid, binding, enforceable and properly perfected as of the Petition Date) or, solely to the extent arising after the Petition Date, Permitted Liens of the type described in clauses (j), (k) or (o) of the definition of “Permitted Liens”;
- (d) Liens incurred or deposits made by any Loan Party in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security payments (solely to the extent any such permitted Liens were incurred and valid, binding, enforceable and properly perfected as of the date of the Petition Date);
- (v) the Term DIP Charge but only to the extent it creates a Lien on the Term Loan Priority Collateral (as such term is defined in the Intercreditor Agreement); and

(vi) the Lender DIP Charge.

“Person” means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company, unlimited liability corporation, company or other entity, or a government or any political subdivision or agency thereof.

“Petition Date” means June 22, 2017 being the date on which the Loan Parties commenced voluntary proceedings under the CCAA in the CCAA Court.

“Plan” means a plan of compromise or arrangement filed in the CCAA Proceeding.

“PPSA” means the *Personal Property Security Act* (Ontario) and the Regulations thereunder, as from time to time in effect; provided, however, if attachment, perfection or priority of the Agent’s security interests in any Collateral are governed by the personal property security laws of any jurisdiction other than Ontario (including Quebec), PPSA shall mean those personal property security laws in such other jurisdiction, including the *Civil Code of Quebec*, for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

“Prepetition Advances” means all Advances made under the Existing Credit Agreement prior to the Effective Date.

“Prepetition L/Cs” means all Letters of Credit issued under the Existing Credit Agreement prior to the Effective Date, provided that, for greater certainty, the L/C Obligations under the Prepetition L/Cs shall form part of the Prepetition Obligations while the Reimbursement Obligations with respect to the Prepetition L/Cs drawn on or after the Effective Date shall form part of the Obligations secured by the Lender DIP Charge.

“Prepetition Obligations” means all Obligations under the Prepetition Advances, the L/C Obligations in respect of the Prepetition L/Cs and all other Obligations (as defined in the Existing Credit Agreement) under the Existing Credit Agreement, provided that, for greater certainty, the Reimbursement Obligations with respect to the Prepetition L/Cs drawn on or after the Effective Date shall form part of the Obligations secured by the Lender DIP Charge.

“Prepetition Term Facility” means that certain term loan facility evidenced by the Prepetition Term Loan Documents.

“Prepetition Term Lenders” means the lenders under the Prepetition Term Facility.

“Prepetition Term Loan Agent” means GACP Finance Co., LLC, and any successor agent under the Prepetition Term Facility.

“Prepetition Term Loan Agreement” means the Credit Agreement dated as of March 20, 2017 among the Borrower and each Guarantor, on the one hand, and the Prepetition Term Loan Agent and the lenders party thereto, on the other hand, as in effect on the Effective Date.

“Prepetition Term Loan Documents” means the “Loan Documents” (as defined in the Prepetition Term Loan Agreement).

“Prepetition Term Loan Obligations” means the outstanding principal balance of the loans made under the Prepetition Term Facility prior to the Effective Date and all accrued interest and all other outstanding obligations under the Prepetition Term Facility prior to the Effective Date.

“Prime Rate” means, with respect to any Advance denominated in Dollars, for any day a fluctuating interest rate per annum equal to the highest of (a) the rate of interest in effect for such day as

publicly announced from time to time by Wells Fargo Bank, National Association as its “prime rate”; (b) the Federal Funds Rate for such day, plus 0.50%; and (c) the LIBOR Rate for a 30 day interest period as determined on such day, plus 1.0%. The “prime rate” is a rate set by Wells Fargo Bank National Association based upon various factors including its costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the prime rate, the Federal Funds Rate or the LIBOR Rate, respectively, shall take effect at the opening of business on the day specified in the public announcement of such change. Notwithstanding the foregoing, if the “prime rate” reported under item (a) is less than zero (0%), such rate shall be deemed to be zero (0%).

“Prime Rate Advance” means an Advance in Dollars that bears interest as provided in Section 2.08(a)(iii).

“Priority Payables Reserve” means at any time, without duplication, the obligations, liabilities and indebtedness at such time which have (or would in a bankruptcy or receivership proceeding have) a trust, deemed trust, right of garnishment, right of distress, charge or statutory lien imposed to provide for payment or Liens ranking or capable of ranking senior to or *pari passu* with Liens securing the Obligations on any of the Collateral under federal, provincial, state, county, municipal, or local law including, to the extent that there is such a trust, statutory Liens or Liens in respect of the specified item that has or is capable of having such rank, claims for unremitted and accelerated rents, utilities, taxes (including sales taxes and goods and services taxes (“GST”) and harmonized sales taxes (“HST”) net of input tax credits deducted in calculating the amount of GST and HST payable), the claims of a clerk, servant, travelling salesperson, labourer or worker (whether full-time or part-time) who is owed wages, salaries, commissions, disbursements, compensation or other amounts (such as union dues payable on behalf of employees) by the Loan Parties (but only to the extent that the claims of such parties may rank or be capable of ranking senior to or *pari passu* with Liens securing the Obligations on any of the Collateral pursuant to Section 81.3 or 81.4 of the BIA or any applicable provincial law), vacation pay, severance pay, employee source deductions, workers' compensation obligations, government royalties or pension fund obligations (including claims of FSCO) (but only to the extent ranking or capable of ranking senior to or *pari passu* with Liens securing the Obligations on any of the Collateral pursuant to Section 81.5 or Section 81.6 of the BIA or any applicable provincial law), in each case net of the aggregate amount of all restricted cash set aside and readily available for the payment of such obligations pursuant to arrangements satisfactory to the Agent, together with the aggregate value, determined in accordance with GAAP, of all Eligible Inventory which may be or may become subject to a right of a supplier to recover possession thereof or to exercise rights of revendication with respect thereto under any federal, provincial, state, county, municipal, or local law, where such supplier's right may have priority over Liens securing the Obligations including Eligible Inventory subject to a right of a supplier to repossess goods pursuant to Section 81.1 of the BIA or the Civil Code of Quebec.

“Proceeds of Crime Act” means the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).

“Pro Forma and Projected Excess Availability” shall mean, for any date of calculation, after giving effect to the applicable transaction or payment, the pro forma and projected Excess Availability for the subsequent twelve (12) fiscal month period, determined as of the last day of each fiscal month in such period and based on the Borrower's good faith projections that are used to run the business of the Borrower and prepared in accordance with past practices. With respect to any such transaction or payment for which either (x) the applicable Loan Party would be required under its corporate governing documents or internal policies and procedures to obtain the approval of such Loan Party's applicable board of directors or similar governing body to make such payment or undertake such transaction, (y) the transaction or payment is in an amount greater than or equal to \$5,000,000; or (z) the making of such payment or the consummation of such transaction would cause the Pro Forma and Projected Excess Availability to be equal to or less than 20% of the Line Cap , such projections shall be delivered to the Agent no less than (i) with respect to clause (x) above, one (1) Business Day prior to the meeting of a Loan Party's applicable board of directors or

similar governing body to approve such transaction or payment, and (ii) with respect to clauses (y) and (z) above, one (1) Business Day prior to making such payment or undertaking such transaction.

**“Qualifying Real Estate”** means real property to which a Loan Party has good and marketable title, acceptable to the Collateral Agent, with respect to which (a) the Agent has been granted a legal, valid, binding and perfected Mortgage securing the Obligations on terms reasonably satisfactory to the Collateral Agent, (b) the Agent has been issued a lender’s title insurance policy reasonably satisfactory to it and the Collateral Agent, (c) the Borrower maintains the insurance and has otherwise complied with Section 6.01(c) of the Credit Agreement (d) ALTA-equivalent surveys, appraisals and environmental reports in each case reasonably satisfactory to Collateral Agent have been delivered to the Collateral Agent, and (d) reasonably satisfactory property condition assessments have been delivered to the Collateral Agent.

**“Realty Reserves”** has the meaning provided to such term in the DIP Term Loan Agreement as in effect on the Sixth Amendment Effective Date.

**“Refunded Swingline Advances”** has the meaning specified in Section 2.04(b).

**“Register”** has the meaning specified in Section 9.07(d).

**“Reimbursement Obligation”** means the obligation of the Borrower to reimburse the L/C Issuing Bank pursuant to Section 3.05 for amounts drawn under Letters of Credit.

**“Related Intellectual Property”** means such rights with respect to the Intellectual Property of the Borrower and its Subsidiaries as are reasonably necessary to permit the Agent to enforce its rights and remedies under the Loan Documents with respect to the Collateral.

**“Reporting and Variance Trigger Date”** means the earlier of: (i) the first date on which Excess Availability is less than CAN\$90,000,000 (after excluding the amount of Excess Availability required to satisfy the financial covenant set forth in Section 6.03 of this Agreement) and (ii) September 1, 2017.

**“Required Lenders”** means, at any time, the holders of more than 50% of the Commitments then in effect or, if the Commitments have been terminated, the holders of more than 50% of the Total Extensions of Credit then outstanding; provided that, at any time when there are two (2) or more Lenders, Required Lenders shall mean at least two (2) Lenders holding the amounts set forth above.

**“Requirements of Law”** means 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.

**“Reserve Notice Period”** means one day prior notice to the Borrower, unless a Cash Dominion Event has occurred and is continuing, in which case the Reserve Notice Period shall mean any notice period (including no notice) determined by the Agent in its Permitted Discretion to be necessary or desirable to protect the interests of the Credit Parties.

**“Restricted Payment”** means any dividend or other distribution (whether in cash, securities or other property) with respect to any equity interests in the Borrower or any Subsidiary of the Borrower, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such equity interests in the Borrower or any Subsidiary of the Borrower or any option, warrant or other right to acquire any such equity interests in the Borrower or any Subsidiary of the Borrower.

**“Restructuring Option”** means any transaction involving the refinancing of a Loan Party, the sale of all or substantially all of the assets of any Loan Party or any other restructuring of the Loan Parties’

businesses and operations, including any liquidation, bankruptcy or other insolvency proceeding in respect of any Loan Party.

**“Revolving Advance”** has the meaning specified in Section 2.01. A Revolving Advance may be a Base Rate Advance, a Prime Rate Advance, a BA Rate Advance or a LIBOR Rate Advance (each of which shall be a “Type” of Revolving Advance).

**“Security Documents”** means the collective reference to the Guarantee and Collateral Agreement, any Mortgage, the deeds of hypothec charging the universality of moveable property granted by certain of the Loan Parties in favor of the Agent, any control agreement, and all other security documents hereafter delivered to the Agent granting a Lien on any property of any Person to secure the obligations and liabilities of any Loan Party under any Loan Document.

**“SISP”** means the sale investment and solicitation process to be approved by the CCAA Court, in form and substance satisfactory to the Agent and the Lenders in their sole and absolute discretion.

**“Sixth Amendment Effective Date”** means March 20, 2017.

**“Standby L/C”** means an irrevocable letter of credit or similar instrument under which the L/C Issuing Bank agrees to make payments in Canadian Dollars or Dollars for the account of the Borrower, on behalf of any Group Member in respect of obligations of such Group Member incurred pursuant to contracts made or performances undertaken or to be undertaken or like matters relating to contracts to which such Group Member is or proposes to become a party, including, without limiting the foregoing, for insurance purposes or in respect of advance payments or as bid or performance bonds or for any other purpose for which a standby letter of credit might be issued.

**“Statutory Reserve Rate”** means 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 percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Federal Reserve Board of the United States with respect to the Adjusted LIBOR Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Federal Reserve Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Revolving Advances based on the LIBOR Rate 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.

**“Stay of Proceedings”** means the stay of proceedings against the Loan Parties and their property and assets and the stay of the exercise of rights and remedies against the Loan Parties and their property and assets contained in the Initial Order, as it may be extended or amended by any other order of the CCAA Court.

**“Store”** means any store owned or leased and operated by any Loan Party.

**“Store Closure Sale”** means a store closure sale conducted in accordance with the Business Optimization Plan by an Acceptable Liquidator.

**“Subsidiary”** of any Person means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of the issued and outstanding capital stock or other equity interest having ordinary voting power to elect a majority of the Board of Directors or other governing body of such corporation, partnership, joint venture, limited liability company, trust or estate (irrespective of whether at the time capital stock or other equity interests of any other class or classes of such corporation, partnership, joint venture, limited liability company, trust or estate shall or might have voting power upon the occurrence of any contingency), is at the time directly or indirectly owned by such

Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

**“Subsidiary Guarantor”** means each direct and indirect wholly owned Subsidiary of the Borrower that owns Inventory, Credit Card Accounts Receivable, or other Collateral (as defined in the Guarantee and Collateral Agreement).

**“Supermajority Lenders”** means, at any time, the holders of 66-2/3% or more of Commitments then in effect or, if the Commitments have been terminated, the holders of 66-2/3% or more of the Total Extensions of Credit then outstanding.

**“Swap Contract”** means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

**“Swingline Advances”** has the meaning specified in Section 2.03.

**“Swingline Commitment”** means the obligation of the Swingline Lender to make Swingline Advances pursuant to Section 2.03 in an aggregate principal amount at any one time outstanding not to exceed CAN\$40,000,000.

**“Swingline Lender”** means WFCFC, in its capacity as the lender of Swingline Advances, and includes any successor in such capacity.

**“Swingline Participation Amount”** has the meaning specified in Section 2.04(c).

**“Taxes”** has the meaning specified in Section 2.15.

**“Termination Date”** means the earliest of (a) December 20, 2017 and (ii) the date of termination in whole of the Commitments pursuant to Section 2.06 or 7.01.

**“Term DIP Charge”** means the super-priority debtor-in-possession charge granted by the CCAA Court pursuant to the Initial Order in favour of the DIP Term Agent and the DIP Term Lenders over all of the present and future assets and property of the Loan Parties, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of a Loan Party, to secure the obligations under the DIP Term Facility and which for greater certainty, shall not secure any Prepetition Term Loan Obligations or other obligations under the Prepetition Term Facility.

**“Testing Period”** has the meaning specified in Section 6.01(j).

**“Total Eligible Inventory Available”** means the Total Eligible Inventory Available as set out in the DIP Budget and the updated cash flows required to be delivered pursuant to Section 6.01(j), as applicable.

**Total Extensions of Credit** means at any time, the aggregate amount of the Extensions of Credit of the Lenders outstanding at such time.

**Type** means either a Base Rate Advance, a Prime Rate Advance, a BA Rate Advance, or a LIBOR Rate Advance.

**Uncapped Availability** means, at any time, an amount equal to (a) the Borrowing Base minus (b) the Total Extensions of Credit.

**Variance Report** has the meaning specified in Section 6.01(j).

**Voting Stock** means capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

**WFCFC** has the meaning provided in the Preamble and its successors.

**Wind-up Reserve** means a reserve in an amount equal to (i) the Pension Wind-up Deficit, less (ii) the lesser of (a) 50% of the Net Real Estate Value and (b) CAN\$150 million.

**SECTION 1.02. Computation of Time Periods.** In this Agreement, unless otherwise specified, (a) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding” (b) “including” means “including without limitation”; and (c) any reference to a time of day means Eastern time.

**SECTION 1.03. Accounting Terms.** All accounting terms not specifically defined herein or in the other Loan Documents shall be construed in accordance with the IFRS as issued by the International Accounting Standards Board (“GAAP”) which for purposes of Section 6.03 shall be consistently applied. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth herein, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders which shall not be unreasonably withheld), provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change in principles and (ii) the Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. For the avoidance of doubt, no retroactive change in GAAP shall apply to the construction of accounting terms under this Agreement in the absence of an amendment hereto in accordance with the terms of this Section 1.03.

**SECTION 1.04. Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document, the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible

assets and properties, including cash, securities, accounts and contract rights, and (vii) any reference to “province” or “provincial” shall be deemed to include “territory” or “territorial”. For all purposes pursuant to which the interpretation or construction of this Agreement and the other Loan Documents may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (1) “personal property” shall include “movable property”, (2) “real property” shall include “immovable property”, (3) “tangible property” shall include “corporeal property”, (4) “intangible property” shall include “incorporeal property”, (5) “security Interest”, “mortgage” and “lien” shall include a “hypothec”, “prior claim” and a “resolutory clause”, (6) all references to filing, registering or recording under the PPSA shall include publication under the Civil Code of Quebec, (7) all references to “perfection” or “perfected” liens or security interests shall include a reference to an “opposable” or “set up” lien or security interest as against third parties, (8) any “right of offset”, “right of setoff” or similar expression shall include a “right of compensation”, (9) “goods” shall include “corporeal moveable property”, other than chattel paper, documents of title, instruments, money and securities, (10) an “agent” shall include a “mandatary”, (11) “construction liens” shall include “legal hypothecs”, (12) “joint and several” shall include “solidary”, (13) “gross negligence or willful misconduct” shall be deemed to be “intentional or gross fault”, (14) “beneficial ownership” shall include “ownership on behalf of another as mandatary”, (15) “easement” shall include “servitude”, (16) “priority” shall include “prior claim”, (17) “survey” shall include “certificate of location and plan”, and (18) “fee simple title” shall include “absolute ownership.”

## ARTICLE II

### AMOUNTS AND TERMS OF THE ADVANCES

**SECTION 2.01. The Revolving Advances.** Each Lender severally agrees, on the terms and conditions hereinafter set forth, to make revolving advances (the “Revolving Advances”) to the Borrower from time to time on any Business Day during the period from the Effective Date until the Termination Date, in an aggregate amount at any one time outstanding which, when added to such Lender’s Commitment Percentage of the sum of (i) the aggregate principal amount of the Swingline Advances then outstanding, (ii) the Prepetition Advances then outstanding and (ii) the L/C Obligations then outstanding (excluding the face amount of any Prepetition L/Cs that have been cash collateralized in accordance with Section 3.11), equals the amount of such Lender’s Commitment; provided, that the aggregate principal amount of any Borrowing made at any time, when aggregated with all other then outstanding Extensions of Credit, shall not exceed the Line Cap at such time. Each Borrowing under this Section 2.01 shall be in an aggregate amount of CAN\$1,000,000 (or \$1,000,000, as applicable) or an integral multiple of CAN\$1,000,000 (or \$1,000,000, as applicable) in excess thereof (provided, that the Swingline Lender may request, on behalf of the Borrower, Borrowings that are Base Rate Advances or Prime Rate Advances in other amounts pursuant to Section 2.04(b)) and shall consist of Revolving Advances of the same Type made on the same day by the Lenders ratably according to their respective Commitments. Within the limits set forth in this Section 2.01, the Borrower may borrow under this Section 2.01, prepay pursuant to Section 2.11 and reborrow under this Section 2.01.

**SECTION 2.02. Making the Revolving Advances.** Each Borrowing under Section 2.01 shall be made on notice, given not later than (x) 12:00 noon on the third Business Day prior to the date of the proposed Borrowing in the case of a Borrowing consisting of BA Rate Advances or LIBOR Rate Advances or (y) 11:00 a.m. on the date of the proposed Borrowing in the case of a Borrowing consisting of Base Rate Advances or Prime Rate Advances, by the Borrower to the Agent, which shall give to each Lender prompt notice thereof by telecopier. Each such notice of a Borrowing (a “Notice of Borrowing”) shall be by telephone, confirmed immediately in writing, by email attachment or by telecopier, in substantially the form of Exhibit A hereto, specifying therein the requested (i) date of such Borrowing, (ii) Type of Revolving Advances comprising such Borrowing, (iii) aggregate amount of such Borrowing, (iv) the currency of such Borrowing, which shall be Dollars or Canadian Dollars, and (v) in the case of a Borrowing consisting of BA Rate Advances or LIBOR Rate Advances, initial Interest Period for each such Revolving Advance. Each Lender shall, before 2:00 P.M. on the date of such Borrowing make available for the account of its Applicable Lending Office to the Agent at the Agent’s Account, in same day funds and in the currency in which such Advance is requested, such Lender’s ratable (in accordance with its Commitment Percentage) portion of such Borrowing. After the Agent’s receipt of such funds and upon fulfillment of the applicable conditions set forth in Article IV, the Agent will make such funds available to the Borrower at the Agent’s address referred to in Section 9.02.

(b) Anything in subsection (a) above to the contrary notwithstanding, (i) the Borrower may not select BA Rate Advances or LIBOR Rate Advances for any Borrowing if the aggregate amount of such Borrowing is less than CAN\$1,000,000 (or \$1,000,000, as applicable) or if the obligation of the Lenders to make BA Rate Advances or LIBOR Rate Advances shall then be suspended pursuant to Section 2.09 or 2.13 and (ii) the BA Rate Advances and LIBOR Rate Advances may not be outstanding as part of more than ten separate Borrowings in the aggregate.

(c) Each Notice of Borrowing shall be irrevocable and binding on the Borrower. In the case of any Borrowing that the related Notice of Borrowing specifies is to be comprised of BA Rate Advances or LIBOR Rate Advances, the Borrower shall indemnify each Lender against any loss, cost or expense incurred by such Lender as a result of any failure to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in Article IV, including any loss (including loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Revolving Advance to be made by such Lender as part of such Borrowing when such Revolving Advance, as a result of such failure, is not made on such date.

(d) Unless the Agent shall have received notice from a Lender prior to the time of any Borrowing that such Lender will not make available to the Agent such Lender's ratable portion of such Borrowing, the Agent may assume that such Lender has made such portion available to the Agent on the date of such Borrowing in accordance with subsection (a) of this Section 2.02 and the Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such ratable portion available to the Agent, such Lender and the Borrower severally agree to repay to the Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Agent, at (i) in the case of the Borrower, the interest rate applicable at the time to Revolving Advances comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate or the BA Rate for an Interest Period of 30 days, as applicable. If such Lender shall repay to the Agent such corresponding amount, such amount so repaid shall be made available to the Borrower and shall constitute such Lender's Revolving Advance as part of such Borrowing for purposes of this Agreement.

(e) The failure of any Lender to make the Revolving Advance to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Revolving Advance on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Revolving Advance to be made by such other Lender on the date of any Borrowing.

**SECTION 2.03. The Swingline Advances.** (a) Subject to the terms and conditions hereof, the Swingline Lender agrees to make a portion of the credit otherwise available to the Borrower under the Commitments from time to time during the period from the Effective Date until the Termination Date by making swing line advances ("Swingline Advances") to the Borrower; provided that (i) the aggregate principal amount of Swingline Advances outstanding at any time shall not exceed the Swingline Commitment then in effect (notwithstanding that the Swingline Advances outstanding at any time, when aggregated with the Swingline Lender's other outstanding Advances, may exceed the Swingline Commitment then in effect) and (ii) the amount of any Swingline Advance made at any time, when aggregated with all other then outstanding Extensions of Credit, shall not exceed the Line Cap at such time; provided that the Swingline Lender shall not be obligated to make any Swingline Loan at any time when any Lender is at such time a Defaulting Lender or Deteriorating Lender hereunder, unless the Swingline Lender has entered into satisfactory arrangements with the Borrower or such Lender to eliminate the Swingline Lender's risk with respect to such Lender. During the period from the Effective Date until the Termination Date, the Borrower may use the Swingline Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swingline Advances shall only be available as Base Rate Advances or Prime Rate Advances.

(b) The Borrower shall repay to the Swingline Lender the then unpaid principal amount of each Swingline Advance made on the earlier of (i) the Termination Date, and (ii) the first date after such Swingline Advance is made that is the 15th or last day of a calendar month and is at least two Business Days after such Swingline Advance is made; provided that on each date that a Revolving Advance is borrowed, the Borrower shall

repay all Swingline Advances then outstanding, if any, and may use all or a portion of such Revolving Advance to fund such repayment.

**SECTION 2.04. Making the Swingline Advances.** Each Borrowing under Section 2.03 shall be made on notice, given not later than 1:00 p.m. on the date of the proposed Borrowing, by the Borrower to the Agent and Swingline Lender. Each such Notice of a Borrowing shall be by telephone, confirmed immediately in writing, by email attachment or by telecopier, in substantially the form of Exhibit A hereto, specifying therein the requested (i) date of such Borrowing, (ii) aggregate amount of such Borrowing, and (iii) the currency of such Borrowing, which shall be Dollars or Canadian Dollars. Each Borrowing under the Swingline Commitment shall be in an amount equal to CAN\$100,000 (or \$100,000, as applicable) or a whole multiple of CAN\$100,000 (or \$100,000, as applicable) in excess thereof. Not later than 3:00 P.M. on the date of the proposed Borrowing, the Swingline Lender shall make available to the Agent at the Agent's Account an amount in immediately available funds equal to the amount of the Swingline Advance to be made by the Swingline Lender. Upon fulfillment of the applicable conditions set forth in Article IV, the Agent shall make the proceeds of such Swingline Advance available to the Borrower at the Agent's address referred to in Section 9.02.

(b) The Swingline Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), by notice given by the Swingline Lender no later than 1:00 p.m., request each Lender to make, and each Lender hereby agrees to make, a Revolving Advance, in an amount equal to such Lender's Commitment Percentage of the aggregate amount of the Swingline Advances and in the same currency as the applicable Swingline Advances being refunded (the "Refunded Swingline Advances") outstanding on the date of such notice, to repay the Swingline Lender. Each Lender shall make the amount of such Revolving Advance available to the Agent at the Agent's Account in same day funds, not later than 2:00 P.M. on the date of such notice. The proceeds of such Revolving Advances shall be immediately made available by the Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Refunded Swingline Advances. The Borrower irrevocably authorizes the Swingline Lender to charge the Borrower's accounts with the Agent or any of the Agent's Affiliates (up to the amount available in each such account) in order to immediately pay the amount of such Refunded Swingline Advances to the extent amounts received from the Lenders are not sufficient to repay in full such Refunded Swingline Advances.

(c) If prior to the time a Revolving Advance would have otherwise been made pursuant to Section 2.04(b), one of the events described in Section 7.01 shall have occurred and be continuing or if for any other reason, as determined by the Swingline Lender in its sole discretion, Revolving Advances may not be made as contemplated by Section 2.04(b), each Lender shall, on the date such Revolving Advance was to have been made pursuant to the notice referred to in Section 2.04(b), purchase for cash an undivided participating interest in the then outstanding Swingline Advances by paying to the Swingline Lender an amount (the "Swingline Participation Amount") equal to (i) such Lender's Commitment Percentage multiplied by (ii) the sum of the aggregate principal amount of Swingline Advances then outstanding that were to have been repaid with such Revolving Advances.

(d) Whenever, at any time after the Swingline Lender has received from any Lender such Lender's Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Advances, the Swingline Lender will distribute to such Lender its Swingline Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, and to reflect such Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Advances then due); provided, however, that in the event that such payment received by the Swingline Lender is required to be returned, such Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

(e) Each Lender's obligation to make the Advances referred to in Section 2.04(b) and to purchase participating interests pursuant to Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defense or other right that such Lender or the Borrower may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article IV, (iii) any adverse change in the condition (financial or otherwise) of the Borrower or any

other Loan Party, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

**SECTION 2.05. Fees.Commitment Fee.** The Borrower agrees to pay to the Agent for the account of each Lender, a commitment fee, commencing on the Effective Date, on the average daily amount of the Available Commitment of such Lender during the period for which payment is made at a rate per annum equal to the Commitment Fee Rate, payable in arrears (i) monthly on the 1<sup>st</sup> calendar day subsequent to the last day of each month ending after the Final Availability Date (provided that the payment to be made on such first month ending after the Final Availability Date shall include the amount of such fee accrued from and after the Effective Date) and (ii) on the Termination Date.

(b) **Other Fees.** The Borrower agrees to pay to the Agent, the Collateral Agent and the Lenders the fees set forth in the Fee Letter in the amounts and at the times specified therein. The Borrower agrees that notwithstanding any acceleration, including any automatic or deemed acceleration, of the Obligations including, but not limited to, as the result of the commencement by or against the Borrower of any proceeding under any Insolvency Legislation, but excluding the CCAA Proceedings, it is agreed that the fees set forth under this Agreement, the Existing Credit Agreement and the Fee Letter are valid and enforceable obligations of the Borrower and shall be paid in full by the Borrower and the Borrower shall not contest the validity or enforceability of such claims in any proceeding under Insolvency Legislation, including without limitation the CCAA Proceedings.

**SECTION 2.06. Optional Termination or Reduction of the Commitments.**

The Borrower shall have the right, without penalty or premium and upon at least three Business Days' notice to the Agent, to permanently terminate in whole or permanently reduce in part the unused portions of the respective Commitments of the Lenders, provided that no such termination or reduction of the Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Advances made on the effective date thereof, the Total Extensions of Credit would exceed the aggregate amount of the Commitments as so reduced. Any partial reduction of the Commitments shall be in the aggregate amount of CAN\$5,000,000 or an integral multiple of CAN\$1,000,000 in excess thereof; provided further that, except for any reduction pursuant to Section 8.12, any such reduction shall be applied ratably to the Commitments of the Lenders.

**SECTION 2.07. Repayment of Advances.** The Borrower shall repay to the Agent, for the ratable account of the Lenders on the Termination Date, the aggregate principal amount of the Advances made by the Lenders then outstanding, in each case in the same currency in which such Advances were made.

**SECTION 2.08. Interest on Advances. Scheduled Interest Owed to Lenders.** The Borrower shall pay interest on the unpaid principal amount of each Advance made and owing to each Lender from the date of such Advance until such principal amount shall be paid in full, at the following rates per annum:

(i) **Base Rate Advances.** During such periods as such Advance is made in Canadian Dollars and is a Base Rate Advance, a rate per annum equal at all times to the sum of (x) the Base Rate in effect from time to time plus (y) the Applicable Margin for Base Rate Advances in effect from time to time, payable in the case of any Base Rate Advance (other than a Swingline Advance), in arrears monthly on the 1<sup>st</sup> calendar day subsequent to the last day of each month during such periods and on the date such Base Rate Advance shall be Converted or paid in full.

(ii) **BA Rate Advances.** During such periods as such Advance is made in Canadian Dollars and is a BA Rate Advance, a rate per annum equal at all times during each Interest Period for such Advance to the sum of (x) the BA Rate for such Interest Period for such Advance plus (y) the Applicable Margin for BA Rate Advances in effect from time to time, payable in arrears on the last day of such Interest Period and on the date such BA Rate Advance shall be Converted or paid in full.

(iii) Prime Rate Advances. During such periods as such Advance is made in Dollars and is a Prime Rate Advance, a rate per annum equal at all times to the sum of (x) the Prime Rate in effect from time to time plus (y) the Applicable Margin for Prime Rate Advances in effect from time to time, payable in the case of any Prime Rate Advance (other than a Swingline Advance), in arrears monthly on the 1st calendar day subsequent to the last day of each month during such periods and on the date such Prime Rate Advance shall be Converted or paid in full.

(iv) LIBOR Rate Advances. During such periods as such Advance is made in Dollars and is a LIBOR Rate Advance, a rate per annum equal at all times during each Interest Period for such Advance to the sum of (x) the Adjusted LIBOR Rate for such Interest Period for such Advance plus (y) the Applicable Margin for LIBOR Rate Advances in effect from time to time, payable in arrears on the last day of such Interest Period and on the date such LIBOR Rate Advance shall be Converted or paid in full.

For greater certainty, with respect to any Prepetition Advance, the Borrower shall pay interest on the unpaid principal amount of each such Advance made and owing to each Lender from the date of such Advance until the Effective Date at the rate set out therefor under the Existing Credit Agreement and from and after the Effective Date until the principal amount thereof shall be paid in full, at the rates per annum set out in this Section 2.08(a).

(b) Default Interest. Upon the occurrence and during the continuance of an Event of Default, at the option of the Agent or on the request of the Required Lenders, the Borrower shall pay interest on the unpaid principal amount of each Advance and Reimbursement Obligation owing to each Lender, payable in arrears on the dates referred to in Section 2.08(a) above, at a rate per annum equal to 2% per annum above the rate per annum required to be paid on such Advance or Reimbursement Obligation pursuant to Section 2.08(a) above. Further, the Borrower shall pay interest, to the fullest extent permitted by law, on the amount of any interest, fee or other amount (other than principal) payable hereunder that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal to (i) with respect to amounts payable in Canadian Dollars, 2% per annum above the rate per annum required to be paid on Base Rate Advances pursuant to Section 2.08(a)(i), and (ii) with respect to amounts payable in Dollars, 2% per annum above the rate per annum required to be paid on Prime Rate Advances pursuant to Section 2.08(a)(iii).

(c) If any provision of this Agreement or any of the other Loan Documents would obligate the Borrower or any other Person to make any payment of interest or other amount payable to the Agent, the Collateral Agent or any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Agent, the Collateral Agent or such Lender of interest at a criminal rate (as construed under the Criminal Code (Canada)), if applicable thereto, then notwithstanding that provision, that amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or result in a receipt by the Agent, the Collateral Agent or such Lender of interest at a criminal rate, the adjustment to be effected, to the extent necessary, as follows:

(i) first, by reducing the amount or rate of interest required to be paid to the Agent, the Collateral Agent or applicable Lender under this Section 2.08(c); and

(ii) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to the Agent, the Collateral Agent or applicable Lender which would constitute interest for purposes of the Criminal Code (Canada).

Notwithstanding the provisions of this Section 2.08(c), and after giving effect to all adjustments contemplated hereby, if the Agent, the Collateral Agent or any Lender shall have received an amount in excess of the maximum permitted by the Criminal Code (Canada) or other legal prohibition, then the Borrower shall be entitled, by notice in writing to the Agent, the Collateral Agent or applicable Lender, as the case may be, to obtain reimbursement from the Agent, the Collateral Agent or applicable Lender, as the case may be, in an amount equal to the excess, and pending reimbursement, the amount of the excess shall be deemed to be an amount payable by the Agent, the Collateral Agent or applicable Lender, as the case may be, to the Borrower. Any amount or rate of

interest referred to in this Section 2.08(c) shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that any Obligation remains outstanding on the assumption that any charges, fees or expenses that fall within the meaning of “interest” (as defined in the Criminal Code (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the date of the incurrence of the Obligation to its relevant maturity date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Agent shall be conclusive for the purposes of that determination.

**SECTION 2.09. Interest Rate Determination.** The Agent shall give prompt notice to the Borrower and the Lenders of the applicable interest rate determined by the Agent for purposes of Section 2.08(a).

(b) If, with respect to any BA Rate Advances or LIBOR Rate Advances, the Required Lenders notify the Agent at least one Business Day before the date of any proposed BA Rate Advance or LIBOR Rate Advance, as applicable, that the BA Rate or LIBOR Rate for any Interest Period for such Advances will not adequately reflect the cost to such Required Lenders of making, funding or maintaining their respective BA Rate Advances or LIBOR Rate Advances for such Interest Period, the Agent shall forthwith so notify the Borrower and the Lenders, whereupon (i) each BA Rate Advance and LIBOR Rate Advance, as applicable, will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance or Prime Rate Advance, as applicable, and (ii) the obligation of the Lenders to make, or to Convert Advances into, BA Rate Advances or LIBOR Rate Advances, as applicable, shall be suspended until the Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

(c) If the Borrower shall fail to select the duration of any Interest Period for any BA Rate Advances or LIBOR Rate Advances in accordance with the provisions contained in the definition of “Interest Period” in Section 1.01, the Agent will forthwith so notify the Borrower and the Lenders and such Advances will automatically, on the last day of the then existing Interest Period therefor, Convert into Base Rate Advances or Prime Rate Advances, as applicable.

(d) On the date on which the aggregate unpaid principal amount of BA Rate Advances or LIBOR Rate Advances, as applicable, comprising any Borrowing shall be reduced, by payment or prepayment or otherwise, to less than CAN\$1,000,000 (or \$1,000,000, as applicable), such Advances shall on the last day of the applicable Interest Period automatically Convert into Base Rate Advances or Prime Rate Advances, as applicable.

(e) Upon the occurrence and during the continuance of any Event of Default, at the option of the Agent or on the request of the Required Lenders (i) each BA Rate Advance and LIBOR Rate Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance or Prime Rate Advance, as applicable, and (ii) the obligation of the Lenders to make, or to Convert Revolving Advances into, BA Rate Advances or LIBOR Rate Advances shall be suspended.

**SECTION 2.10. Optional Conversion of Revolving Advances.** The Borrower may on any Business Day, upon notice given to the Agent not later than 12:00 noon on the third Business Day prior to the date of the proposed Conversion and subject to the provisions of Sections 2.09 and 2.13, Convert part or all Revolving Advances of one Type comprising the same Borrowing into Revolving Advances of the other Type; provided, however, that any Conversion of BA Rate Advances into Base Rate Advances or of LIBOR Rate Advances into Prime Rate Advances shall be made only on the last day of an Interest Period for such BA Rate Advances or LIBOR Rate Advances, any Conversion of Base Rate Advances into BA Rate Advances or of Prime Rate Advances into LIBOR Rate Advances shall be in an amount not less than the minimum amount specified in Section 2.02(b) and no Conversion of any Revolving Advances shall result in more separate Borrowings than permitted under Section 2.02(b). Each such notice of a Conversion shall, within the restrictions specified above, specify (i) the date of such Conversion, (ii) the Revolving Advances to be Converted, and (iii) if such Conversion is into BA Rate Advances or LIBOR Rate Advances, the duration of the initial Interest Period for each such Revolving Advance. Each notice of Conversion shall be irrevocable and binding on the Borrower.

**SECTION 2.11. Optional and Mandatory Prepayments of Advances.** The Borrower may, without penalty or premium and upon notice given not later than 12:00 noon on the date of such prepayment to the Agent stating the proposed date and aggregate principal amount of the prepayment, and if such notice is given the

Borrower shall, prepay the outstanding principal amount of the Advances comprising part of the same Borrowing in whole or ratably in part, together with accrued interest to the date of such prepayment on the principal amount prepaid, in each case in such currency as the applicable Borrowing was made; provided, however, that (x) each partial prepayment shall be in an aggregate principal amount of CAN\$5,000,000 (or \$5,000,000, as applicable) or an integral multiple of CAN\$1,000,000 (or \$1,000,000, as applicable) in excess thereof (or, in the case of partial prepayments of Swingline Advances, CAN\$100,000 (or \$100,000, as applicable) or a whole multiple thereof) and (y) in the event of any such prepayment of a BA Rate Advance or LIBOR Rate Advance, the Borrower shall be obligated to reimburse the Lenders in respect thereof pursuant to Section 9.04(c).

(b) On the date of delivery of any Borrowing Base Certificate, if the Total Extensions of Credit exceed the Line Cap, the Borrower shall prepay Advances in an amount equal to such excess in the same currency in which such Advances were made, provided that if the aggregate principal amount of Advances then outstanding is less than the amount of such excess (because L/C Obligations constitute a portion thereof), the Borrower shall, to the extent of the balance of such excess, replace outstanding Letters of Credit and/or deposit an amount in cash in a cash collateral account established with the Agent for the benefit of the Lenders on terms and conditions satisfactory to the Agent. Any prepayment of Loans pursuant to this Section 2.11(b) or Section 2.11(c) shall be applied, first, to any Base Rate Advances or Prime Rate Advances then outstanding and the balance of such prepayment, if any, to the BA Rate Advances or LIBOR Rate Advances then outstanding. In connection with the foregoing, the Agent may monthly (or more frequently in the Agent's Permitted Discretion) make the necessary exchange rate calculations in accordance with Section 3.10 to determine whether any such excess described in this Section exists on such date. Prepayments made pursuant to this Section 2.11(b) shall not reduce the Aggregate Commitments hereunder. Notwithstanding the foregoing, the Borrower shall not be required to make the prepayment required under this Section 2.11(b) at any time prior to the Final Availability Date so long as the Total Extensions of Credit do not exceed the Line Cap by an amount greater than the Acceptable Excess Amount.

(c) Until the repayment in full of the Prepetition Obligations and the Prepetition Term Loan Obligations, the Borrower shall promptly apply all cash receipts from the sale of any property or assets (other than Term Loan Priority Collateral (as defined in the Intercreditor Agreement), as follows:

- (i) *first*, to repay all Prepetition Obligations (other than undrawn Prepetition L/Cs) in full;
- (ii) *second*, to cash collateralize all Prepetition L/Cs in accordance with Section 3.11; and
- (iii) *third*, to repay all Prepetition Term Loan Obligations.

(d) Until the repayment in full of the Prepetition Term Loan Obligations, the Borrower shall promptly apply any all cash receipts which are identifiable as proceeds of Term Loan Priority Collateral (as defined in the Intercreditor Agreement) to repay all Prepetition Term Loan Obligations in full.

(e) Upon the occurrence and during the continuance of a Cash Dominion Event, the Borrower shall prepay the Advances in the same currency in which such Advances were made, and upon the occurrence and during the continuance of an Event of Default, the Borrower shall cash collateralize the L/C Obligations, in each case, in accordance with the provisions of Section 6.01(p) hereof. Prepayments made pursuant to this Section 2.11(c) shall not reduce the Aggregate Commitments hereunder.

(f) The Net Proceeds of any Disposition by any Loan Party shall be applied promptly, and in any event no later than three (3) Business Days after receipt thereof, to prepay the Obligations, provided that if such Net Proceeds constitute Term Loan Priority Collateral, such Net Proceeds shall be applied first to prepay the Prepetition Term Loan Obligations in full, second to prepay the DIP Term Loan Obligations in full and third to prepay the Obligations.

**SECTION 2.12. Increased Costs.** If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance with any guideline or request from any central bank or

other governmental authority (whether or not having the force of law) made or issued after the Effective Date, there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining BA Rate Advances or LIBOR Rate Advances or issuing or participating in Letters of Credit (excluding for purposes of this Section 2.12 any such increased costs resulting from (i) Taxes or Other Taxes (as to which Section 2.15 shall govern) and (ii) changes in the basis of taxation of overall net income, overall gross income or capital by Canada or by the foreign jurisdiction or state or province under the laws of which such Lender is organized or has its Applicable Lending Office or any political subdivision thereof), then the Borrower shall from time to time, upon demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost; provided that a Lender claiming additional amounts under this Section 2.12(a) agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office and/or take other commercially reasonable action if the making of such a designation or the taking of such actions would avoid the need for, or reduce the amount of, such increased cost that may thereafter accrue and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate as to the amount of such increased cost, submitted to the Borrower and the Agent by such Lender, shall be entitled to a presumption of correctness. If the Borrower so notifies the Agent after any Lender notifies the Borrower of any increased cost pursuant to the foregoing provisions of this Section 2.12(a), the Borrower may, upon payment of such increased cost to such Lender, replace such Lender with a Person that is an Eligible Assignee in accordance with the terms of Section 9.07 (and the Lender being so replaced shall take all action as may be necessary to assign its rights and obligations under this Agreement to such Eligible Assignee).

(b) If any Lender determines that compliance with any change after the Effective Date in law or regulation or any guideline or request after the Effective Date from any central bank or other governmental authority (whether or not having the force of law) affects or would affect the amount of capital required or expected to be maintained by such Lender or any entity controlling such Lender and that the amount of such capital is increased by or based upon the existence of such Lender's commitment to lend hereunder and other commitments of this type, then, upon demand by such Lender (with a copy of such demand to the Agent), the Borrower shall pay to the Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender or such entity in the light of such circumstances, to the extent that such Lender reasonably determines such increase in capital to be allocable to the existence of such Lender's commitment to lend hereunder. A certificate as to such amounts submitted to the Borrower and the Agent by such Lender shall be entitled to a presumption of correctness.

(c) The Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or capital or reserve requirement or pursuant to Section 2.15 for any taxes incurred more than six months prior to the date that such Lender notifies the Borrower of the change or issuance giving rise to such increased costs or capital or reserve requirement or tax and of such Lender's intention to claim compensation therefor; provided that if the change or issuance giving rise to such increased costs or capital or reserve requirement or tax is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof.

**SECTION 2.13. Illegality.** Notwithstanding any other provision of this Agreement, if any Lender shall notify the Agent that the introduction of or any change in or in the interpretation of any law or regulation makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for any Lender or its Applicable Lending Office to perform its obligations hereunder to make BA Rate Advances or LIBOR Rate Advances or to fund or maintain BA Rate Advances or LIBOR Rate Advances hereunder, (a) each BA Rate Advance or LIBOR Rate Advance, as applicable, will automatically, upon such demand, to the extent required by applicable law, Convert into a Base Rate Advance or a Prime Rate Advance, and (b) the obligation of the Lenders to make BA Rate Advances or LIBOR Rate Advances, as applicable, or to Convert Advances into BA Rate Advances or LIBOR Rate Advances, as applicable, shall be suspended until the Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

**SECTION 2.14. Payments and Computations.** The Borrower shall make each payment hereunder and under the other Loan Documents, without any right of counterclaim or set-off, not later than 1:00 P.M. on the day when due in the same currency in which the Advance was initially made or the Letter of Credit issued to the Agent at the Agent's Account in same day funds. The Agent will promptly thereafter cause to be distributed like

funds relating to the payment of principal or interest or commitment fees ratably (other than amounts payable pursuant to Section 2.12, 2.15 or 9.04(c)) to the Lenders for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon its acceptance of an Assignment and Acceptance and recording of the information contained therein in the Register pursuant to Section 9.07(c), from and after the effective date specified in such Assignment and Acceptance, the Agent shall make all payments hereunder and under the other Loan Documents in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Acceptance shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) The Borrower hereby authorizes each Lender, if and to the extent payment owed by it to such Lender is not made when due hereunder or under the other Loan Documents, to charge from time to time against any or all of the Borrower's accounts with such Lender any amount so due, notwithstanding that an Overadvance may result thereby. Any such Lender so charging such accounts shall deliver the proceeds therefrom to the Agent for distribution to the Credit Parties in the manner set forth herein and in the other Loan Documents.

(c) All computations of interest based on the Base Rate, the Prime Rate or the BA Rate, and of commitment fees shall be made by the Agent on the basis of a year of 365 days, and all computations of interest based on the Federal Funds Rate or the Adjusted LIBOR Rate shall be made by the Agent on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or commitment fees are payable. Each determination by the Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error. For purposes of disclosure under the *Interest Act* (Canada), where interest is calculated pursuant hereto at a rate based upon a three hundred sixty-five (365) or three hundred sixty (360) day year (the "First Rate"), it is hereby agreed that the rate or percentage of interest on a yearly basis is equivalent to such First Rate multiplied by the actual number of days in the year divided by three hundred sixty-five (365) or three hundred sixty (360), as applicable.

(d) Whenever any payment hereunder or under the other Loan Documents shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or commitment fee, as the case may be; provided, however, that, if such extension would cause payment of interest on or principal of BA Rate Advances or LIBOR Rate Advances to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(e) Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due by it to the Lenders hereunder that the Borrower will not make such payment in full, the Agent may assume that the Borrower has made such payment in full to the Agent on such date and the Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent the Borrower shall not have so made such payment in full to the Agent, each Lender shall repay to the Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Agent, at the BA Rate for a 30-day Interest Period (with respect to amounts payable in Canadian Dollars) or the Federal Funds Rate (with respect to amounts payable in Dollars), as applicable.

**SECTION 2.15. Taxes.** Any and all payments by the Borrower to or for the account of any Lender, the Agent or the Collateral Agent hereunder or under the other Loan Documents or any other documents to be delivered hereunder shall be made, in accordance with Section 2.14 or the applicable provisions of such other documents, free and clear of and without deduction for any and all present or future withholding taxes, including levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Lender, the Agent and the Collateral Agent, taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, and branch profits taxes, by the jurisdiction under the laws of which such Lender, the Agent or the Collateral Agent (as the case may be) is organized or any political subdivision thereof and, in the case of each Lender, taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, and branch profits taxes, by the jurisdiction of such Lender's Applicable Lending Office or any political subdivision thereof (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities in respect of payments hereunder or under the other Loan Documents being hereinafter referred to as

“Taxes”). If the Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under any other Loan Document or any other documents to be delivered hereunder to any Lender, the Agent or the Collateral Agent, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.15) such Lender, the Agent or the Collateral Agent (as the case may be) receive an amount equal to the sum each would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or under the other Loan Documents or from the execution, delivery or registration of, performing under, or otherwise with respect to, this Agreement or the other Loan Documents or any other documents to be delivered hereunder, but excluding all other Canadian and United States federal taxes other than withholding taxes (hereinafter referred to as “Other Taxes”).

(c) The Borrower shall indemnify each Lender, the Agent and the Collateral Agent for and hold each of them harmless against the full amount of Taxes or Other Taxes (including taxes of any kind imposed or asserted by any jurisdiction on amounts payable under this Section 2.15) imposed on or paid by such Lender, the Agent or the Collateral Agent (as the case may be) and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. This indemnification shall be made within 30 days from the date such Lender, the Agent or the Collateral Agent makes written demand therefor.

(d) Within 30 days after the date of any payment of Taxes or Other Taxes, the Borrower shall furnish to the Agent, at its address referred to in Section 9.02, the original or a certified copy of a receipt evidencing such payment to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Agent.

(e) Any Lender claiming any additional amounts payable pursuant to this Section 2.15 agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Applicable Lending Office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender.

(f) If any Lender determines, in its sole discretion, that it has actually and finally realized, by reason of a refund, deduction or credit of any Taxes paid or reimbursed by the Borrower pursuant to subsection (a) or (c) above in respect of payments under this Agreement or the other Loan Documents, a current monetary benefit that it would otherwise not have obtained, and that would result in the total payments under this Section 2.15 exceeding the amount needed to make such Lender whole, such Lender shall pay to the Borrower, with reasonable promptness following the date on which it actually realizes such benefit, an amount equal to the amount of such excess, net of all out-of-pocket expenses reasonably allocable in securing such refund, deduction or credit, provided that the Borrower, upon the request of such Lender, agrees to repay the amount paid over to the Borrower to such Lender in the event such Lender is required to repay such refund to such jurisdiction. Nothing in this subsection (f) shall be construed to require any Lender to make available to the Borrower or any other Person its tax returns or any confidential tax information.

(g) If the Agent, the Collateral Agent or any Lender, as the case may be, shall become aware that it is entitled to claim a refund from a Governmental Authority in respect of Taxes or Other Taxes paid by the Borrower pursuant to this Section 2.15, including Taxes or Other Taxes as to which it has been indemnified by the Borrower, or with respect to which the Borrower or a Group Member that is a signatory hereto has paid additional amounts pursuant to this Section 2.15, it shall notify the Borrower of the availability of such refund claim and, if the Agent, the Collateral Agent or any Lender, as the case may be, determines in good faith that making a claim for refund will not have any adverse consequence to its taxes or business operations, it shall, after receipt of a request by the Borrower, make a claim to such Governmental Authority for such refund at the Borrower’s expense.

**SECTION 2.16. Sharing of Payments, Etc.** If any Lender shall obtain any payment from any Group Member (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Advances or other amounts owing to it (other than pursuant to Section 2.05(b), 2.06, 2.07, 2.12, 2.15, 2.18 or 9.04(c)) in excess of its ratable share, such Lender shall forthwith purchase from the other Lenders such participations in the Advances or other amounts owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each such other Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.16 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

**SECTION 2.17. Use of Proceeds of Advances.** Unless otherwise agreed to in writing by the Agent and the Lenders, the Borrower shall use the proceeds of the Advances solely:

(a) to finance operating expenses and restructuring costs in the CCAA Proceedings, (B) to pay professional fees of the Monitor and the fees of legal counsel to the Loan Parties and the Monitor and (C) for general corporate purposes of the Borrower and the Loan Parties, all in accordance with and subject to the DIP Budget, subject to the Permitted Variances;

(b) to pay the Obligations and the fees and expenses related to this Agreement and the CCAA Proceedings, provided however that except as provided in Section 3.05 with respect to the Reimbursement Obligation in respect of any Prepetition L/C drawn down on or after the Effective Date, no proceeds shall be applied to the Prepetition Obligations,

(c) to pay fees and expenses of counsel to the Agent and the Lenders, counsel to the DIP Term Agent and the DIP Term Lenders, counsel to the board of directors of the Borrower, the Lender FA and any other advisors retained by the Agent and the Lenders,

provided that, no proceeds of the Advances will be used:

(d) to investigate, object to or challenge in any way any claims of the Lenders against any of the Loan Parties in respect of this Agreement, the Existing Credit Agreement or any of the other Loan Documents, or any of the Obligations (including the Prepetition Obligations); or

(e) to investigate, object to or challenge in any way the validity, perfection or enforceability of the Liens created pursuant to the Lender DIP Charge or any of the Security Documents, provided further that nothing in this paragraph shall restrict the Loan Parties, the Monitor, or the Monitor's counsel from: (A) assessing the validity and enforceability of the Liens in respect of advances under the Existing Credit Agreement and the Prepetition Term Credit Agreement, and (B) conducting a claims process in accordance with any CCAA Court Order.

**SECTION 2.18. Reserved.**

**SECTION 2.19. Permitted Overadvances.** The Agent may, in its discretion, make Permitted Overadvances without the consent of the Lenders, the Swingline Lender and the L/C Issuing Bank, and each Lender shall be bound thereby. Any Permitted Overadvance may constitute a Swingline Advance. A Permitted Overadvance is for the account of the Borrower and shall constitute a Base Rate Advance (or a Prime Rate Advance, as applicable) and an Obligation (as defined in the Guarantee and Collateral Agreement) and shall be repaid by the Borrower in accordance with the provisions of Section 2.11(b). The making of any such Permitted Overadvance on any one occasion shall not obligate the Agent or any Lender to make or permit any Permitted Overadvance on any

other occasion or to permit such Permitted Overadvances to remain outstanding. The making by the Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of Article III regarding the Lenders' obligations to purchase participations with respect to Letters of Credit or of Section 2.04 regarding the Lenders' obligations to purchase participations with respect to Swingline Advance. The Agent shall have no liability for, and no Loan Party or Credit Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Agent with respect to "inadvertent Overadvances" (i.e. where an Overadvance results from changed circumstances beyond the control of the Agent (such as a reduction in the collateral value)) regardless of the amount of any such Overadvance(s).

#### SECTION 2.20. Wind-Up Reserve.

(a) Unless otherwise agreed in writing by the Collateral Agent in its sole discretion, until the Final Availability Date, the Wind-up Reserve will be included as an Availability Reserve without any prior notice, grace period or other condition or formality, in addition to any other Availability Reserves then in effect or thereafter imposed by the Agent or the Collateral Agent from time to time in accordance with the terms of this Agreement, it being understood that the Wind-up Reserve does not limit the rights of the Collateral Agent to impose Availability Reserves in respect of the Qualifying Real Estate in the exercise of their Permitted Discretion if at any time the Collateral Agent determines that there is any increase in the risk to the effectiveness, validity or enforceability of the security over the Qualifying Real Estate. Without limitation to the foregoing, no Reserve Notice Period shall be required prior to the Wind-up Reserve being effective.

(b) For the avoidance of doubt, neither the Wind-up Reserve, nor the termination thereof upon the Final Availability Date shall limit the rights of the Agent to impose any other Availability Reserves, including, but not limited to, Availability Reserves in respect of current service pension payments or other pension payments to the extent permitted hereunder.

(c) The Borrower shall deliver to the Agent an Actuarial Report in respect of each Canadian Pension Plan with a defined benefit provision as at the end of each of June 30 and December 31 of each calendar year by no later than the date which is 90 days following each such date (provided that the Agent may (or at the request of the Required Lenders, shall) request two additional Actuarial Reports in each calendar year to be delivered at the Borrower's cost and expense. Such additional Actuarial Reports shall be prepared as of the date of the Agent's request or such later date as may be specified by the Agent and shall be delivered to the Agent by no later than the date which is 60 days following the date of such request). For the purposes of determining the Wind-up Reserve, the amount of the Pension Wind-up Deficit will be equal to the Pension Wind-up Deficit reflected in the most recent Actuarial Reports delivered to the Collateral Agent pursuant to this Section 2.20. The Borrower shall also deliver to the Collateral Agent such other reports as the Borrower may receive from time to time from its actuaries with respect to the calculation of the Pension Wind-up Deficit. Without limiting the foregoing, upon (i) the delivery by the Borrower of each Borrowing Base Certificate pursuant to Section 6.01(j) hereof and (ii) the request by the Borrower for any Extension of Credit pursuant to a Notice of Borrowing or Application for a Letter of Credit hereunder, the Borrower shall deliver to the Agent in connection therewith an updated calculation of the Wind-Up Reserve in a form reasonably acceptable to the Agent.

(d) Reserved.

(e) Qualifying Real Estate will be subject to updated additional appraisals at the Borrower's expense at the request of the Agent or the Collateral Agent; provided that such appraisals shall be limited to one per year so long as no Event of Default has occurred and is continuing.

(f) The Agent shall, as soon as reasonably practicable and in any event within 10 Business Days following receipt of an interim Actuarial Report, prepared as of a date not more than 60 days prior to delivery to the Agent thereof and in a form consistent with the interim Actuarial Reports previously delivered to the Agent, and written notice from and request of the Borrower, release from the Mortgages granted to the Agent, one or more parcels of Qualifying Real Estate, provided that after giving effect to such release and any adjustment to the Wind-up Reserve in connection therewith, Pro Forma and Projected Excess Availability shall be at least 15% of the Combined Borrowing Base. The Agent shall, at the Borrower's expense, execute such release, discharges or other documentation as may be requested by the Borrower to effect the forgoing.

(g) Reserved.

(h) Reserved.

## ARTICLE III

### AMOUNT AND TERMS OF THE LETTERS OF CREDIT

#### SECTION 3.01. L/C Commitment.

(a) Subject to the terms and conditions hereof, in reliance on the agreements of the other Lenders set forth in Section 3.04(a), the L/C Issuing Bank agrees from time to time to issue Letters of Credit for the account of the Borrower on any Business Day during the period from the Effective Date until the Termination Date in such form as may be approved from time to time by the L/C Issuing Bank; provided that (i) after giving effect to such issuance, the L/C Obligations shall not exceed the L/C Commitment or (ii) the face amount of the requested Letter of Credit, when aggregated with all other then outstanding Extensions of Credit, shall not exceed the Line Cap at such time. Each Letter of Credit shall (i) be denominated in Canadian Dollars, Dollars or any other lawful foreign currency which is approved in writing on a case by case basis by the L/C Issuing Bank and the Agent in their sole and absolute discretion and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance, or (y) subject to the provisions of Section 6.01(p), the date that is five (5) Business Days prior to the Termination Date, provided that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which, subject to the provisions of Section 6.01(p)) shall in no event extend beyond the date referred to in clause (y) above). From and after the Effective Date, all Prepetition L/Cs shall be subject to and governed by, the terms and conditions hereof.

(b) The L/C Issuing Bank shall not at any time be obligated to issue any Letter of Credit if (i) such issuance would conflict with, or cause the L/C Issuing Bank or any Lender to exceed any limits imposed by, any applicable Requirement of Law, (ii) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuing Bank from issuing such Letter of Credit, or any law applicable to the L/C Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuing Bank shall prohibit, or request that the L/C Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the L/C Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the L/C Issuing Bank in good faith deems material to it; (iii) such issuance would violate one or more policies of the L/C Issuing Bank applicable to letters of credit generally, or (iv) any Lender is at such time a Defaulting Lender or Deteriorating Lender hereunder, unless the L/C Issuing Bank has entered into satisfactory arrangements with the Borrower or such Lender to eliminate the L/C Issuing Bank's risk with respect to such Lender.

SECTION 3.02. Procedure for Issuance of Letter of Credit. The Borrower may from time to time request that the L/C Issuing Bank issue a Commercial L/C or Standby L/C for its account by delivering to the L/C Issuing Bank at its address for notices specified herein an Application therefor, completed to the satisfaction of the L/C Issuing Bank, and such other certificates, documents and other papers and information as the L/C Issuing Bank may reasonably request. Upon receipt of any Application, the L/C Issuing Bank will process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall endeavor to promptly issue the Letter of Credit requested thereby (but in no event shall the L/C Issuing Bank be required to issue any Letter of Credit earlier than three Business Days after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed to by the L/C Issuing Bank and the Borrower. The L/C Issuing Bank shall furnish a copy of such Letter of Credit to the Borrower promptly following the issuance thereof. The L/C Issuing Bank shall promptly notify the Agent of the issuance, extension or amendment of Letters of Credit and any drawings or other payments under Letters of Credit.

### SECTION 3.03. Fees and Other Charges.

(a) The Borrower will pay a fee on all outstanding Letters of Credit at a per annum rate equal to the Applicable Margin for Letters of Credit, in each case shared ratably among the Lenders based upon their respective Commitment Percentages, and payable monthly in arrears the 1<sup>st</sup> calendar day subsequent to the last day of each month after the issuance date, provided that, with respect to any Prepetition L/C, such fee shall accrue (i) for prior to the Effective Date, at a per annum rate equal to the Applicable Margin for Letters of Credit as set out in the Existing Credit Agreement and (ii) on and after the Effective Date at a per annum rate equal to the Applicable Margin for Letters of Credit set out in this Agreement. In addition, the Borrower shall pay to the L/C Issuing Bank for its own account a fronting fee in an amount to be agreed upon by the L/C Issuing Bank and the Borrower (but in no event to exceed 0.125% per annum) on the undrawn and unexpired amount of each Letter of Credit, payable monthly in arrears on the 1<sup>st</sup> calendar day subsequent to the last day of each month after the issuance date.

(b) In addition to the foregoing fees, the Borrower shall pay or reimburse the L/C Issuing Bank for such normal and customary costs and expenses as are incurred or charged by the L/C Issuing Bank in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit, unless otherwise agreed.

### SECTION 3.04. Letter of Credit Participations.

(a) The L/C Issuing Bank irrevocably agrees to grant and hereby grants to each Lender, and, to induce the L/C Issuing Bank to issue Letters of Credit, each Lender irrevocably agrees to accept and purchase and hereby accepts and purchases from the L/C Issuing Bank, on the terms and conditions set forth below, for such Lender's own account and risk an undivided interest equal to such Lender's Commitment Percentage in the L/C Issuing Bank's obligations and rights under and in respect of each Letter of Credit and the amount of each draft paid by the L/C Issuing Bank thereunder. Each Lender agrees with the L/C Issuing Bank that, if a draft is paid under any Letter of Credit for which the L/C Issuing Bank is not reimbursed in full by the Borrower in accordance with the terms of this Agreement, such Lender shall pay to the L/C Issuing Bank upon demand at the L/C Issuing Bank's address for notices specified herein an amount equal to such Lender's Commitment Percentage of the amount of such draft, or any part thereof, that is not so reimbursed. Each Lender's obligation to pay such amount shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defense or other right that such Lender or the Borrower may have against the L/C Issuing Bank, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article IV, (iii) any adverse change in the condition (financial or otherwise) of the Borrower or any other Loan Party, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided that each Lender shall only be obligated to make any such payment in Canadian Dollars or Dollars (and not any foreign currency) in accordance with the provisions of Section 3.10 hereof.

(b) If any amount required to be paid by any Lender to the L/C Issuing Bank pursuant to Section 3.04(a) in respect of any unreimbursed portion of any payment made by the L/C Issuing Bank under any Letter of Credit is paid to the L/C Issuing Bank within three Business Days after the date such payment is due, such Lender shall pay to the L/C Issuing Bank on demand an amount equal to the product of (i) such amount, times (ii) the daily average Federal Funds Rate or the BA Rate for a 30 day Interest Period, as applicable, during the period from and including the date such payment is required to the date on which such payment is immediately available to the L/C Issuing Bank, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. If any such amount required to be paid by any Lender pursuant to Section 3.04(a) is not made available to the L/C Issuing Bank by such Lender within three Business Days after the date such payment is due, the L/C Issuing Bank shall be entitled to recover from such Lender, on demand, such amount with interest thereon calculated from such due date at the rate per annum set forth in Section 2.08(a)(i), for the Lenders, applicable to Base Rate Advances or Prime Rate Advances, as applicable. A certificate of the L/C Issuing Bank submitted to any Lender with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error.

(c) Whenever, at any time after the L/C Issuing Bank has made payment under any Letter of Credit and has received from any Lender its pro rata share of such payment in accordance with Section 3.04(a), the L/C Issuing Bank receives any payment related to such Letter of Credit (whether directly from the Borrower or otherwise, including proceeds of collateral applied thereto by the L/C Issuing Bank), or any payment of interest on account thereof, the L/C Issuing Bank will distribute to such Lender its pro rata share thereof; provided, however, that in the event that any such payment received by the L/C Issuing Bank shall be required to be returned by the L/C Issuing Bank, such Lender shall return to the L/C Issuing Bank the portion thereof previously distributed by the L/C Issuing Bank to it.

**SECTION 3.05. Reimbursement Obligation of the Borrower.** If any draft is paid under any Letter of Credit, the Borrower shall reimburse the L/C Issuing Bank for the amount of (a) the draft so paid and (b) any taxes, fees, charges or other costs or expenses incurred by the L/C Issuing Bank in connection with such payment, not later than 12:00 Noon on (i) the Business Day that the Borrower receives notice of such draft, if such notice is received on such day prior to 10:00 A.M. or (ii) if clause (i) above does not apply, the Business Day immediately following the day that the Borrower receives such notice; provided, that if the total reimbursement amount set forth in clauses (a) or (b) above is not less than CAN\$5,000,000 (or \$5,000,000, as applicable) or CAN\$500,000 (or \$500,000, as applicable), respectively, the Borrower may, subject to the conditions to borrowing set forth herein, request that such reimbursement be financed with a Base Rate Advance, Prime Rate Advance or Swingline Advance in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Advance, provided, that if the Borrower's Reimbursement Obligation is not satisfied in full pursuant to the foregoing, the outstanding amount of such Reimbursement Obligation shall be immediately and automatically be deemed to be an Advance hereunder in the currency of the applicable Reimbursement Obligation (notwithstanding any failure to satisfy any condition precedent set forth in Article IV for such Advance) and initially, shall bear interest at the rate then applicable to Base Rate Advances or Prime Rate Advance, as applicable. Each such payment shall be made to the L/C Issuing Bank at its address for notices referred to herein in Canadian Dollars or Dollars (or if the Letter of Credit is issued in a currency other than Canadian Dollars or Dollars, in such currency or the Canadian Dollar equivalent thereof calculated in accordance with the provisions of Section 3.10) and in immediately available funds. Interest shall be payable on any such amounts from the date on which the relevant draft is paid until payment in full at the rate set forth in (x) until the Business Day next succeeding the date of the relevant notice, Section 2.08(a)(i) (for amounts denominated in Canadian Dollars) or 2.08(a)(iii) (for amounts denominated in Dollars), and (y) thereafter, Section 2.08(b).

**SECTION 3.06. Obligations Absolute.** The Borrower's obligations under this Article III shall be absolute and unconditional under any and all circumstances and irrespective of any set-off, counterclaim or defense to payment that the Borrower may have or have had against the L/C Issuing Bank, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with the L/C Issuing Bank that the L/C Issuing Bank shall not be responsible for, and the Borrower's Reimbursement Obligations under Section 3.05 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The L/C Issuing Bank shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the L/C Issuing Bank. The Borrower agrees that any action taken or omitted by the L/C Issuing Bank under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct, shall be binding on the Borrower and shall not result in any liability of the L/C Issuing Bank to the Borrower.

**SECTION 3.07. Letter of Credit Payments.** If any draft shall be presented for payment under any Letter of Credit, the L/C Issuing Bank shall promptly notify the Borrower of the date and amount thereof. The responsibility of the L/C Issuing Bank to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are substantially in conformity with such Letter of Credit.

**SECTION 3.08. Applications.** To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Article III, the provisions of this Article III shall apply.

**SECTION 3.09. Use of Letters of Credit.** The Letters of Credit shall be available (and the Borrower agrees that it shall use such Letters of Credit) for general corporate purposes of the Borrower and its Subsidiaries.

**SECTION 3.10. Currency Equivalents Generally.**

Any amount specified in this Agreement (including pursuant to Section 3.05 above) to be in a currency other than Canadian Dollars shall also include the equivalent of such amount in Canadian Dollars, such equivalent amount to be determined by the Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Canadian Dollars. For purposes of this Section 3.10, the “Spot Rate” for a currency means the rate quoted by the Canadian Reference Bank as the spot rate for the purchase by the Canadian Reference Bank of such currency with another currency at approximately 10:00 a.m. (Toronto time) on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made.

**SECTION 3.11. Cash Collateralization of Prepetition L/Cs.**

The Borrower shall cash collateralize all Prepetition L/Cs in an amount equal to one hundred percent (100%) of the face amount thereof in accordance with the DIP Budget, provided that, in any event all Prepetition L/Cs will be so cash collateralized in full on or before July 28, 2017. The obligation to cash collateralize the Prepetition L/Cs under this Section 3.11 may be satisfied by application of the cash receipts in accordance with Section 2.11(c). All such cash collateral shall be held as additional collateral security for the Obligations in an account in the name of the Agent and for the benefit of the Lenders (the “L/C Collateral Account”) and neither such cash collateral nor the Prepetition L/C Collateral Account shall be subject to the Court Charges.

**ARTICLE IV  
CONDITIONS TO EFFECTIVENESS**

**SECTION 4.01. Conditions Precedent to Effectiveness.** This Agreement shall become effective on and as of the first date on which each of the following conditions precedent have been satisfied:

(a) The Agent’s receipt of the following, each of which shall be originals or telecopies or electronic transmission of pdf formatted copies (followed promptly by originals) unless otherwise specified, each properly executed by an Authorized Officer of the signing Loan Party, each dated the Effective Date (or, in the case of certificates of governmental officials, a recent date before the Effective Date) and each in form and substance satisfactory to the Agent and the Required Lenders:

(i) this Agreement duly executed by each of the Borrower, the Agent, the Collateral Agent, the L/C Issuing Bank and the Lenders.

(ii) a Borrowing Base Certificate, duly completed and executed by an Authorized Officer of the Borrower, together with supporting information satisfactory to the Agent in its Permitted Discretion;

(iii) results of such other diligence as the Agent and each of the Lenders may reasonably require, including compliance with “know your customer” and anti-money laundering rules and regulations, including, without limitation, the Proceeds of Crime Act;

(iv) the DIP Budget;

(v) the Business Optimization Plan;

(vi) the Perfection Certificate duly completed and executed by an Authorized Officer of the Borrower;

(vii) the Fee Letter; and

(viii) such other customary certificates, documents or consents as the Agent reasonably may require.

(b) the Borrower shall have entered into the DIP Term Loan Agreement with the DIP Term Agent and the DIP Term Lenders thereunder and such DIP Term Loan Agreement shall be (i) effective and in full force and effect and (ii) in form and substance satisfactory to the Agent and the Lenders; and the CCAA Court shall have approved the DIP Term Loan Agreement and the Term DIP Charge;

(c) [reserved].

(d) The representations and warranties made by each Loan Party in or pursuant to the Loan Documents are true and correct on and as of such date in all material respects, before and after giving effect to such extension of credit and to the application of the proceeds therefrom, as though made on and as of such date, except to the extent that (i) such representations or warranties are qualified by a materiality standard, in which case they shall be true and correct in all respects and (ii) such representations or warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(e) [reserved].

(f) [reserved].

(g) [reserved].

(h) The conditions set forth in Section 4.03 shall have been satisfied.

(i) There shall not be pending any litigation or other proceeding which is not stayed by the Stay of Proceedings.

(j) All fees required to be paid to the Agent or the Collateral Agent on or before the Effective Date shall have been paid in full, and all fees required to be paid to the Lenders on or before the Effective Date shall have been paid in full.

(k) The Borrower shall have paid all costs and expenses of the Agent and the Collateral Agent (to the extent set forth in Section 9.04(a)) incurred in connection with or relating to this Agreement and the other Loan Documents, including fees, charges and disbursements of counsel to the Agent and the Collateral Agent, and the Lenders FA, to the extent invoiced prior to or on the Effective Date and all such amounts shall be paid by the Borrower directly from the initial Advance hereunder to the extent not paid previously (provided that such payment shall not thereafter preclude a final settling of accounts between the Borrower and the Agent).

(l) No material changes in governmental regulations or policies affecting any Loan Party or any Credit Party shall have occurred prior to the Effective Date.

(m) The CCAA Court shall have issued and entered the Initial Order in form and substance satisfactory to the Agent and the Lenders approving this Agreement and the financing contemplated hereunder and granting of the Lender DIP Charge securing all Obligations (other than Prepetition Obligations), which shall have priority over all Liens other than the Permitted Priority Liens, and the Initial Order shall not have been stayed, vacated or otherwise caused to be ineffective or amended, restated or

modified in a way that adversely impacts the rights and interests of the Agent and the Lenders, as determined by the Agent and the Lenders.

(n) [reserved].

(o) There are no Liens in the Collateral ranking in priority to the Liens securing the Obligations (including the Lender DIP Charge), except for the Permitted Priority Liens.

(p) The Agent and the Lenders acting reasonably shall be satisfied with the identity of the applicants in the CCAA Proceedings.

#### **SECTION 4.02. Conditions Precedent to Initial Extension of Credit.**

The obligation of each Lender to make the initial Extension of Credit under this Agreement shall be subject to the condition precedent that the Effective Date shall have occurred and the following additional conditions precedent shall have been satisfied:

(a) The Agent's receipt of the following, each of which shall be originals or telecopies or electronic transmission of pdf formatted copies (followed promptly by originals) unless otherwise specified, each properly executed by an Authorized Officer of the signing Loan Party, each dated the Effective Date (or, in the case of certificates of governmental officials, a recent date before the Effective Date) and each in form and substance satisfactory to the Agent and the Required Lenders:

(i) to the extent not previously delivered, the Security Documents required to be delivered hereunder (including, without limitation, the Guarantee and Collateral Agreement or an assumption thereto, and Quebec governed law hypothecs creating Liens over movable and immovable property located in the Province of Quebec), each duly executed by the applicable Loan Parties;

(ii) to the extent not previously delivered, all other Loan Documents required to be delivered hereunder, each duly executed by the applicable Loan Parties;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Authorized Officers of each Loan Party as the Agent may reasonably require evidencing (A) the authority of each Loan Party to enter into this Agreement and to enter into or confirm its obligations under the other Loan Documents to which such Loan Party is a party or is to be a party and (B) the identity, authority and capacity of each Authorized Officer thereof authorized to act as an Authorized Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(iv) copies of each Loan Party's organization or other governing documents and such other documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where failure to so qualify could reasonably be expected to have a Material Adverse Effect;

(v) a certificate signed by an Authorized Officer of the Borrower certifying (A) that the conditions specified in Section 4.03 have been satisfied, (C) that the Perfection Certificate is true and correct in all material respects;

(vi) evidence that all insurance required to be maintained pursuant to Section 6.01(c) has been obtained and is in effect;

(vii) A Borrowing Base Certificate (giving effect to the adjustments to the Borrowing Base resulting from the occurrence of the Final Availability Date and any adjustments to advance

rates resulting from recent appraisals), duly completed and executed by an Authorized Officer of the Borrower, together with supporting information satisfactory to the Agent in its Permitted Discretion;

(viii) to the extent not previously delivered, duly executed Credit Card Notifications and Blocked Account Agreements required pursuant to Section 6.01(m);

(b) the Agent shall have received results of searches or other evidence reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Liens permitted by Section 6.02(a);

(c) all actions required by law or reasonably requested by the Agent to be undertaken in the Province of Quebec in respect of the hypothecs referred to in clause (a)(i) of this Section 4.02 shall have been filed, registered or recorded to create or perfect or provide notice of the Liens intended to be created by such Loan Documents governed by the laws of the Province of Quebec and all such documents and instruments shall have been so filed, registered or recorded in the Province of Quebec to the satisfaction of the Agent; and

(d) the Final Availability Date shall have occurred.

**SECTION 4.03. Conditions Precedent to Each Extension of Credit** The obligation of each Lender to make an Extension of Credit on any date shall be subject to the conditions precedent that the Effective Date shall have occurred and on the date of such Extension of Credit the following statements shall be true (and each of the giving of the applicable Notice of Borrowing or Application for a Letter of Credit, as the case may be, and the acceptance by the Borrower of the proceeds of such Borrowing or the issuance of such Letter of Credit, as applicable, shall constitute a representation and warranty by the Borrower that on the date of such Borrowing or Letter of Credit issuance such statements are true):

(a) the representations and warranties made by each Loan Party in or pursuant to the Loan Documents are true and correct on and as of such date in all material respects, before and after giving effect to such Extension of Credit and to the application of the proceeds therefrom, as though made on and as of such date, except to the extent that (A) such representations or warranties are qualified by a materiality standard, in which case they shall be true and correct in all respects, (B) such representations or warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date), and (C) such representations and warranties relate to Section 5.01(f), in which case the representation and warranty shall be limited to clauses (c) and (d) of the definition of "Material Adverse Effect";

(b) no event has occurred and is continuing, or would result from such Extension of Credit or from the application of the proceeds therefrom, that constitutes a Default or an Event of Default;

(c) The Borrower and the other Loan Parties shall be in compliance with all CCAA Court Orders, the Loan Documents and Requirements of Law; and

(d) after giving effect to such Extension of Credit, the Total Extensions of Credit will not exceed the Line Cap.

**SECTION 4.04. Effective Date** The Agent shall promptly notify the Lenders and the Borrower of the occurrence of the Effective Date.

**SECTION 4.05. Waiver of Conditions** The terms and conditions of in Sections 4.01 and 4.03 are inserted for the sole benefit of the Agent and the Lenders and may be waived by the Required Lenders, in whole or in part, with or without terms or conditions, in respect of all or any portion of an Extension of Credit.

ARTICLE V  
REPRESENTATIONS AND WARRANTIES

SECTION 5.01. Representations and Warranties of the Borrower. The Borrower hereby represents and warrants as follows:

(a) Each Loan Party (i) is duly organized and validly existing under the laws of the jurisdiction of its organization or formation and (ii) is in compliance with all Requirements of Law except to the extent that the failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party, and the consummation of the transactions contemplated hereby or thereby, are within such Loan Party's powers, have been duly authorized by all necessary organizational action, and do not contravene (i) the charter or by-laws or other organizational or governing documents of such Loan Party or (ii) upon entry of the Initial Order, any law or any contractual restriction binding on or affecting any Loan Party, except, for purposes of this clause (ii), to the extent such contravention would not reasonably be expected to have a Material Adverse Effect.

(c) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other third party is required for the due execution, delivery and performance by any Loan Party of any Loan Document to which it is a party that has not already been obtained, except for the Initial Order.

(d) Each Loan Document has been duly executed and delivered by each Loan Party party thereto. This Agreement constitutes, and each other Loan Document will constitute upon execution and upon the issuance of the Initial Order, the legal, valid and binding obligation of each Loan Party party thereto enforceable against such Loan Party in accordance with its respective terms subject to the effect of any applicable bankruptcy, insolvency, reorganization or moratorium or similar laws affecting the rights of creditors generally and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

(e) [reserved].

(f) Other than the commencement of the CCAA Proceedings, since the Effective Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

(g) There is no action, suit, investigation, litigation or proceeding, including any Environmental Action, which is pending or, to the Borrower's knowledge, threatened affecting the Borrower or any of its Subsidiaries before any court, Governmental Authority or arbitrator that will not be stayed by the Stay of Proceedings.

(h) All Canadian federal and provincial income tax returns and all other material tax returns which are required to be filed have been filed by or on behalf of the Borrower and its Subsidiaries, and all taxes due with respect to the Borrower and its Subsidiaries pursuant to such returns or pursuant to any assessment received by the Borrower or any of its Subsidiaries have been paid except to the extent permitted in Section 6.01(b). The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of taxes or other governmental charges have been made in accordance with, and to the extent required by, GAAP.

(i) All written factual information heretofore furnished by the Borrower or its Subsidiaries to the Agent or any Lender (including the Perfection Certificate) for purposes of or in connection with this Agreement or any other Loan Document, taken as a whole, was true and correct in all material respects on

the date as of which such information was stated or certified, provided that the Borrower makes no representations or warranties with respect to any projections or other nonfactual information contained in such information.

(j) (i) Each Loan Party has title in fee simple to, or a valid leasehold interest in, all its real property, and good title to, or a valid leasehold interest in, all its other property necessary for the conduct of its business and except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect, and (ii) no Inventory, Credit Card Account Receivable, DC or Related Intellectual Property is subject to any Lien except as permitted by Section 6.02(a).

(k) Except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (i) each Loan Party owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted; (ii) no material claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property, nor does the Borrower know of any valid basis for any such claim; and (iii) the use of Intellectual Property by each Group Member does not infringe on the rights of any Person in any material respect.

(l) As of the Effective Date, Schedule 5.01(l) lists all Canadian Pension Plans currently maintained or contributed to by the Loan Parties. The Canadian Pension Plans are duly registered under all applicable provincial pension benefits legislation. All obligations of the Loan Parties (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Pension Plans or the funding agreements therefor have been performed in a timely fashion in accordance with the terms of the Canadian Pension Plans and applicable laws and regulations unless such non-compliance, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, there are as of the Effective Date no outstanding disputes concerning the assets held pursuant to any Canadian Pension Plan or such funding agreement. Except as authorized by the Initial Order or any other CCAA Court Order, all contributions or premiums required to be made by the Loan Parties to the Canadian Pension Plans have been made in a timely fashion in accordance with the terms of the Canadian Pension Plans and applicable laws and regulations unless such non-compliance, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. All employee contributions to the Canadian Pension Plans required to be made by way of authorized payroll deduction have been properly withheld by the Loan Parties and fully paid into the Canadian Pension Plans in a timely fashion. All reports and disclosures relating to the Canadian Pension Plans required by any applicable laws or regulations have been filed or distributed in a timely fashion unless such non-compliance, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, there have been no improper withdrawals, or applications of, the assets of any of the Canadian Pension Plans. Except as set forth on Schedule 5.01 (l), as of the Effective Date, the Canadian Pension Plans are fully funded both on an ongoing basis and on a solvency basis (using actuarial assumptions and methods which are consistent with the valuations last filed with the applicable Governmental Authorities and which are consistent with generally accepted actuarial principles). To the knowledge of the Borrower, none of the Canadian Pension Plans is at the Effective Date the subject of an investigation, any other proceeding or any action or claim by any Governmental Authority or any other Person, and to the knowledge of the Borrower, at the Effective Date there exists no state of facts which after notice or lapse of time or both could reasonably be expected to give rise to any such proceeding, action or claim. As of the Effective Date, no Loan Party maintains, sponsors or contributes, nor has any interest in a Person that maintains, sponsors or contributes, to any Canadian Defined Benefit Pension Plan other than those disclosed in Schedule 5.01(l) on the Effective Date or has any liabilities or obligations in respect of a Canadian Defined Benefit Pension Plan that has been terminated or wound up. To the knowledge of the Borrower, no Canadian Defined Benefit Pension Termination Event has occurred. Except with respect to contributions to a Canadian Defined Benefit Plan that are not made pursuant to an authorization set out in the Initial Order, no Lien exists, choate or inchoate, in respect of any Loan Party or their property in connection with any Canadian Defined Benefit Pension Plan (other than inchoate Liens pursuant to applicable Canadian federal or provincial pension benefit standards legislation for amounts required to be remitted but not yet due) unless

such Liens, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(m) Except as, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, no Group Member (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

(n) The Security Documents are effective to create in favor of the Agent, for the benefit of the Credit Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. Upon entry of the Initial Order, the Security Documents shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to the Lien or claim of any other Person except Permitted Priority Liens.

(o) [reserved].

(p) The properties of the Loan Parties are insured as required pursuant to Section 6.01(c) hereof. Each insurance policy required to be maintained by the Loan Parties pursuant to Section 6.01(c) is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

(q) As of the Effective Date: (1) except as set forth in the Perfection Certificate, there are no outstanding rights to purchase any equity interests in any Subsidiary of a Loan Party, and (2) the copies of the organization and governing documents of each Loan Party and each amendment hereto provided pursuant to Section 4.01 are true and correct copies of each such document, each of which is valid and in full force and effect.

(r) As of the Effective Date, except as set forth on Schedule 5.01(r) or would not reasonably be expected to have individually or in the aggregate, a Material Adverse Effect, (a) there are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of the Borrower, threatened, (b) the hours worked by and payments made to employees of the Loan Parties comply with any applicable federal, provincial, local or foreign law dealing with such matters, (c) all payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 5.01(r) (as updated by the Borrower from time to time) no Loan Party or any Subsidiary is a party to or bound by any collective bargaining agreement, management agreement or any material bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement (excluding in each case individual employment agreements). There are no representation proceedings pending or, to the knowledge of the Borrower, threatened to be filed with any labor relations board, and no labor organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of the Borrower, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound.

(s) Except for the Financial Advisor, no broker or finder brought about the obtaining, making or closing of the Advances or transactions contemplated by the Loan Documents, and, other than amounts payable pursuant to the Fee Letter, no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

(t) Other than any breach or default resulting from the commencement and continuation of the CCAA Proceedings (which breaches and defaults have been stayed by the Stay of Proceedings), the Loan Parties are not in breach or in default in any material respect of or under any Material Contract and have not received any notice of the intention of any other party thereto to terminate any Material Contract.

(u) The Borrower and each of its Subsidiaries are in compliance with (a) the Criminal Code (Canada), and (b) the Proceeds of Crime Act; and the Borrower and each of its Subsidiaries are in compliance in all material respects with all other federal, provincial or territorial laws relating to “know your customer” and anti-money laundering rules and regulations.

(v) The Initial Order is not the subject of a pending appeal in any respect, and none of the Initial Order, the borrowings, or the performance by any Loan Party of any of its obligations under any of the Loan Documents is subject of a presently effective stay pending appeal.

(w) No order has been issued by the CCAA Court terminating the CCAA Proceedings or converting the CCAA Proceedings to bankruptcy proceedings under the BIA.

(x) The CCAA Proceedings were commenced in accordance with applicable law and proper notice thereof and of any applicable hearing has been given in accordance with applicable law.

(y) All financial statements of the Loan Parties provided to the Agent by or on behalf of any Loan Party fairly reflect, as of the dates thereof, the financial condition of the Loan Parties, as applicable, in all material respects and the results of their operations for the periods covered thereby, and have been prepared in accordance with GAAP.

(z) The DIP Budget is reasonable and has been prepared in good faith.

(aa) None of the Borrower or any other Loan Party has defaulted in respect of its obligations for payroll and source deductions or is in arrears in respect of the payment of any such obligations.

(bb) No information, report, financial statement, exhibit or schedule furnished by or on behalf of the Borrower to the Agent or any Lender in connection with the negotiation of any Loan Document (including the DIP Budget) or included therein or delivered pursuant thereto, when taken as a whole, contained any material misstatement of fact or omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not materially misleading; provided that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, the Borrower represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule, it being understood that actual results may differ from such forecasts and projections and such differences may be material.

(cc) No Default or Event of Default has occurred or is continuing.

(dd) Each applicant under the CCAA Proceedings is the Borrower or a Subsidiary of the Borrower.

## ARTICLE VI

### COVENANTS

**SECTION 6.01. Affirmative Covenants.** So long as any Advance or other Obligation (other than contingent indemnification obligations for which no claim shall have then been asserted) shall remain unpaid, any Letter of Credit shall remain outstanding (unless the same has been cash collateralized in an amount equal to 105% of the aggregate then undrawn and unexpired amount of such Letters of Credit and all other Reimbursement Obligations or back-to-back letters of credit from an issuer and on terms acceptable to the L/C Issuing Bank have

been provided in respect of such Letters of Credit) or any Lender shall have any Commitment hereunder, the Borrower will, and will cause each of its Subsidiaries and each other Loan Party to:

(a) Compliance with Laws, Etc. Subject to the Initial Order and any other CCAA Court Order, comply in all respects with all applicable Requirements of Law, such compliance to include compliance with the *Pensions Benefit Act* (Ontario) and Environmental Laws, except for such noncompliance as would not reasonably be expected to have a Material Adverse Effect.

(b) Payment of Taxes, Etc. Subject to the Initial Order and any other CCAA Court Order, pay and discharge before the same shall become delinquent, (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property (ii) all payments required to be made to any Canadian Pension Plan, and (iii) all lawful claims that, if unpaid, might by law become a Lien upon its property; provided that neither the Borrower nor any of its Subsidiaries shall be required to pay or discharge any such tax, assessment, charge or claim (x) that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained, unless and until any Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors or (y) if such non-payments, either individually or in the aggregate, would not be reasonably expected to have a Material Adverse Effect.

(c) Maintenance of Insurance. Maintain insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is consistent with prudent business practice; provided that the Borrower and its Subsidiaries may self insure to the extent consistent with prudent business practice; provided further that policies maintained with respect to any Collateral located at a warehouse or DC shall provide coverage for Inventory at (x) the cost of such Inventory, consistent with the Loan Parties' past practices, or (y) a selling price permitted by the Agent in its Permitted Discretion. None of the Credit Parties shall be a co-insurer with any Loan Party or any other Person with respect to any fire and extended coverage policies maintained with respect to any Collateral without the prior written consent of the Agent. On or before the Effective Date, fire and extended coverage policies maintained with respect to any Collateral shall be endorsed or otherwise amended to include a non-contributing lenders' loss payable clause, in form and substance reasonably satisfactory to the Agent, which endorsements or amendments shall provide that during a Cash Dominion Event, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent and the Collateral Agent, as their interests may appear. Within thirty (30) days following delivery of written notice from the Agent to the Borrower, the Borrower shall notify the insurers and use commercially reasonable efforts to have such policies amended to include such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties. On or before the Effective Date, commercial general liability policies (or certificates evidencing such policies) shall be endorsed to name the Agent and the Collateral Agent as additional insured, as their interests may appear. Each certificate delivered by the Loan Parties' insurance broker or insurer with respect to each property insurance policy referred to in this Section 6.01(c) shall also provide that such policy shall not be canceled, modified or not renewed other than upon not less than ten (10) days' prior written notice thereof by the insurance broker, or insurer, as applicable, to the Agent. The Borrower shall deliver to the Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, evidence of renewal or replacement of a policy previously delivered to the Agent, including an insurance binder therefor, together with evidence satisfactory to the Agent of payment of the premium therefor and, upon request of the Agent, a copy of such renewal or replacement policy. In the event that the Borrower fails to maintain any such insurance as required pursuant to this Section 6.01(c), the Agent may obtain such insurance on behalf of the Borrower and the Loan Parties shall reimburse the Agent as provided herein for all costs and expenses in connection therewith; the Agent's obtaining of such insurance shall not be deemed a cure or waiver of any Default or Event of Default arising from the Loan Parties' failure to comply with the provisions of this Section 6.01(c).

(d) Preservation of Corporate Existence, Etc. Preserve and maintain its corporate existence, material rights (charter and statutory) and franchises, except as may be expressly set out in the Business Optimization Plan or as ordered pursuant to a CCAA Court Order.

(e) Inspection Rights. In addition to the Agent's rights under Section 6.01(k) hereof, subject to reasonable confidentiality limitations and requirements imposed by the Borrower due to competitive

concerns or otherwise, at any reasonable time and from time to time, permit the Agent or any of the Lenders or any agents, representatives or consultants thereof (including the Lenders FA), at the Loan Parties' expense, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Borrower and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Borrower and any of its Subsidiaries, as the case may be, with any of their officers or directors and with their independent chartered accountants, provided, that the Agent and the Lenders shall coordinate with the DIP Term Loan Agent and the DIP Term Lenders to exercise the foregoing rights in a coordinated manner to reduce administrative and monetary costs of compliance by the Borrower and its Subsidiaries.

(f) Keeping of Books. Keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Borrower and each such Subsidiary in accordance with GAAP in effect from time to time.

(g) Maintenance of Properties, Etc. Except as otherwise permitted hereunder or as expressly contemplated under the Business Optimization Plan, or where the failure to do so, either individually or in the aggregate, would not be reasonably expected to result in a decrease in the value of any Collateral in excess of \$250,000, maintain and preserve all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted.

(h) Transactions with Affiliates. Conduct all transactions otherwise permitted under this Agreement with any of their Affiliates (other than Loan Parties) on terms that are fair and reasonable and no less favorable to the Borrower or its Subsidiaries than it would obtain in a comparable arm's-length transaction with a Person not an Affiliate other than as required by any applicable Requirement of Law; provided, that the foregoing shall not prohibit any Loan Party or any Subsidiary thereof from entering into employment arrangements with its officers and retention and other agreements with officers and directors pursuant to the reasonable requirements of its business.

(i) Further Assurances.

(i) With respect to any Inventory, Credit Card Accounts Receivable and other Collateral (as defined in the Guarantee and Collateral Agreement as in effect on the Sixth Amendment Effective Date) acquired after the Effective Date by any Group Member that is or is required to become a Loan Party hereunder, promptly (i) execute and deliver to the Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Agent may reasonably request in order to grant to the Agent, for the benefit of the Credit Parties, a security interest in such property and (ii) take all actions as the Agent may reasonably request to grant to the Agent, for the benefit of the Credit Parties, a perfected security interest in such property with the priority required herein, including the filing of PPSA financing statements in such jurisdictions as may be required by any Security Document or by law or as may be requested by the Agent and the delivery of Blocked Account and other control agreements as may be reasonably requested by the Agent.

(ii) [reserved].

(iii) With respect to any Dealer Stores, upon the request of the Agent, assign of record any PPSA financing statements which have been filed in favor of the Loan Parties.

(iv) In the event the Borrower or the other Loan Parties open a new deposit account in which funds of any of the Loan Parties are concentrated, or commence concentrating funds in an existing deposit account that is not subject to a Blocked Account Agreement, at the request of the Agent, the Borrower shall deliver or cause to be delivered a Blocked Account Agreement reasonably satisfactory in form and substance to the Agent with respect to such account.

(v) Each Loan Party agrees that, concurrently with the grant by such Loan Party of a Lien on Additional GA Collateral to the DIP Term Loan Agent as security for the DIP Term Facility, it will grant a Lien in favour of the Agent on such Additional GA Collateral and shall deliver such Security Documents and other documentation and opinions, in form and substance reasonably satisfactory to the Agent, in connection with the grant of such Lien as the Agent shall reasonably request, including title insurance policies, financing statements, fixture filings and environmental audits and such Loan Party shall pay all recording costs, intangible taxes and other fees and costs (including any and all reasonable and documented out-of-pocket expenses) incurred in connection therewith.

(j) Reporting Requirements. Furnish to the Agent (or such other Person as provided in clause (xiv) below):

(i) (A) as soon as available and in any event within 50 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, (a) the consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such quarter and consolidated statements of income and cash flows of the Borrower and its Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, duly certified (subject to year-end audit adjustments and ordinary course quarterly adjustments) by an Authorized Officer of the Borrower as having been prepared in accordance with GAAP and (b) a certificate of an Authorized Officer of the Borrower as to compliance with the terms of this Agreement and the other Loan Documents in the form of Exhibit G; and

(B) as soon as available and in any event within 30 days after the end of each fiscal month of each fiscal year of the Borrower, (a) the consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such month and consolidated statements of income and cash flows of the Borrower and its Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such month, duly certified (subject to year-end audit adjustments and ordinary course quarterly adjustments) by an Authorized Officer of the Borrower as having been prepared in accordance with GAAP and (b) a certificate of an Authorized Officer of the Borrower as to compliance with the terms of this Agreement and the other Loan Documents in the form of Exhibit G;

(ii) as soon as available and in any event within 95 days after the end of each fiscal year of the Borrower, (a) a copy of the annual audit report for such year for the Borrower and its Subsidiaries, containing the consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year and consolidated statements of income and cash flows of the Borrower and its Subsidiaries for such fiscal year by its board-appointed auditor of national standing, and (b) a certificate of an Authorized Officer of the Borrower as to compliance with the terms of this Agreement and the other Loan Documents in the form of Exhibit G;

(iii) on Wednesday of each week (or, if such day is not a Business Day, the immediately following Business Day), a Borrowing Base Certificate as of the end of the preceding week (subject to month end reconciliation consistent with past practice) and supporting information satisfactory to the Agent in its Permitted Discretion with respect to the determination of the Borrowing Base;

(iv) promptly and in any event within two (2) Business Days after any Authorized Officer of the Borrower has knowledge of the occurrence and continuance of a Default or Event of Default, a statement of an Authorized Officer of the Borrower setting forth details of such Default or Event of Default and the action that the Borrower has taken and proposes to take with respect thereto;

(v) promptly after the sending or filing thereof, copies of all quarterly and annual reports and proxy solicitations that the Borrower sends to its public security holders generally, and

copies of all reports and prospectuses for the public offering of securities that the Borrower or any of its Subsidiaries files with the Ontario Securities Commission, the Toronto Stock Exchange, or any other national or provincial securities exchange;

(vi) promptly after the commencement thereof, notice of all actions and proceedings before any court, governmental agency or arbitrator affecting the Borrower or any of its Subsidiaries of the type described in Section 5.01(g);

(vii) with written notice promptly following the occurrence of any of the following, (A) any Environmental Action with respect to Qualifying Real Estate , (B) any breach of Environmental Law occurring on Qualifying Real Estate, (C) any Lien on Qualifying Real Estate by a Governmental Authority, or (D) any release of Hazardous Materials or other condition on Qualifying Real Estate, which in each case which has, or could reasonably be expected to result in, Environmental Liability in excess of \$150,000;

(viii) [reserved];

(ix) with respect to Canadian Pension Plans, promptly (A) after the filing thereof, a copy of: (i) all actuarial valuations and corresponding actuarial information summaries; (ii) all annual information returns; (iii) all summaries of contributions and revised summaries of contributions; (iv) all investment information summaries; and (v) statement of investment policies and procedures information summaries required to be filed with FSCO by the Borrower pursuant to the *Pension Benefits Act* (Ontario), (B) after the receipt by the Borrower thereof, all audited financial statements prepared in respect of any of the Canadian Pension Plans, (C) at any time after the occurrence of a Canadian Defined Benefit Pension Termination Event, after receipt, a copy of any material correspondence from a Governmental Authority in respect of a Canadian Defined Benefit Pension Plan; and (D) notice of the occurrence of any Canadian Defined Benefit Pension Termination Event;

(x) promptly, notice of any event that Borrower or any other Loan Party reasonably believes has resulted in a Material Adverse Effect;

(xi) the financial and collateral reports described on Schedule 6.01(j), at the times set forth in such Schedule and which shall in any event include the following: (A) store activity (i.e. stores opened, closed, or sold by banner), (B) comparable store sales by banner, (C) amendments to any real property leases, (D) detail of aggregate and per store rent paid or other amounts due and payable to lessors of real property used by any of the Loan Parties, (E) a report summarizing proceeds received from a condemnation or casualty event and (F) amount of any unpaid rents other than amounts being contested or disputed in good faith in accordance with this Agreement (including store address, last payment date, amount owed, and landlord name and contact information);

(xii) simultaneously with the delivery thereof in respect of the DIP Term Loan Agreement, all documents, reports and other deliverables delivered to any “agent” or “lender” under the DIP Term Loan Agreement (including all calculations of the DIP Term Loan Borrowing Base and supporting calculations and documents delivered or required to be delivered in connection therewith and all documents delivered or required to be delivered in connection with requests for advances and/or loans under the DIP Term Loan Agreement);

(xiii) at any time after the Final Availability Date, on the Wednesday of each week at any time following the occurrence of the Reporting and Variance Trigger Date, and otherwise on the Wednesday of every second week: (i) an updated weekly cash flow forecast for the subsequent 13-week period on a rolling basis which shall be in form and substance satisfactory to the Agent, and (ii) a variance calculation (the “Variance Report”) setting forth actual cash receipts, disbursements, net cash flows, Eligible Inventory, Total Eligible Inventory Available and Excess Availability of the Loan Parties for the preceding four calendar week period on a rolling basis (the

“Testing Period”) and on a cumulative basis, and setting forth all the variances, on a line-item and aggregate basis in comparison to the amounts set forth in respect thereof for such Testing Period in the DIP Budget; each such Variance Report to be promptly discussed on a telephone call with the Lenders FA and with respect to each fiscal month (based on a fiscal calendar consistent with past practice) a Variance Report shall be delivered no later than 10 days after the last day of such fiscal month which shall include reasonably detailed explanations for any material variances during such fiscal month (including variances permitted under Section 6.01(y)), which shall be certified by an Authorized Officer of the Borrower;

(xiv) regular updates as requested by the Agent to specified individuals at the Lender FA and counsel to the Agent and the Lenders, who shall not share specifics of such updates or written materials provided to them with the Agent or the Lenders (but who may provide general status updates to the Agent and the Lender and respond to status inquiries on a general basis), setting out the status and results of the SISP and the Business Optimization Plan, including an update on the status of the sale process, store closures, liquidations and consolidation and other items set out therein;

(xv) other than in respect of the initial application materials in connection with the commencement of the CCAA Proceedings which have been delivered prior to the execution of this Agreement and are in form and substance satisfactory to the Agent and the Lenders, as soon as practicable in advance of filing with the CCAA Court, and, in any event, at least three (3) Business Days prior to any such filing or proposed filing by, or on behalf of, the Borrower or any other Loan Party, or if such time period is not possible as soon as practicable before any filing and in all cases at the same time as such materials are provided to the DIP Term Agent and/or the DIP Term Lenders, drafts of all pleadings, motions, applications, proposed orders or financial information and other documents proposed to be filed by, or on behalf of, any Loan Party with the CCAA Court, and provide the Lenders and their counsel with a reasonable opportunity to review and comment on all such documents.

(xvi) promptly after the same are available, copies of all pleadings, applications, judicial information, financial information and other documents filed in the CCAA Proceeding;

(xvii) [reserved]; and

(xviii) such other information respecting the Borrower or any of its Subsidiaries, or the Borrowing Base as the Agent or any Lender through the Agent may from time to time reasonably request.

Reports and financial statements required to be delivered by the Borrower pursuant to clauses (i)(a), (ii)(a) and (v) of this subsection (j) shall be deemed to have been delivered on the date on which the Borrower causes such reports, or reports containing such financial statements, to be posted on the Internet at [www.sedar.com](http://www.sedar.com) or at such other website identified by the Borrower in a notice to the Agent and the Lenders and that is accessible by the Lenders without charge. Whenever any report or other document is required hereunder or under any other Loan Document to be delivered on a day other than a Business Day, such report or other document payment shall be required to be delivered on the next succeeding Business Day.

(k) Collateral Monitoring and Review. Upon the request of the Agent or the Required Lenders, after reasonable notice and during normal business hours, permit the Agent or professionals (including, consultants, accountants, and/or appraisers) retained by the Agent to conduct appraisals, commercial finance examinations and other evaluations, including, without limitation, of (i) the Loan Parties’ practices in the computation of the Borrowing Base and (ii) the assets included in the Borrowing Base and financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, related to the calculation of the Borrowing Base. The Borrower shall pay the reasonable out-of-pocket fees and expenses of the Agent and the Collateral Agent (including, without limitation, the reasonable charges of professionals) in connection with one inventory appraisal and one commercial finance examination each

fiscal year (which the Agent shall be obligated to undertake for the benefit of the Credit Parties), provided, however, notwithstanding the foregoing, (x) if Excess Availability is at any time less than or equal to 65% of the Line Cap but greater than 20% of the Line Cap, the Agent may, in its discretion, undertake a second inventory appraisal and second commercial finance examination in a given fiscal year at such time at the Borrower's expense, (y) if Excess Availability is less than or equal to 20% of the Line Cap, the Agent may in its discretion, undertake up to three inventory appraisals and three commercial finance examinations each fiscal year at the Borrower's expense. Notwithstanding the foregoing, the Agent may cause (i) additional appraisals and commercial finance examinations to be undertaken (A) as it in its Permitted Discretion deems necessary or appropriate, at its own expense or, (B) if any Event of Default has occurred and is continuing or if required by applicable law, at the expense of the Borrower. In connection with any inventory appraisal and commercial finance examination relating to the computation of the Borrowing Base, the Borrower shall make such adjustments to the calculation of the Borrowing Base as the Agent shall, after the expiration of the Reserve Notice Period, reasonably require in its Permitted Discretion based upon the terms of this Agreement and the results of such inventory appraisal and commercial finance examination. Any inventory appraisal or commercial finance examination requested by the Agent shall be scheduled at such time as the Agent, in consultation with the Borrower, may agree in order to minimize any disruption to the conduct of the Borrower's business. Without limiting the foregoing, the Agent and the Lenders shall be entitled to receive any appraisals, examinations or other evaluations set out in this paragraph (k) to the extent obtained by the DIP Term Agent and the DIP Term Lenders and shall be entitled to rely on such information in making decisions under this Agreement including with respect to establishing the Borrowing Base and any Availability Reserves.

(l) Reserved.

(m) Cash Management.

(i) On or prior to the Effective Date or such later date as the Agent may agree:

(A) deliver to the Agent copies of notifications (each, a "Credit Card Notification") substantially in the form attached hereto as Exhibit E which have been executed on behalf of such Loan Party and addressed to such Loan Party's credit card clearinghouses and processors listed in the Perfection Certificate (collectively, the "Credit Card Processors"); and

(B) enter into a Blocked Account Agreement reasonably satisfactory in form and substance to the Agent with each Blocked Account Bank covering the deposit accounts set forth on Schedule 6.01(m)(i)(B) and any additional deposit account now or hereafter maintained by any Loan Party (collectively, the "Blocked Accounts").

(ii) The Loan Parties shall ACH or wire transfer daily (or with respect to DDAs that have historically not been swept daily (and other DDAs with the consent of the Agent, not to be unreasonably withheld), periodically, consistent with past practices) (and whether or not there are then any outstanding Obligations and whether or not a Cash Dominion Event then exists) to a Blocked Account all amounts on deposit in each DDA of such Loan Party, other than DDAs that are Excluded Accounts; provided that such covenant shall not apply to (i) any minimum balance as may be required to be kept in the subject DDA by the depository institution at which such DDA is maintained or (ii) if greater, any amounts maintained by the Loan Parties in such DDAs (and other DDAs with the consent of the Agent, not to be unreasonably withheld) in the ordinary course of business consistent with past practices). The Loan Parties shall ACH or wire transfer daily to a Blocked Account all payments due from credit card processors and other proceeds of any of the Collateral. All funds in each DDA and Blocked Account (other than Excluded Accounts) shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA or Blocked Account.

(iii) Each Credit Card Notification shall be held by the Agent until the occurrence of a Cash Dominion Event. After the occurrence and during the continuance of a Cash Dominion Event, the Agent may deliver such Credit Card Notifications to the applicable Credit Card Processors. Each Credit Card Notification shall instruct the applicable Credit Card Processor to follow the instructions of the Collateral Agent with respect to all amounts as may become due from time to time from such Credit Card Processor to the applicable Loan Party.

(iv) Each Blocked Account Agreement shall permit the Agent, after the occurrence and during the continuance of a Cash Dominion Event, to require or cause the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the Agent's Account, of all cash receipts and collections held in each applicable Blocked Account (net of any minimum balance, not to exceed CAN\$10,000 (or such greater amount with the consent of the Agent, not to be unreasonably withheld), as may be required to be kept in the subject Blocked Account by the Blocked Account Bank), including, without limitation, the following:

- (A) all available cash receipts from the sale of Inventory and other Collateral;
- (B) all proceeds of collections of Credit Card Accounts Receivable;
- (C) all proceeds from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of any Collateral; and
- (D) all Net Proceeds from any equity issuance by any Loan Party or its Subsidiaries.

The Borrower shall be deemed to have complied with the provisions of this clause (iv) if they cause the ACH or wire transfer daily of all funds which an Authorized Officer of the Borrower in good faith believes to be the amount deposited in the Blocked Accounts in excess of CAN\$10,000 (or such greater amount as permitted above in this clause (iv)).

(v) The Agent's Account shall at all times be under the sole dominion and control of the Agent. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Agent's Account, (ii) the funds on deposit in the Agent's Account shall at all times be collateral security for all of the Obligations, and (iii) the funds on deposit in the Agent's Account shall be applied as provided in this Agreement. In the event that, notwithstanding the provisions of this Section 6.01(m), during the continuance of a Cash Dominion Event, any Loan Party receives or otherwise has dominion and control of any such proceeds or collections, such proceeds and collections shall be held in trust by such Loan Party for the Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into the Agent's Account or dealt with in such other fashion as such Loan Party may be instructed by the Agent. During the continuance of a Cash Dominion Event, the amounts deposited into the Agent's Account shall be applied to the prepayment of the Obligations then outstanding; *provided that* upon payment in full of such outstanding Obligations, any remaining amounts will be released and transferred to a deposit account of the Loan Parties as the Borrower shall direct and the existence of a Cash Dominion Event (other than as the result of the occurrence of an Event of Default) shall not, in and of itself, impair the right of the Borrower to Revolving Advances in accordance with the terms hereof.

(vi) Upon the request of the Agent, the Loan Parties shall cause bank statements and/or other reports to be delivered to the Agent not less often than monthly, accurately setting

forth all amounts deposited in each Blocked Account to ensure the proper transfer of funds as set forth above.

(n) Reserved.

(o) Physical Inventories. Cause physical inventories and periodic cycle counts to be undertaken, at the expense of the Loan Parties, in each case consistent with past practices (but in no event less frequently than one physical inventory per fiscal year), conducted by such inventory takers and following such methodology as is consistent with the immediately preceding inventory or as otherwise may be satisfactory to the Agent in its Permitted Discretion. The Agent, at the expense of the Loan Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. The Loan Parties, within five (5) days following the completion of any such inventory, shall provide the Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory or cycle counts undertaken by a Loan Party) and shall post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.

(p) Letters of Credit. In the event that the Loan Parties request that any Letter of Credit have an expiry after the Termination Date and the L/C Issuing Bank in its discretion, issues such Letter of Credit, deposit in a cash collateral account of the Agent, an amount equal to 105% of the L/C Obligations with respect to any such Letter of Credit, in the same currency as the applicable Letter of Credit is issued, on or before the date that is (10) Business Days prior to the Termination Date.

(q) Treatment of Obligations. Each of the Loan Parties agrees that it shall not file, consent to or support any Plan to compromise the Obligations and that the Obligations shall remain unaffected in any Plan consented to or supported by any Loan Party.

(r) Canadian Pension Plans. Subject to the Initial Order and any other CCAA Court Order, administer the Canadian Pension Plans in accordance with the requirements of the applicable pension plan texts, funding agreements, any other documents governing the Canadian Pension Plans, the ITA and applicable federal or provincial pension benefits legislation except for any non-compliance which would not reasonably be expected to have a Material Adverse Effect. Without the prior written consent of the Agent, the Borrower shall not, and shall not permit any of its Subsidiaries to, terminate, or cause to be terminated, any of the Canadian Pension Plans, if such Canadian Pension Plan would have a wind up deficiency on termination in an amount which would reasonably be expected to have a Material Adverse Effect. The Borrower shall, and shall cause its Subsidiaries to, promptly provide the Agent with any documentation relating to any of the Canadian Pension Plans as the Agent may request. The Borrower shall, and shall cause its Subsidiaries to, notify the Agent within thirty (30) days of a material increase in the obligations, liabilities and indebtedness of any of the Canadian Pension Plans.

(s) Compliance with Terms of Leaseholds. Except (i) as otherwise expressly permitted hereunder or contemplated by the SISP and the Business Optimization Plan or (ii) to the extent stayed under the Stay of Proceedings or otherwise in accordance with the Initial Order or any other CCAA Court Order, make all payments and otherwise perform all obligations in respect of all leases of real property to which the Borrower or any of its Subsidiaries is a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify the Agent of any default by any party with respect to such leases and cooperate with the Agent in all respects to cure any such default.

(t) Material Contracts. Perform and observe all the terms and provisions of each Material Contract to be performed or observed by them, maintain each such Material Contract in full force and effect in accordance with its terms (subject to amendments, modifications or waivers permitted by Section 6.02(l)), enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time reasonably requested by the Agent and, upon the reasonable request of the Agent, make to each other party to each such Material Contract such demands for information and reports or for action as the Borrower or any of its Subsidiaries is entitled to make under such Material Contract, in

each case except as may be permitted by the Initial Order or any other CCAA Court Order, or as contemplated by the Business Optimization Plan.

(u) Environmental Reports. In addition to the Agent's rights under Sections 6.01(e) and (k), permit the Agent or the Collateral Agent or their respective agents or representatives to have access to any Qualifying Real Estate to conduct environmental assessments (to the satisfaction of the Agent or Collateral Agent, as applicable), at the Borrower's expense following the receipt of a notice under Section 6.01(j)(vii) or following the occurrence of an Event of Default which is continuing.

(v) Lender FA. Each Loan Party acknowledges that the Agent and the Lender, and the DIP Term Loan Agent and the DIP Term Lenders, have engaged the Lender FA as financial advisor for the sole benefit of the Agent and the Lenders and the DIP Term Loan Agent and the DIP Term Lenders. Each Loan Party and agrees that (i) such Loan Party shall provide its complete cooperation during business hours with the Lender FA; and (ii) all reasonable fees, costs and expenses of any such Lender FA shall be paid by the Loan Parties and shall form part of the Obligations; and (iii) all reports, determinations and other written and verbal information provided by the Lender FA shall be confidential and no Loan Party shall be entitled to have access to same, provided, that the Loan Parties shall be provided with a reasonable opportunity to review and respond to any written reports prepared by the Lender FA to the extent that disclosure of any such written reports to the Loan Parties will not be prejudicial to the Agent, the Lender, the DIP Term Loan Agent and the DIP Term Lenders, as reasonably determined by each such party.

(w) Acceptable Liquidator. Engage an Acceptable Liquidator on or before June 30, 2017 on terms acceptable to the Agent acting reasonably, after consultation with the Lenders, and shall cause the Acceptable Liquidator to provide weekly reports in form and substance reasonably satisfactory to the Agent regarding the results and status of the Initial Store Closing Sale, including a schedule of applicable discounts then in effect and to be established in the future;

(x) Access to Advisors. Allow the Agent, the Collateral Agent, each of the Lenders and their consultants, counsel and advisors (including the Lenders FA) access to, upon reasonable notice during normal business hours, all professional advisors engaged by the Loan Parties (which engagement with respect to any professional advisors engaged after the Effective Date, shall be on terms and conditions reasonably satisfactory to the Agent and the Required Lenders).

(y) Compliance with DIP Budget. Adhere to the DIP Budget subject to the following variances which shall be tested on the Wednesday of each week following the Reporting and Variance Trigger Date:

(i) the cumulative negative variance (if any) in the amount of the Loan Parties' Operating Net Cash Flow since the Effective date shall not exceed the Permitted Net Cash Variance Amount for the relevant Testing Period; and

(ii) the actual amount of the Loan Parties' Total Eligible Inventory Available in respect of any Testing Period shall be equal to at least 90% of the amount of Total Eligible Inventory Available reflected in the DIP Budget for such Testing Period (the "Minimum Inventory Amount"), provided that, if for any Testing Period the actual amount of Total Eligible Inventory Available is less than the Minimum Inventory Amount (the amount of such shortfall being, the "Inventory Shortfall Amount") and such Inventory Shortfall Amount is a result of any store closure not set out in the DIP Budget and set out on Schedule 1.01C as of the Effective Date, the Permitted Net Cash Variance Amount in effect at such time shall be decreased by the amount of the Inventory Shortfall Amount and if, after giving effect to such decrease in the Permitted Net Cash Variance Amount the Loan Parties remain in compliance with the covenant in paragraph (i) above, it shall not constitute an Event of Default pursuant to this paragraph (ii).

Notwithstanding the foregoing, the Loan Parties shall not be required to comply with the covenant in this Section 6.01(y) at any time prior to the Final Availability Date so long as the Total Extensions of Credit do not exceed the Line Cap by an amount greater than the Acceptable Excess Amount.

(z) Compliance with Initial Order, SISP and Business Optimization Plan. Strictly comply with the terms of the Initial Order and any other CCAA Court Orders, the SISP and the Business Optimization Plan, and operate the business of the Loan Parties in a manner consistent therewith, except as consented to by the Agent.

(aa) Milestones. The Loan Parties shall achieve each of the following milestones (the “Milestones”) on the timeline set out below or such later dates as may be agreed by the Agent and the Lenders in their sole and absolute discretion, provided however, that the Agent and the Lenders agree, no later than September 5, 2017 to review the Milestones set out in (vi)-(x) below in good faith based on, among other things, the Loan Parties’ progress under the SISP at that time, proceeds collected and applied to the Obligations to that date, the Loan Parties’ liquidity and financial performance:

(i) The Borrower shall have commenced the CCAA Proceeding and obtained the Initial Order on or prior to June 23, 2017;

(ii) The Comeback Motion in respect of the Initial Order, which shall be in form and substance satisfactory to the Agent, and which shall include seeking authority to implement the SISP and approve the Term DIP Charge and the Lender DIP Charge on a final basis, shall be heard on or before July 13, 2017,;

(iii) The Final Availability Date shall have occurred on or before July 13, 2017.

(iv) On or before July 21, 2017, the CCAA Court shall enter an order approving the SISP Motion (the “SISP Order”), which shall be in form and substance acceptable to the Agent;

(v) Within 3 Business Days of the issuance of the SISP Order, the Borrower shall forward process letters to any potential bidders;

(vi) On or before September 25, 2017, the Borrower, with the consent of the Agent and the Lenders, shall have selected the successful binding bid(s) (the “Successful Bid(s)”) and negotiated definitive documentation in respect of the Successful Bid(s) in form and substance acceptable to the Agent and the Lenders;

(vii) On or before September 27, 2017, the Borrower, with the consent of the Agent and the Lenders, shall have identified locations, if any, where the inventory at such locations is not included in any Successful Bid (s) and shall have sought the required authority to and shall have commenced store closure sales for all such locations and inventory located thereon;

(viii) On or before September 29, 2017, the Borrower shall have served a motion seeking approval of the Successful Bid(s) by the CCAA Court

(ix) On or before October 4, 2017, the CCAA Court shall have approved the Successful Bid(s); and

(x) On or before October 25, 2017, the Borrower shall have consummated the Successful Bid, which shall be in form and substance Acceptable to the agent and the Lenders.

(bb) Conference Calls. The Borrower shall, and shall use commercially reasonable efforts if requested by the Lenders to cause:

(i) its advisors to participate on weekly (or more frequently as the Agent or the Lenders may reasonably request) conference calls with the Agent and the Lenders and their respective advisors, to discuss the DIP Budget, the Borrower's current and projected operational performance, and any related financial matters (and for certainty, the Borrower's counsel shall be permitted to participate on such calls in the Borrower's discretion); and

(ii) subject to the applicable restrictions that may exist in the Initial Order, any professional advisor or agent of the Borrower working for it or any Loan Party with respect to the SISP or any Bankruptcy Sale to participate on weekly (or more frequently as the Agent or the Lenders may request) conference calls with the Agent and the Lenders and their respective advisors to discuss any matters related to such matters (and for certainty, the Borrower's counsel shall be permitted to participate on such calls in the Borrower's discretion).

**SECTION 6.02. Negative Covenants.** So long as any Advance or other Obligation (other than contingent indemnification obligations for which no claim shall have then been asserted) shall remain unpaid, any Letter of Credit shall remain outstanding (unless the same has been cash collateralized in an amount equal to 105% of the aggregate then undrawn and unexpired amount of such Letters of Credit and all other Reimbursement Obligations or back-to-back letters of credit from an issuer and on terms acceptable to the L/C Issuing Bank have been provided in respect of such Letters of Credit) or any Lender shall have any Commitment hereunder, each of the Borrower will not, and will not permit any of its Subsidiaries to:

(a) Liens, Etc.

(i) Create or suffer to exist any Lien upon property of the Borrower or any Subsidiary constituting Inventory, Credit Card Accounts Receivable or any other Collateral (as defined in the Guarantee and Collateral Agreement or the hypothec as in effect on the Sixth Amendment Effective Date) or any Related Intellectual Property, other than Permitted Liens.

(ii) Create or suffer to exist any Lien upon property of any Loan Party constituting Inventory, Credit Card Accounts Receivable or any other Collateral in priority to the Lender DIP Charge except the Permitted Priority Liens.

(b) Fundamental Changes. Amalgamate with, merge into or consolidate with any other Person, or permit any other Person to amalgamate with, merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except to the extent permitted by the Initial Order or any other CCAA Court Order, or otherwise consented to by the Agent and the Required Lenders.

(c) Acquisitions. Make any Acquisition.

(d) Restricted Payments. Declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except Restricted Payments by any Subsidiary of the Borrower to the Borrower or another wholly owned Subsidiary of the Borrower that is a Loan Party.

(e) 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 Subsidiary of the Borrower to create, incur, assume or suffer to exist any Lien in favor of the Agent required under this Agreement or any other Loan Document upon any of their property or revenues, whether now owned or hereafter acquired, other than any agreement relating to any Lien not prohibited by Section 6.02(a) (provided that any prohibition or limitation shall apply only to the assets subject to such Lien).

(f) Clauses Restricting Subsidiary Distributions. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary of the Borrower other than a Loan Party to (a) make Restricted Payments in respect of any equity interests of such Subsidiary held by, or pay any indebtedness owed to, the Borrower or any other Subsidiary of the Borrower, (b) make loans or advances to, or other investments in, the Borrower or any other Subsidiary of the Borrower or (c) transfer any of its assets to the Borrower or any other Subsidiary of the Borrower, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under this Agreement and the other Loan Documents; (ii) any restrictions contained in the Initial Order or any other CCAA Court Order; (iii) the provisions contained in any existing indebtedness prior to the Effective Date; (iv) customary provisions

restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or a Subsidiary of the Borrower entered into in the ordinary course of business prior to the Effective Date, (v) customary restrictions and conditions contained in the documents relating to any Lien, so long as such Lien is not prohibited hereunder and such restrictions or conditions relate only to the specific asset subject to such Lien; (vi) customary provisions restricting assignment of any contract entered into by the Borrower or any Subsidiary of the Borrower in the ordinary course of business, (vii) customary provisions restricting the assignment of licensing agreements, management agreements or franchise agreements entered into by the Borrower or any of its Subsidiaries in the ordinary course of business prior to the Effective Date; (ix) restrictions on the transfer of assets securing purchase money obligations and capitalized lease obligations; and (x) customary net worth provisions contained in real property leases entered into by Subsidiaries of the Borrower prior to the Effective Date, so long as the Borrower has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligations.

(g) Accounting Changes. Make or permit any change in accounting policies or reporting practices, except as required or permitted by GAAP.

(h) Dispositions. Make any Disposition except Permitted Dispositions.

(i) Debt; Prepayment of Debt.

(i) Create, incur, assume, suffer to exist or otherwise become or remain liable with respect to, any Debt, except Permitted Debt.

(ii) Prepay any Debt except as set out in Section 2.11(c) and Section 2.11(d).

(j) Investments. Make any Investments, except Permitted Investments.

(k) Reserved.

(l) Amendment of Material Documents. Amend, modify or waive any of the Borrower's rights under (a) its organization documents in a manner materially adverse to the Credit Parties, or (b) any Material Contract, in each case except in accordance with a CCAA Court Order.

(m) No new pension plans. Commence or agree to commence payment of contributions to a Canadian Pension Plan which provides for defined benefits to which the Loan Parties had not previously been contributing.

(n) Additional Subsidiaries. Create or acquire any Subsidiary after the date of this Agreement.

(o) Change in Name or Location. Change the name, trade name or locations of business of any Loan Party without giving the Agent at least fifteen (15) days prior notice thereof.

(p) Payments under Employment Benefit Plans. Make any payment or distribution in respect of post-employment benefit payments (excluding any such payments to be made in accordance with the DIP Budget and approved by the CCAA Court).

(q) Expenditures. Make any expenditures inconsistent with the DIP Budget, subject to Permitted Variances.

(r) Advisors. Retain any advisors to assist the Loan Parties in connection with the SISP and the Business Optimization Plan unless reasonably acceptable to the Agent, provided that the Agent acknowledges and confirms that the Financial Advisor and the Monitor are acceptable to it.

(s) CCAA Proceeding. Seek, consent to, or permit to exist any of the following:

(i) any modification (other than extension of the Stay of Proceedings made under the Initial Order in the ordinary course with the prior written consent of the Agent), stay, vacation or amendment to the Initial Order or the SISP Order to which the Agent has not consented in writing;

(ii) a priority claim or administrative expense or unsecured claim against any Loan Party (now existing or hereafter arising of any kind or nature whatsoever, *pari passu* with or in priority to the DIP Charge other than (i) statutory Liens and charges not capable of being subordinated by the entry of the Initial Order, and (ii) the Administration Charge, the FA Charge, the D&O Charge (solely with respect to the portion thereof intended to rank ahead of the Lender DIP Charge as provided in the definition thereof) and the KERP Charge (solely with respect to the portion thereof intended to rank ahead of the DIP Charges as provided in the definition thereof);

(iii) any order which authorizes the return of any of the Loan Parties property pursuant to any provisions of the CCAA or applicable Law;

(iv) any order which authorizes the payment of any Debt (other than in accordance with this Agreement and the Intercreditor Agreement, as authorized by the Initial Order) incurred prior to the Petition Date; or

(v) any order seeking authority to take any action that is prohibited by the terms of this Agreement or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Loan Documents.

**SECTION 6.03. Financial Covenant.** The Borrower will not permit Excess Availability at any time to be less than the greater of (i) \$40,000,000 and (ii) ten percent (10%) of the Combined Borrowing Base, provided that the Borrower shall not be required to comply with the foregoing financial covenant at any time prior to the Final Availability Date so long as the Total Extensions of Credit do not exceed the Line Cap by an amount greater than the Acceptable Excess Amount.

## ARTICLE VII

### EVENTS OF DEFAULT

**SECTION 7.01. Events of Default.** If any of the following events ("Events of Default") shall occur and be continuing:

(a) The Borrower shall fail to pay (i) any principal of any Advance or Reimbursement Obligation when the same becomes due and payable, or (ii) any interest on any Advance or Reimbursement Obligation or any fees, or any other amounts payable under this Agreement or any other Loan Document, in each case under this clause (ii), within three (3) days after the same becomes due and payable; or

(b) Any representation or warranty made by any Loan Party herein or in any other Loan Document shall prove to have been incorrect in any material respect when made; or

(c) (i) Any Loan Party shall fail to perform or observe any term, covenant or agreement contained in Section 6.01 (d), (e), (h), (j), (k), (m), (v), (w), (x), (aa) or (bb), 6.02 or 6.03 of this Agreement or (ii) any Loan Party shall fail to perform or observe any other term, covenant or agreement contained in this Agreement or any other Loan Document, if such failure shall remain unremedied for three (3) Business Days after the earlier to occur of (x) written notice thereof shall have been given to the Borrower by the Agent or any Lender and (y) the Borrower or such other Loan Party having knowledge of or receiving notice of such failure; or

(d) Except to the extent resulting from the CCAA Proceedings or subject to the Stay of Proceedings, any Group Member shall fail to pay principal of at least CAN\$5,000,000 on any Debt that is outstanding (but excluding Debt outstanding hereunder) when the same becomes due and payable (whether

by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or any other event shall occur or condition shall exist under any agreement or instrument relating to any Debt that is outstanding in a principal amount of at least CAN\$5,000,000 and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate the maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid or redeemed, purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made and is accepted in an amount of at least CAN\$5,000,000 (in each case other than (i) a scheduled prepayment, redemption or purchase, or (ii) a mandatory prepayment, redemption or purchase, or a required offer to prepay, redeem or purchase, that results from the voluntary sale or transfer of property or assets), in each case prior to the stated maturity thereof; or

(e) Except to the extent subject to the Stay of Proceedings, any Group Member shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against any Group Member seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, receiver-manager, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 60 days, or any of the actions sought in such proceeding (including the entry of an order for relief against, or the appointment of a receiver, trustee, receiver-manager, custodian or other similar official for, it or for any substantial part of its property) shall occur; or any Group Member shall take any corporate action to authorize any of the actions set forth above in this subsection (e); or

(f) Except to the extent subject to the Stay of Proceedings, a judgment or order for the payment of money in excess of CAN\$5,000,000 (net of any portion of such judgment to be paid by a third-party insurer as to which coverage has not been disputed) shall be rendered against any Group Member and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 10 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(g) (i) Any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its Subsidiaries, and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than a Permitted Holder becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the equity securities of Borrower entitled to vote for members of the Board of Directors of Borrower on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right) and such "person" or "group" shall beneficially own (as such term is used herein) a greater percentage of the equity Securities of Borrower entitled to vote for members of the Board of Directors than the Permitted Holders shall, collectively, beneficially own; provided that for purposes of this provision, no person or group shall be deemed to have beneficial ownership of the securities of Borrower owned directly or indirectly by Parent or any of its Subsidiaries unless such person or group shall control (as defined in the definition of "Affiliate") Parent; or (ii) during any period of 12 consecutive months, a majority of the members of the Board of Directors or other equivalent governing body of Borrower cease to be composed of individuals (x) who were members of that board or equivalent governing body on the first day of such period, (y) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (x) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (z) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (x) and (y) above constituting at the

time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (y) and clause (z), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the Board of Directors); or (iii) except as a result of a Permitted Disposition, the Borrower shall cease for any reason to own, directly or indirectly, 100% of the Voting Stock of each other Loan Party; or

(h) The indictment or institution of any legal process or proceeding against, the Borrower or any Subsidiary thereof, under any federal, provincial, state, municipal, and other criminal statute, rule, regulation, order, or other requirement having the force of law for an indictable offense; or

(i) Any of the Loan Documents shall cease, for any reason, to be in full force and effect, or any Loan Party shall so state in writing, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby, including as a result of the failure to comply with Section 5.4 of the Guarantee and Collateral Agreement; or

(j) The guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason, to be in full force and effect or any Loan Party shall so state in writing; or

(k) Any event or condition shall occur with respect to a Canadian Pension Plan which results in a Loan Party having a payment obligation under (i) such Canadian Pension Plan, or (ii) the Pension Benefits Act (Ontario) or any other similar law, in either case in an amount that is in excess of the payment obligations arising under such Canadian Pension Plan in the ordinary course by more than CAN\$ 5,000,000, which payment obligation is not met within the period required by the terms of such Canadian Pension Plan and applicable law (unless such payment is required not to be paid pursuant to the Initial Order or any other CCAA Court Order) or the occurrence of a Canadian Defined Benefit Pension Termination Event; or

(l) Any of the following shall occur:

(i) any “Event of Default” (as such term is defined in the DIP Term Loan Agreement) which is continuing under or pursuant to the DIP Term Loan Agreement;

(ii) any breach of the Intercreditor Agreement shall occur;

(iii) the Term DIP Loan (as defined in the DIP Term Loan Agreement) shall not have been advanced on or prior to the Term DIP Loan Commitment Termination Date (as defined in the DIP Term Loan Agreement); or

(iv) the Termination Date (as defined in the DIP Term Loan Agreement) shall occur; or

(m) Except to the extent subject to the Stay of Proceedings any Loan Party or any Subsidiary thereof fails to observe or perform any agreement or obligation relating to any Material Contract or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is the termination of, or to permit the counterparty to such Material Contract to terminate, such Material Contract; or

(n) If any Loan Party commences an action or takes any other proceeding to obtain any form of relief against the Agent or the Lenders (including with respect to the Prepetition Obligations), including a proceeding to recover damages or to obtain payment of any amounts purported to be owing by the Agent or the Lenders or any Affiliate thereof to any Loan Party or any Affiliate thereof if the Agent, any Lender or any such Affiliate disputes any of the same;

(o) There shall exist any variance in the Operating Net Cash Flow or the Total Eligible Inventory Available in excess of the variances permitted under Section 6.01(y) for any period required to be tested thereunder; or

(p) The Loan Parties shall fail to engage an Acceptable Liquidator on or before the date set out in Section 6.01(w); or

(q) The Loan Parties shall fail to meet any Milestone;

(r) Any of the following shall occur in the CCAA Proceeding:

(i) if any Plan is sanctioned or any Restructuring Option is consummated by the Loan Parties, or any CCAA Court Order is entered that contravenes or is not consistent this Agreement or any other Loan Document so as to adversely impact the rights or interests of the Agent or the Lenders, as determined by the Agent or the Required Lenders; or

(ii) the filing of any application by any Loan Party without the express prior written consent of the Agent for the approval of any super-priority claim in the CCAA Proceedings which is pari passu with or senior to the priority of the DIP Charge, or there shall arise any such super-priority claim under the CCAA (in each case, other than the Permitted Priority Liens); or

(iii) if any Loan Party shall pass an effective resolution or initiate steps or proceedings (including applications to the CCAA Court) without the prior written consent of the Agent on behalf of the Required Lenders for the purpose of authorizing the disposition of all or substantially all of its property, assets and undertakings, except for Permitted Disposition; or

(iv) the payment or other discharge by any Loan Party of any Prepetition Obligations, except as expressly permitted hereunder, or by order in the CCAA Proceedings to which order the Agent has provided its written prior consent; or

(v) the failure of any Loan Party (i) to comply in all material respects with each and all of the terms and conditions of the Initial Order and the SISP Order and the Business Optimization Plan, or (ii) to comply in all material respects with any other CCAA Court Order; or

(vi) the filing of any motion by any Loan Party or the entry of any CCAA Court Order or an order of any other court of competent jurisdiction: (A) permitting working capital or other financing (other than ordinary course trade credit or unsecured debt) for any Loan Party from any Person other than the Agent (unless the proceeds of such financing are used to pay in full all Obligations (including Prepetition Obligations), cash collateralization of all Letters of Credit (including Prepetition L/Cs in accordance with Section 3.11), and the establishment of a reserve account for all other Obligations and indemnification obligations hereunder), (B) granting a Lien on, or security interest in any of the Collateral, other than with respect to this Agreement or as otherwise permitted herein (unless such liens are granted in connection with a financing, the proceeds of which are applied to the payment in full of all Obligations (including Prepetition Obligations), cash collateralization of all Letters of Credit (including Prepetition L/Cs in accordance with Section 3.11) and the cash collateralization of all Letters of Credit (including Prepetition L/Cs in accordance with Section 3.11), and the establishment of a reserve account for all other Obligations and indemnification obligations hereunder), or (C) dismissing the CCAA Proceeding or lifting the Stay of Proceedings to permit (1) the enforcement of any Lien against a material portion of a Loan Party's property, assets or undertaking, or (2) the appointment of a receiver, receiver and manager or interim receiver, or similar official or the making of a bankruptcy order against or an order winding-up a Loan Party, (D) granting any Lien which is senior to or *pari passu* with the Lender DIP Charge, other than the Permitted Priority Liens or, for applicable Collateral, the Term DIP Charge, (E) staying, reversing, vacating or otherwise modifying the Loan Documents or any CCAA Court Order in a manner materially adverse to the interests of the Lenders, as determined by the Agent in its Permitted Discretion, (F) materially adversely impacting the rights and interests of the Agent or the Lenders, as determined by the Agent in its Permitted

Discretion, without the prior written consent of the Agent and the Required Lenders, as applicable; or (G) directing any Loan Party to pay any post-employment benefits; or

(vii) the filing of a motion by any Loan Party seeking approval of a Plan or the entry of an order confirming a Plan, that does not require repayment in full in cash of all Obligations (including Prepetition Obligations) on the date of a final approval order under the CCAA; or

(viii) if any proceeding, motion or application is commenced or filed by any of the Loan Parties, or if commenced by any other Person, is supported, consented to, or remains uncontested by a Loan Party for a period of five (5) Business Days, challenging the validity, priority, perfection, or enforceability of the Loan Documents, the Prepetition Obligations, or any Lien granted pursuant to the Loan Documents, or (b) any Lien granted pursuant to the Loan Documents is determined to be null and void, invalid or unenforceable by the CCAA Court or another court of competent jurisdiction in any action commenced or asserted by any other party in interest in the CCAA Proceedings; or

(ix) termination of the CCAA Proceedings or the stay thereunder or conversion to proceedings under the *Bankruptcy and Insolvency Act* (Canada),

then, and in any such event, the Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions upon notice to the Borrower: (i) declare the Commitment of each Lender to be terminated, whereupon the same shall forthwith terminate; and (ii) declare the Advances, all interest thereon and all other amounts payable under this Agreement and the other Loan Documents (including all amounts of the L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) to be forthwith due and payable, whereupon the Advances, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; provided, however, that if an Event of Default under Section 7.01(e) or Section 7.01(r)(ix) occurs, (A) the Commitment of each Lender shall automatically be terminated and (B) the Advances, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower; provided, further, however, that with respect to the enforcement of Liens or other rights or remedies against the Loan Parties or with respect to the Collateral, Agent shall provide the Loan Parties and Monitor with seven (7) days' written notice prior to taking the action contemplated thereby and any such enforcement or other exercise of rights or remedies shall be subject to the CCAA Court's approval. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph or for which the outstanding amount of any drawing under any Letters of Credit (including any taxes, fees, charges and other costs and expenses incurred by the L/C Issuing Bank in connection therewith) have not then been fully reimbursed or discharged, the Borrower shall at such time deposit in a cash collateral account opened by the Agent, an amount equal to 105% of the aggregate then undrawn and unexpired amount of such Letters of Credit and all other Reimbursement Obligations. Amounts held in such cash collateral account shall be applied by the Agent to the payment of drafts drawn under such Letters of Credit and the other Reimbursement Obligations, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon and all Reimbursement Obligations fully reimbursed or discharged, if any, shall be applied to repay other obligations of the Borrower hereunder and under the other Loan Documents. After all such Letters of Credit shall have expired or been fully drawn upon, all Reimbursement Obligations shall have been satisfied and all other obligations of the Borrower hereunder and under the other Loan Documents shall have been paid in full, the balance, if any, in such cash collateral account shall be returned to the Borrower (or such other Person as may be lawfully entitled thereto).

## ARTICLE VIII

### THE AGENT

**SECTION 8.01. Appointment.** Each Lender hereby irrevocably designates and appoints Wells Fargo Capital Finance Corporation Canada as Agent under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Agent, in such capacity, 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 Agent by the terms of this Agreement and the other Loan Documents, together with such

other powers as are reasonably incidental thereto. For clarity, and notwithstanding anything to the contrary contained in this Agreement and the other Loan Documents, no consent of the Lenders shall be required to amend this Agreement or the Loan Documents to (i) cause additional assets to become Collateral or to add additional Subsidiaries as guarantors of the Obligations, (ii) implement the provisions of Section 8.12, or (iii) implement a Commitment Increase in accordance with the terms of Section 2.18, and the Agent and the Loan Parties shall be entitled to execute any and all amendments necessary or desirable to accomplish any of the foregoing and such amendments shall be binding on the other parties hereto Notwithstanding any provision to the contrary elsewhere in this Agreement, the Agent shall have no duties or responsibilities, except those expressly set forth in this Agreement and the other Loan Documents to which it is a party, 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 Agent.

**SECTION 8.02. Delegation of Duties.** The Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care. The Agent reserves the right to execute any of its duties under this Agreement or any other Loan Document by or through agents, including a separate Canadian agent, to hold, realize or enforce any Loan Document.

**SECTION 8.03. Exculpatory Provisions.** No Agent (for purposes of this Section 8.03, “Agent” and “Agents” shall mean the collective reference to the Agent, the Collateral Agent and any other Lender designated as an “Agent” for purposes of this Agreement, including the Arrangers, the Co-Syndication Agents and the Documentation Agent) nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (i) liable 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 (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person’s own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Lenders 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 that is a party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party.

**SECTION 8.04. Reliance by Agent.** The Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order 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 Borrower), independent accountants and other experts selected by the Agent. The 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 the Agent. The Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, the Supermajority Lenders or all 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. The 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 Lenders (or, if so specified by this Agreement, the Supermajority Lenders or all 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 Advances.

**SECTION 8.05. Notice of Default.** The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Agent has received notice from a Lender 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 Agent receives such a notice, the Agent shall give notice thereof to the

Lenders. The Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, the Supermajority Lenders or all Lenders); provided that unless and until the Agent shall have received such directions, the 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.

**SECTION 8.06. Non-Reliance on Agents and Other Lenders.** Each Lender expressly acknowledges that neither the Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by the 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 the Agent to any Lender. Each Lender represents to the Agent that it has, independently and without reliance upon the 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 Advances hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit 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 Agent hereunder, the Agent shall not 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 the Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

#### **SECTION 8.07. Reports and Financial Statements**

By signing this Agreement, each Lender:

(a) agrees to furnish the Agent after the occurrence and during the continuance of a Cash Dominion Event (and thereafter at such frequency as the Agent may reasonably request) with a summary of all Bank Products and Cash Management Services provided by, and amounts due or to become due on account thereof to, such Lender. In connection with any distributions to be made hereunder, the Agent shall be entitled to assume that no amounts are due to any Lender on account of any such Bank Products or Cash Management Services unless the Agent has received written notice thereof from such Lender;

(b) is deemed to have requested that the Agent furnish such Lender, promptly after they become available, copies of all financial statements and reports required to be delivered by the Loan Parties hereunder and all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the “Reports”) (which the Agent agrees to so deliver);

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

(d) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;

(e) agrees to keep all Reports confidential in accordance with the provisions of this Agreement; and

(f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any

action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any credit extensions that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in any Letter of Credit or Swingline Advance, or the indemnifying Lender's purchase of, a Loan or Loans; and (ii) to pay and protect, and indemnify, defend, and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorney costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

**SECTION 8.08. Indemnification.** The Lenders agree to indemnify the Agent in its capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Commitment 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 of any Lender shall have terminated and the Advances shall have been paid in full, ratably in accordance with such Commitment Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Advances) be imposed on, incurred by or asserted against such Agent in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of the Advances and all other amounts payable hereunder.

**SECTION 8.09. Agent in Its Individual Capacity.** Each Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent. With respect to its Advances made or renewed by it and with respect to any Letter of Credit issued or participated in 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.

**SECTION 8.10. Successor Agent.** The Agent may resign as Agent upon 30 days' notice to the Lenders and the Borrower. If the Agent shall resign as Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless an Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Agent, and the term "Agent" shall mean such successor agent effective upon such appointment and approval, and the former Agent's rights, powers and duties as Agent 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 Advances. If no successor agent has accepted appointment as Agent by the date that is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the hereunder, as until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After any retiring Agent's resignation as Agent, the provisions of this Article VIII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement and the other Loan Documents.

**SECTION 8.11. Documentation Agent and Syndication Agent.** The Documentation Agent and the Syndication Agent nor any other Lender designated as an "Agent" for purposes of this Agreement (other than WFCFC in its capacity as Agent) shall have any duties or responsibilities hereunder in its capacity as such.

#### **SECTION 8.12. Defaulting Lenders.**

(a) If a Lender becomes a Defaulting Lender, then, in addition to the rights and remedies that may be available to the other Credit Parties, the Loan Parties or any other party at law or in equity, and not at limitation thereof, (i) such Defaulting Lender's right to participate in the administration of, or decision-making

rights related to, the Obligations in respect of Required Lender and Supermajority Lender votes, this Agreement or the other Loan Documents shall be suspended during the pendency of such failure or refusal, (ii) a Defaulting Lender shall be deemed to have permanently (unless reinstated as set forth below) assigned, without further consideration any and all payments due to it from the Loan Parties, whether on account of outstanding Advances, interest, fees or otherwise, to the remaining non-Defaulting Lenders for application to, and reduction of, their proportionate shares of all outstanding Obligations until, as a result of application of such assigned payments the Lenders' respective Commitment Percentages of all outstanding Obligations shall have returned to those in effect immediately prior to such delinquency and without giving effect to the nonpayment causing such delinquency, or (iii) at the option of the Agent, any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise) shall, in lieu of being distributed to such Defaulting Lender, be retained by the Agent as cash collateral for, and applied by the Agent to, defaulted and future funding obligations of the Defaulting Lender in respect of any Advance or existing or future participating interest in any Swingline Advance or Letter of Credit. The Defaulting Lender's decision-making and participation rights and rights to payments as set forth in clauses (i) and (ii) hereinabove shall be restored only upon (a) the payment by the Defaulting Lender of its Commitment Percentage of any Obligations, any participation obligation, or expenses as to which it is delinquent, together with interest thereon at a rate equal to the BA Rate for a 30 day Interest Period or the Federal Funds Rate, as applicable, from time to time in effect from the date when originally due until the date upon which any such amounts are actually paid and (b) receipt by the Agent and the Borrower of a certification by such Defaulting Lender of its ability and intent to comply with the provisions of this Agreement going forward.

(b) The non-Defaulting Lenders shall also have the right, but not the obligation, in their respective, sole and absolute discretion, to cause the termination and assignment, without any further action by the Defaulting Lender for no cash consideration (*pro rata*, based on the respective Commitments of those Lenders electing to exercise such right), of the Defaulting Lender's Commitment to fund future Advances. Upon any such purchase of the Commitment of any Defaulting Lender, the Defaulting Lender's share in future Extensions of Credit and its rights under the Loan Documents with respect thereto (but not with respect to then outstanding Obligations owed to the Defaulting Lender) shall terminate on the date of purchase, and the Defaulting Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest, including, if so requested, an Assignment and Acceptance.

(c) In addition to the rights of the non-Defaulting Lenders set forth in Section 8.12(b) above, the Borrower shall have the right, at any time, upon at least five Business Days' notice to a Defaulting Lender or a Deteriorating Lender (with a copy to the Agent), to terminate in whole such Lender's Commitments and to replace such Defaulting Lender in accordance with the provisions of Section 9.16 hereof.

(d) Each Defaulting Lender shall indemnify the Agent and each non-Defaulting Lender from and against any and all loss, damage or expenses, including but not limited to reasonable attorneys' fees and funds advanced by the Agent or by any non-Defaulting Lender, on account of a Defaulting Lender's failure to timely fund its Commitment Percentage of an Advance or to otherwise perform its obligations under the Loan Documents.

#### **SECTION 8.13. Collateral Agent as Fondé de Pouvoir.**

Without limiting the power of the Agent hereunder or under any other Loan Document, each of the Credit Parties hereby acknowledges that for the purposes of holding any hypothec granted or to be granted by the Borrower or any Subsidiary Guarantor under any deed of hypothec ("Deed of Hypothec") pursuant to the laws of the Province of Quebec to secure payment of any obligation under this Agreement or any other Loan Document entered into by the Borrower or any Subsidiary Guarantor, the Collateral Agent is hereby appointed to act as the hypothecary representative (formerly referred to as the person holding the power of attorney or *fondé de pouvoir*) pursuant to Article 2692 of the *Civil Code of Quebec* to act on behalf of each of the Credit Parties, debentureholders or bondholders, and the Borrower, each Subsidiary Guarantor and each Credit Party hereby confirms and agrees to such appointment. Each of the Credit Parties hereby further acknowledges that the Collateral Agent is hereby appointed as agent, mandatary, custodian and depositary for and on behalf of each of them (i) to hold and to be the sole registered holder of any debenture or bond issued under any Deed of Hypothec executed by or on behalf of the Borrower or any Subsidiary Guarantor as aforesaid, the whole notwithstanding Section 32 of the *Act respecting the special powers of legal persons* (Quebec) or any other applicable law, and (ii) to enter into, to take and to hold on their behalf, and for their benefit, any bond pledge agreement ("Pledge") to be executed by the Borrower or any

Subsidiary Guarantor under the laws of the Province of Quebec and creating a pledge on any such debentures or bonds as security for the payment and performance of the Obligations. Each Person who is or becomes a Credit Party and each assignee holder under this Agreement or any other Loan Document, debenture or bond issued by the Borrower or any Subsidiary Guarantor shall be deemed to ratify the aforesaid appointments of the Collateral Agent, by its execution of an Assignment and Assumption. The Collateral Agent agrees to act in such capacities. The Collateral Agent, in such aforesaid capacities shall (x) 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 Collateral Agent with respect to the Collateral under the Deed of Hypothec and Pledge, applicable law or otherwise, and (y) 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 Credit Parties. The execution prior to the date hereof by the Collateral Agent of any Deed of Hypothec, Pledge or other security documents made pursuant to the applicable law of the Province of Quebec is hereby ratified and confirmed. Without prejudice to section 9.09 hereof, the provisions of this paragraph shall be also governed by the laws of the Province of Quebec.

#### SECTION 8.14. References to Collateral Agent

Any reference in this Agreement, any other Loan Document or any filing or document related thereto, to Co-Collateral Agent or Control Co-Collateral Agent shall mean Wells Fargo Capital Finance Corporation Canada in its capacity as Collateral Agent.

### ARTICLE IX

#### MISCELLANEOUS

**SECTION 9.01. Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, nor consent to any departure by the Borrower or any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall (a) unless in writing and signed by each Lender directly affected thereby, do any of the following: (i) increase the amount or extend the expiration date of any Lender's Commitment, (ii) reduce the principal of, or interest on, the Advances or any fees or other amounts payable hereunder or (iii) postpone any date fixed for any payment of principal of, or interest on, the Advances or any fees or other amounts payable hereunder; (b) unless in writing and signed by all of the Lenders, do any of the following: (i) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Advances, or the number of Lenders, that shall be required for the Lenders or any of them to take any action hereunder, (ii) other than in accordance with Section 9.13, release all or substantially all of the Collateral or release all or substantially all of the guarantors from their obligations under the Guarantee and Collateral Agreement, (iii) amend this Section 9.01, (iv) amend Section 7.01(g) or waive any provision of Section 7.01(g) or any change of control resulting therefrom, (v) modify the definition of Permitted Overadvance if the amount of the Overadvance permitted thereunder would be increased or (vi) other than in accordance with Section 6.01(d), release the Borrower from all of its obligations hereunder; (c) unless in writing and signed by the Supermajority Lenders, increase any advance rate percentage set forth in the definition of "Borrowing Base"; provided that the foregoing shall not limit the discretion of the Agent to change, establish or eliminate any reserves, (d) unless in writing and signed by the Agent and the Collateral Agent (in addition to the Lenders required above to take such action), as applicable, amend, modify or waive any provision of Article VIII or affect the rights or duties of the Agent or the Collateral Agent under this Agreement or any other Loan Document; (e) unless in writing and signed by the Swingline Lender (in addition to the Lenders required above to take such action), amend, modify or waive any provision of Section 2.03 or 2.04; or (f) unless in writing and signed by the L/C Issuing Bank (in addition to the Lenders required above to take such action), amend, modify or waive any provision of Article III.

#### SECTION 9.02. Notices, Etc.

(a) All notices and other communications provided for hereunder shall be in writing (including telecopier communication) and mailed, telecopied or delivered, (i) if to the Borrower or any Subsidiary Guarantor, at its address at 290 Yonge St., Suite 700, Toronto, Ontario, M5B 2C3, Attention: General Counsel, with a copy to

Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attention: Joshua A. Feltman; (ii) if to any Lender, at its address set forth in its completed administrative questionnaire delivered to the Agent; (iii) if to WFCFC, in its capacity as Agent, the Swingline Lender or L/C Issuing Bank, at its address at One Boston Place, 18<sup>th</sup> Floor, Boston, Massachusetts 02108, Attention: William Chan, with a copy to Riemer & Braunstein LLP, Three Center Plaza, Boston, Massachusetts 02108, Attention: David S. Berman, Esq.; and, as to each other party, at such other address as shall be designated by such party in a written notice to the Borrower and the Agent; provided that notices required to be delivered pursuant to Section 6.01(j)(i), (ii), (iii), and (v) shall be delivered to the Agent and the Lenders as specified in Section 9.02(b). All such notices and communications shall, when mailed, telecopied, telegraphed or emailed, be effective when deposited in the mails, telecopied, delivered to the telegraph company or confirmed by email, respectively, except that notices and communications to the Agent pursuant to Article II, III or VIII shall not be effective until received by the Agent. Delivery by telecopier or by electronic transmission of a pdf formatted copy of an executed counterpart of any amendment or waiver of any provision of this Agreement or any Loan Document or of any exhibit hereto or thereto to be executed and delivered hereunder shall be effective as delivery of a manually executed counterpart thereof.

(b) The Borrower agrees that materials required to be delivered pursuant to Sections 6.01(j)(i), (ii), (iii) and (v), shall be deemed delivered to the Agent on the date on which the Borrower causes such reports, or reports containing such financial statements, to be posted on the Internet at such website identified by the Borrower in a written notice to the Agent and the Lenders and that is accessible by the Lenders without charge or if not so posted, may be delivered to the Agent in an electronic medium in a format acceptable to the Agent by email. The Borrower agrees that the Agent may make such materials, as well as any other written information, documents, instruments and other material relating to The Borrower, any of its Subsidiaries or any other materials or matters relating to this Agreement, the Loan Documents or any of the transactions contemplated hereby (collectively, the “Communications”) available to the Lenders by posting such notices on Intralinks or a substantially similar electronic system (the “Platform”). The Borrower acknowledges that (i) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (ii) the Platform is provided “as is” and “as available” and (iii) neither the Agent nor any of its Affiliates warrants the accuracy, adequacy or completeness of the Communications or the Platform and each expressly disclaims liability for errors or omissions in the Communications or the Platform. 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 the Agent or any of its Affiliates in connection with the Platform.

(c) Each Lender agrees that notice to it (as provided in the next sentence) (a “Notice”) specifying that any Communications have been posted to the Platform shall constitute effective delivery of such information, documents or other materials to such Lender for purposes of this Agreement; provided that if requested by any Lender the Agent shall deliver a copy of the Communications to such Lender by email or telecopier. Each Lender agrees (i) to notify the Agent in writing of such Lender’s e-mail address to which a Notice may be sent by electronic transmission (including by electronic communication) on or before the date such Lender becomes a party to this Agreement (and from time to time thereafter to ensure that the Agent has on record an effective e-mail address for such Lender) and (ii) that any Notice may be sent to such e-mail address.

**SECTION 9.03. No Waiver; Remedies.** No failure on the part of any Lender or the Agent to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

#### **SECTION 9.04. Costs and Expenses.**

(a) The Borrower agrees to pay promptly all reasonable costs and expenses of the Agent in connection with the preparation, execution, delivery, distribution (including via the internet or through a service such as Intralinks), administration, modification and amendment of this Agreement, the other Loan Documents and the other documents to be delivered hereunder, including, (A) all due diligence, syndication (including printing, distribution and bank meetings), transportation, computer, duplication, appraisal, consultant, and audit expenses, (B) subject to Section 6.01(k), all expenses incurred in connection with inspections, verifications, examinations and

appraisals relating to the Borrowing Base and the Collateral, and (C) the reasonable fees and expenses of counsel for the Agent with respect thereto and with respect to advising the Agent as to its rights and responsibilities under this Agreement and the other Loan Documents, the reasonable fees and expenses of the Lenders FA and any other advisors retained by the Agent and the Lenders or any of their counsel to provide assistance in connection with the transactions contemplated hereby and the CCAA Proceedings, and any fees, or expenses, which the Borrower has agreed to pay pursuant to any Fee Letter or this Agreement. The Borrower further agrees to pay on demand all costs and expenses of the Agent and the Lenders, if any (including reasonable fees and expenses of counsel, the Lenders FA and any other advisors retained by the agent and the Lenders or any of their counsel), in connection with the enforcement of, or protection of their rights under, (whether through negotiations, legal proceedings or otherwise) this Agreement, the other Loan Documents and the other documents to be delivered hereunder, and such advisors' assistance in connection with the transactions contemplated hereby, and, for greater certainty, including, without limitation, all costs and expenses of the Agent and the Lenders incurred in connection with any proceeding or potential proceeding under Insolvency Legislation, including the CCAA Proceedings, including reasonable fees and expenses of one U.S. counsel and one Canadian counsel (including local counsel, as required) for the Agent, and one U.S. counsel and one Canadian counsel (including local counsel, as required) for the Lenders in connection with the enforcement of or protection rights under this Section 9.04(a).

(b) The Borrower agrees to indemnify and hold harmless the Agent, the Collateral Agent and each Lender and each of their Affiliates and their officers, directors, employees, agents and advisors (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and expenses (including reasonable fees and expenses of counsel) incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (i) this Agreement, the other Loan Documents, any of the transactions contemplated herein or therein or the actual or proposed use of the Letters of Credit or the proceeds of the Advances, and (ii) the actual or alleged presence of Hazardous Materials on any property of the Borrower or any of its Subsidiaries or any Environmental Action relating in any way to the Borrower or any of its Subsidiaries, except to the extent such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 9.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Borrower, its directors, equityholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Borrower also agrees not to assert any claim for special, indirect, consequential or punitive damages against the Agent, the Collateral Agent, any Lender, any of their Affiliates, or any of their respective directors, officers, employees, attorneys and agents, on any theory of liability, arising out of or otherwise relating to this Agreement, the other Loan Documents, any of the transactions contemplated herein or the actual or proposed use of the Letters of Credit or the proceeds of the Advances.

(c) Except for a repayment effected in accordance with clause (d) below, if any payment of principal of, or Conversion of, any BA Rate Advance or LIBOR Rate Advance is made by the Borrower to or for the account of a Lender other than on the last day of the Interest Period for such Advance, as a result of a payment or Conversion pursuant to Section 2.09(d) or (e), 2.11 or 2.13, acceleration of the maturity of the Advances pursuant to Section 7.01 or for any other reason, or by an Eligible Assignee to a Lender other than on the last day of the Interest Period for such Advance upon an assignment of rights and obligations under this Agreement pursuant to Section 9.07 as a result of a demand by the Borrower pursuant to Section 9.07(a), the Borrower shall, promptly after notice by such Lender setting forth in reasonable detail the calculations used to quantify such amount (with a copy of such notice to the Agent), pay to the Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment or Conversion, including any loss (including loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Advance.

(d) The Borrower may prepay the amount of any BA Rate Advance by depositing with the Agent an amount equal to the aggregate of (a) the principal amount of such BA Rate Advance and (b) the amount of interest accruing during the Interest Period applicable to such BA Rate Advance in accordance with Section 2.08 (a) (ii). Such amount (the "Invested Amount") shall be invested by the Agent in an interest bearing account for the balance of the applicable Interest Period. The Invested Amount shall be applied by the Agent to payment of the

principal amount of such BA Rate Advance together with the interest payable thereon on the last day of the Interest Period applicable to such BA Rate Advance. Interest earned on the Invested Amount shall be paid by the Agent to the Borrower promptly after the payment in full of such BA Rate Advance and the interest payable thereon.

(e) Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in Sections 2.12, 2.15 and 9.04 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the other Loan Documents.

**SECTION 9.05. Right of Set-off.** Upon (i) the occurrence and during the continuance of any Event of Default and (ii) the making of the request or the granting of the consent specified by Section 7.01 to authorize the Agent to declare the Extensions of Credit due and payable pursuant to the provisions of Section 7.01, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, the other Loan Documents and the Extensions of Credit of such Lender, whether or not such Lender shall have made any demand under this Agreement or the other Loan Documents. Each Lender agrees promptly to notify the Borrower (with a copy to the Agent) after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender and its Affiliate under this Section are in addition to other rights and remedies (including other rights of set-off) that such Lender and its Affiliate may have.

**SECTION 9.06. Binding Effect; Effectiveness.** When this Agreement has been executed by the Borrower, the Agent and the Lenders, this Agreement shall thereafter be binding upon and inure to the benefit of the Borrower, the Agent, each Lender and their respective successors and assigns; provided, that, except with respect to Sections 9.07 and 9.08, this Agreement shall only become effective upon satisfaction of the conditions precedent set forth in Section 4.01 and none of the provisions of this Agreement, including without limitation provisions in respect of Advances and Letters of Credit to be made by or issued by any Lender, and in respect of any covenant, fee, indemnity, default, and expense reimbursement made by any Loan Party or for which any Loan Party is liable hereunder, shall become effective, nor shall any representation herein be deemed to be made, until the satisfaction of such conditions.

#### **SECTION 9.07. Assignments and Participations.**

(a) Each Lender may, upon notice to the Borrower and the Agent and with the consent, not to be unreasonably withheld, of the Agent, assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, the Advances and other amounts owing to it and any Note or Notes held by it); provided, however, that (i) each such assignment shall be of a constant, and not a varying, percentage of all rights and obligations under this Agreement, (ii) except in the case of an assignment to a Person that, immediately prior to such assignment, was a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of all of a Lender's rights and obligations under this Agreement, the amount of the Commitment of the assigning Lender being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event be less than CAN\$5,000,000 or an integral multiple of CAN\$1,000,000 in excess thereof unless the Borrower and the Agent otherwise agree, (iii) each such assignment shall be to an Eligible Assignee, (iv) the parties to each such assignment shall execute and deliver to the Agent, for its acceptance and recording in the Register, an Assignment and Acceptance, and the parties to such assignment (other than the Borrower and the Agent) shall deliver together therewith any Note subject to such assignment and a processing and recordation fee of CAN\$3,500 (except no such fee shall be payable for assignments to a Lender, an Affiliate of a Lender or an Approved Fund), and (v) any Lender may, without the approval of the Borrower, but with notice to the Borrower, assign all or a portion of its rights and obligations to any of its Affiliates or to another Lender. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, (x) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender hereunder and (y) the Lender assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than its rights under Section 2.12, 2.15 and 9.04 to the extent any claim

thereunder relates to an event arising prior such assignment) and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(b) By executing and delivering an Assignment and Acceptance, the Lender assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the other Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Loan Parties or the performance or observance by the Borrower of any of its obligations under this Agreement or any other instrument or document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements and other information referred to in Section 5.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the Agent or the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee confirms that it is an Eligible Assignee; (vi) such assignee appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement and the other Loan Documents as are delegated to the Agent by the terms hereof and thereof, together with such powers and discretion as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Lender.

(c) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee representing that it is an Eligible Assignee, together with any Note or Notes subject to such assignment, the Agent shall, if such Assignment and Acceptance has been completed and is in substantially the form of Exhibit B hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Borrower.

(d) The Agent shall maintain at its address referred to in Section 9.02 a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Advances and L/C Obligations owing to, each Lender from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(e) Each Lender may, without the consent of the Agent or any Loan Party, sell participations to one or more banks or other entities (other than the Borrower or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, the Advances owing to it and any Note or Notes held by it); provided, however, that (i) such Lender's obligations under this Agreement (including its Commitment to the Borrower and its obligations to the Swingline Lender and the Issuing Lender hereunder) shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such Lender shall remain the holder of any such Note for all purposes of this Agreement, (iv) the Borrower, the 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 and (v) no participant under any such participation shall have any right to approve any amendment or waiver of any provision of this Agreement or any Loan Document, or consent to any departure by the Borrower therefrom, except to the extent that such amendment, waiver or consent would require the affirmative vote of the Lender from which it purchased its participation pursuant to Section 9.01(a).

(f) Any Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.07, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Borrower or its Subsidiaries furnished to such Lender by or on behalf of the Borrower; provided that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree to preserve the confidentiality of any Borrower Information relating to the Borrower or its Subsidiaries received by it from such Lender in accordance with Section 9.08.

(g) Notwithstanding any other provision set forth in this Agreement, any Lender may at any time create a security interest in all or any portion of its rights under this Agreement (including the Advances owing to it and any Notes held by it), including, without limitation, in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

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

(i) The Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of each of the Lenders.

**SECTION 9.08. Confidentiality.** Neither the Agent nor any Lender may disclose to any Person any confidential, proprietary or non-public information of the Borrower furnished to the Agent or the Lenders by the Borrower (such information being referred to collectively herein as the “Borrower Information”), except that each of the Agent and the Lenders may disclose Borrower Information (i) to its and its Affiliates’ employees, officers, directors, agents and advisors to whom disclosure is required to enable the Agent or such Lender to perform its obligations under this Agreement and the other Loan Documents or in connection with the administration or monitoring of this Agreement and the other Loan Documents by the Agent or such Lender (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Borrower Information and instructed to keep such Borrower Information confidential on substantially the same terms as provided herein), (ii) to the extent requested by any regulatory authority, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement and the other Loan Documents, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement and the other Loan Documents or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section 9.08, to any assignee or participant, or any prospective assignee or participant, (vii) to the extent such Borrower Information (A) is or becomes generally available to the public on a non-confidential basis other than as a result of a breach of this Section 9.08 by the Agent or such Lender, as the case may be, or (B) is or becomes available to the Agent or such Lender on a non-confidential basis from a source other than the Borrower or any of its Subsidiaries and (viii) with the consent of the Borrower; provided that the foregoing obligations of the Agent and the Lenders under this Section 9.08 shall survive only until the second anniversary of (a) in the case of the Agent, the date on which such Agent ceased to be Agent hereunder, (b) in the case of a Lender, the date such Lender ceased to be a Lender hereunder, and (c) the date on which all Obligations were satisfied in full in accordance with Section 9.13(b).

**SECTION 9.09. Governing Law.** This Agreement and the Notes shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein without regard to conflicts of laws principles thereof.

**SECTION 9.10. Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or by electronic transmission of a pdf formatted counterpart shall be effective as delivery of a manually executed counterpart of this Agreement.

#### **SECTION 9.11. Jurisdiction, Etc.**

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any court sitting in Toronto, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for

recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such court. The Borrower hereby irrevocably consents to the service of process in any action or proceeding in such courts by the mailing thereof by any parties hereto by registered or certified mail, postage prepaid, to the Borrower at its address specified pursuant to Section 9.02. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents in the courts of any jurisdiction.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any court in Toronto. 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.

**SECTION 9.12. WAIVER OF JURY TRIAL.** EACH OF THE BORROWER, THE AGENT, AND THE LENDERS HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR THE ACTIONS OF THE AGENT OR ANY LENDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

**SECTION 9.13. Release of Collateral or Guarantee Obligation.**

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Agent is hereby irrevocably authorized by each Lender (without requirement of consent of or notice to any Lender) to take, and hereby agree to take, any action requested by the Borrower having the effect of releasing any Collateral or guarantee obligations (i) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document (including, without limitation, any Permitted Disposition) or that has been consented to in accordance with Section 9.01 or (ii) under the circumstances described in paragraph (b) below.

(b) At such time as the Advances, the Reimbursement Obligations and all other Obligations shall have been paid in full in cash, the Commitments have been terminated and no Letters of Credit shall be outstanding (or any outstanding Letters of Credit shall have been cash collateralized in an amount equal to 105% of the aggregate then undrawn and unexpired amount of such Letters of Credit and all other Reimbursement Obligations or back-to-back letters of credit from an issuer and on terms acceptable to the L/C Issuing Bank have been provided in respect of such Letters of Credit), the Collateral shall be released from the Liens created by the Security Documents, and the Security Documents and all obligations (other than those expressly stated to survive such termination) of the Agent and each Loan Party under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

**SECTION 9.14. Proceeds of Crime Act.** Each Lender that is subject to the Proceeds of Crime Act (the “Act”) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Agent, as applicable, to identify the Borrower in accordance with the Act. The Borrower hereby agrees to provide such information promptly upon the request of any Lender or the Agent. No part of the proceeds of the Advances will be used by any Loan Party, directly or indirectly, for any purpose which would contravene or breach the Act or the Criminal Code (Canada).

**SECTION 9.15. Integration.**

This Agreement and the other Loan Documents represent the agreement of the Borrower, the Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Agent or any Lender relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

## SECTION 9.16. Replacement of Lenders

If any Lender requests compensation under Section 2.12 or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, if any Lender does not consent (a “Non-Consenting Lender”) to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders or any Lender is a Defaulting Lender or Deteriorating Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrower shall have paid to the Agent the assignment fee specified in Section 9.07;
- (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents 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);
- (c) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.15, such assignment will result in a reduction in such compensation or payments thereafter;
- (d) with respect to the replacement of any Non-Consenting Lender, such amendment, waiver or consent can be effected as a result of such assignment (together with all other assignments required by the Agent to be made pursuant to this paragraph); and
- (d) such assignment does not conflict with applicable laws.

A Lender shall not be required to make any such assignment or 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.

## SECTION 9.17. No Advisory or Fiduciary Capacity.

In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm’s-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by

virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

#### **SECTION 9.18. Press Releases.**

(a) Except to the extent filed with the CCAA Court in connection with the CCAA Proceeding, each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Agent, the Collateral Agent or their respective Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to Agent and the Collateral Agent and without the prior written consent of Agent and the Collateral Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under applicable law and then, in any event, such Credit Party or Affiliate will consult with the Agent and the Collateral Agent before issuing such press release or other public disclosure.

(b) Subject to obtaining the approval referred to in the following sentence, the Borrower consents to the publication by the Agent, the Collateral Agent or any Lender of advertising material relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo or trademark. The Agent, the Collateral Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Borrower for review and approval (which approval shall not be unreasonably withheld or delayed) prior to the publication thereof. The Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

**SECTION 9.19. Judgment Currency.** (a) If, for the purpose of obtaining or enforcing judgment against the Borrower in any court in any jurisdiction, it becomes necessary to convert into any other currency (the "Judgment Currency") an amount due in Canadian Dollars or Dollars under this Agreement, the conversion will be made at the rate of exchange prevailing on the Business Day immediately preceding:

(i) the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of Ontario or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or

(ii) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the "Judgment Conversion Date").

(b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 9.18(a) above, there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the Borrower will pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of Canadian Dollars or Dollars, as the case may be, which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date.

(c) The term "rate of exchange" in this Section 9.18 means:

(i) for a conversion of Canadian Dollars to the Judgment Currency, the reciprocal of the official noon rate of exchange published by the Bank of Canada for the date in question for the conversion of the Judgment Currency to Canadian Dollars;

(ii) for a conversion of Dollars to the Judgment Currency when the Judgment Currency is Canadian Dollars, the official noon rate of exchange published by the Bank of Canada for the date in question for the conversion of Dollars to Canadian Dollars;

(iii) for a conversion of Dollars to the Judgment Currency when the Judgment Currency is not Canadian Dollars, the effective rate obtained when a given amount of Dollars is converted to Canadian Dollars at the rate determined pursuant to Section 9.19(c)(ii) and the result thereof is then converted to the Judgment Currency pursuant to Section 9.19(c)(i); or

(iv) if a required rate is not so published by the Bank of Canada for any such date, the spot rate quoted by the Agent at Toronto, Canada at approximately noon (Toronto time) on that date in accordance with its normal practice for the applicable currency conversion in the wholesale market.

#### SECTION 9.20. Reserved.

#### SECTION 9.21. Language.

The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein (including, without limitation, the other Loan Documents) be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement.*

### ARTICLE X

#### ACKNOWLEDGEMENT AND RESTATEMENT

**SECTION 10.01. Existing Obligations.** Borrowers and Guarantors hereby acknowledge, confirm and agree that Borrower is indebted to Agent and Lenders for Advances made to, and Letters of Credit issued on behalf of, the Borrower under the Existing Credit Agreement, and all fees, costs, expenses and other charges relating thereto, all of which are unconditionally owing by Borrower to the Agent and the Lenders, without offset, defense or counterclaim of any kind, nature or description whatsoever.

#### SECTION 10.02. Acknowledgment of Security Interests.

(a) Each of the Loan Parties hereby acknowledges, confirms and agrees that the Collateral Agent has and shall continue to have a security interest in and Lien upon the Collateral granted by such Loan Party in connection with the Existing Credit Agreement.

(b) The Liens of the Collateral Agent in the Collateral granted by each Loan Party pursuant to the Existing Loan Agreement shall be deemed to be continuously granted and perfected from the earliest date of the granting and perfection of such Liens under or in connection with the Existing Loan Agreement.

#### SECTION 10.03. Existing Credit Agreement.

Each of the Loan Parties hereby acknowledges, confirms and agrees that, immediately prior to giving effect to this Agreement, (a) the Existing Credit Agreement is in full force and effect as of the date hereof immediately prior to the Effective Date, and (b) the agreements and obligations of the Loan Parties under the Existing Credit Agreement and the Loan Documents delivered in connection therewith constitute the legal, valid and binding obligations of such Loan Parties against them in accordance with their respective terms.

#### SECTION 10.04. Amendment and Restatement.

(a) Except as otherwise stated in this Section 14, as of the date hereof, the terms, conditions, agreements, covenants, representations and warranties set forth in the Existing Credit Agreement are hereby amended and restated in their entirety, and as so amended and restated, replaced and superseded, by the terms, conditions, agreements, covenants, representations and warranties set forth in this Agreement. The amendment and restatement contained herein shall not, in and of itself, in any manner, be construed to constitute payment of, or impair, limit, cancel or extinguish, or constitute a novation in respect of, the obligations and liabilities of the Borrower and the other Loan Parties evidenced by or arising under the Existing Credit Agreement, and the Liens securing such obligations and liabilities shall not in any manner be impaired, limited, terminated, waived or released.

(b) All of the Prepetition Obligations incurred under the Existing Credit Agreement and all accrued and unpaid interest and fees with respect thereto shall be deemed to be Obligations pursuant to the terms hereof.

[Remainder of page intentionally left blank]

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

SEARS CANADA INC., as Borrower

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WELLS FARGO CAPITAL FINANCE CORPORATION  
CANADA,  
as Agent, Collateral Agent, a Lender, and Swingline Lender

By: \_\_\_\_\_  
Name: William Chan  
Title: Director

CANADIAN IMPERIAL BANK OF COMMERCE, as a  
Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ROYAL BANK OF CANADA,  
as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BANK OF AMERICA, N.A., CANADA BRANCH,  
as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## SCHEDULE 1.01

Lenders; Commitments

Lenders	Commitments
Wells Fargo Capital Finance Corporation Canada	CAN\$150,000,000
Canadian Imperial Bank of Commerce	CAN\$85,000,000
Bank of America, N.A., Canada Branch	CAN\$35,000,000
Royal Bank of Canada	CAN\$30,000,000
<b>TOTAL</b>	<b>CAN\$300,000,000</b>

6705560



**SENIOR SECURED SUPERPRIORITY  
CREDIT AGREEMENT**

Dated as of June 22, 2017

among

**SEARS CANADA INC.,**  
as Borrower,

and

**THE TERM DIP LENDERS NAMED HEREIN,**

and

**GACP FINANCE CO., LLC**  
as Term DIP Agent

and

**GACP FINANCE CO., LLC**  
as Lead Arranger

and

**GACP FINANCE CO., LLC**  
as Syndication Agent

and

**TPG SPECIALTY LENDING, INC.**  
as Documentation Agent

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	
DEFINITIONS AND ACCOUNTING TERMS	
SECTION 1.01. Certain Defined Terms.....	1
SECTION 1.02. Computation of Time Periods.....	35
SECTION 1.03. Accounting Terms.....	35
SECTION 1.04. Other Interpretive Provisions .....	35
SECTION 1.05. Currency Equivalent.....	36
ARTICLE II	
AMOUNTS AND TERMS OF THE ADVANCES	
SECTION 2.01. The Term DIP Loan. ....	36
SECTION 2.02. Making the Term DIP Loan. ....	37
SECTION 2.03. Fees. ....	38
SECTION 2.04. Repayment of Term DIP Loan. ....	38
SECTION 2.05. Interest on Term DIP Loan. ....	38
SECTION 2.06. Interest Rate Determination. ....	40
SECTION 2.07. Optional Conversion of Term DIP Loan.....	40
SECTION 2.08. Optional and Mandatory Prepayments of Term DIP Loan. ....	41
SECTION 2.09. Increased Costs.....	42
SECTION 2.10. Payments and Computations. ....	43
SECTION 2.11. Taxes. ....	44
SECTION 2.12. Sharing of Payments, Etc. ....	46
SECTION 2.13. Use of Proceeds of Term DIP Loan. ....	46
SECTION 2.14. Illegality. ....	46
SECTION 2.15. Wind-up Reserve.....	47
ARTICLE III	
CONDITIONS TO EFFECTIVENESS	
SECTION 3.01. Conditions Precedent to Effectiveness.....	47
SECTION 3.02. Conditions Precedent to Advance of the DIP Term Loan.....	49
SECTION 3.03. Waiver of a Condition Precedent. ....	51
ARTICLE IV	
REPRESENTATIONS AND WARRANTIES	
SECTION 4.01. Representations and Warranties of the Borrower.....	51
SECTION 4.02. Deemed Representations and Warranties.....	56
ARTICLE V	
COVENANTS	

SECTION 5.01. Affirmative Covenants.....	56
SECTION 5.02. Negative Covenants. ....	68
SECTION 5.03. Financial Covenant.....	71

## ARTICLE VI

### EVENTS OF DEFAULT

SECTION 6.01. Events of Default.....	72
--------------------------------------	----

## ARTICLE VII

### THE TERM DIP AGENT

SECTION 7.01. Appointment.....	76
SECTION 7.02. Delegation of Duties. ....	76
SECTION 7.03. Exculpatory Provisions. ....	77
SECTION 7.04. Reliance by Agent. ....	77
SECTION 7.05. Notice of Default.....	77
SECTION 7.06. Non-Reliance on Agent and Other Term DIP Lenders. ....	78
SECTION 7.07. Reports and Financial Statements. ....	78
SECTION 7.08. Indemnification. ....	79
SECTION 7.09. Agent in Its Individual Capacity. ....	79
SECTION 7.10. Successor Agent. ....	79
SECTION 7.11. Defaulting Term DIP Lenders.....	80
SECTION 7.12. Agent as hypothecary representative.....	80

## ARTICLE VIII

### MISCELLANEOUS

SECTION 8.01. Amendments, Etc. ....	81
SECTION 8.02. Notices, Etc. ....	82
SECTION 8.03. No Waiver; Remedies. ....	83
SECTION 8.04. Costs and Expenses. ....	83
SECTION 8.05. Right of Set-off. ....	84
SECTION 8.06. Binding Effect; Effectiveness.....	85
SECTION 8.07. Assignments and Participations. ....	85
SECTION 8.08. Confidentiality.....	87
SECTION 8.09. Governing Law.....	88
SECTION 8.10. Execution in Counterparts.....	88
SECTION 8.11. Jurisdiction, Etc.....	88
SECTION 8.12. WAIVER OF JURY TRIAL. ....	88
SECTION 8.13. Release of Collateral or Guarantee Obligation. ....	88
SECTION 8.14. Proceeds of Crime Act. ....	89
SECTION 8.15. Integration. ....	89
SECTION 8.16. Replacement of Term DIP Lenders.....	89
SECTION 8.17. No Advisory or Fiduciary Capacity. ....	90
SECTION 8.18. Press Releases. ....	90
SECTION 8.19. Judgment Currency. ....	91
SECTION 8.20. Acknowledgement and Consent to Bail-In of EEA Financial Institutions.....	91

SECTION 8.21. Language.....	92
-----------------------------	----

## SCHEDULES

Schedule 1.01 A	Business Optimization Plan
Schedule 1.01 B	Lenders' Commitments
Schedule 1.01 C	List of Store Closures
Schedule 1.01 D	DIP Budget
Schedule 4.01(l)	Canadian Pension Plans
Schedule 4.01(n)	[reserved]
Schedule 4.01(q)	Labor Matters
Schedule 5.01(k)	Financial and Collateral Reports
Schedule 5.01(n)(i)(B)	Blocked Account Banks

## EXHIBITS

Exhibit A	Form of Notice of Borrowing
Exhibit B	Form of Assignment and Acceptance
Exhibit C	Form of Borrowing Base Certificate
Exhibit D	[reserved]
Exhibit E	[reserved]
Exhibit F	[reserved]
Exhibit G	Form of Compliance Certificate

CREDIT AGREEMENT (this “Agreement”) dated as of June 22, 2017, among SEARS CANADA INC., a corporation organized under the federal laws of Canada (the “Borrower”), the banks, financial institutions and other institutional lenders listed on the signature pages hereof (the “Term DIP Lenders”), GACP FINANCE CO., LLC (“GACP”) as administrative agent and syndication agent (in such capacities, the “Term DIP Agent”).

A. The Borrower has advised the Term DIP Agent and the Term DIP Lenders that the Borrower and the other Loan Parties have commenced or intend to commence voluntary proceedings under the CCAA (the “CCAA Proceedings”) in the Ontario Superior Court of Justice (Commercial List) (the “CCAA Court”) and that such Loan Parties will continue to operate their respective businesses pursuant to the CCAA.

B. The Borrower requested that the Term DIP Lenders provide financing to fund certain of the Borrower's obligations during the pendency of the CCAA Proceedings, such financing to be provided by the Term DIP Lenders to be made subject to and in accordance with the terms and conditions set out herein.

C. The availability of the Term DIP Loan established by the terms of this Agreement is subject to, among other things, (i) this Agreement and the ABL DIP Credit Agreement and the financing facilities established thereunder being approved by the CCAA Court on terms and conditions satisfactory to the Term DIP Agent and the Term DIP Lenders and (ii) the terms and conditions of the ABL DIP Credit Agreement being satisfactory to the Term DIP Agent and the Term DIP Lenders.

D. The Term DIP Lenders have agreed to establish a senior secured superpriority term credit facility for the Borrower in order for the Borrower to fund certain obligations of the Loan Parties during the pendency of the Loan Parties' CCAA Proceedings on the terms and conditions set forth herein, and the Term DIP Agent has agreed to act as administrative agent and as collateral agent for the Term DIP Lenders under such term credit facility.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“ABL DIP Agent” shall have the meaning provided to the term “Agent” in the ABL DIP Credit Agreement.

“ABL DIP Borrowing Base” shall have the meaning provided to the term “Borrowing Base” in the ABL DIP Credit Agreement as in effect on the date hereof.

“ABL DIP Charge” means the super-priority debtor in possession charge granted by the CCAA Court pursuant to the Initial Order in favour of the ABL DIP Agent and the ABL DIP Lenders over all of the present and future assets and property of the Loan Parties, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or

otherwise become the property of a Loan Party to secure the “Obligations” under and as defined in the ABL DIP Credit Agreement but excluding all “Prepetition Advances” under and as defined in the ABL DIP Credit Agreement.

“ABL DIP Credit Agreement” means the amended and restated credit agreement dated on or about June 22, 2017, among the Borrower, the banks, financial institutions and other institutional lenders party thereto, Wells Fargo Capital Finance Corporation Canada, as administrative agent, co-collateral agent, and swingline lender, GE Canada Finance Holding Company, as co-collateral agent and the other parties from time to time party thereto, as amended, restated, supplemented or otherwise modified from time to time; provided that any such amendment, restatement, supplement or modification shall be subject to the terms of the Intercreditor Agreement.

“ABL DIP Excess Availability” shall have the meaning provided to the term “Excess Availability” in the ABL DIP Credit Agreement as in effect on the date hereof. For the avoidance of doubt, calculation of Excess Availability under the ABL DIP Credit Agreement shall in all instances take into account the Wind-up Reserve (if applicable) and the Push Down Reserve.

“ABL DIP Lenders” shall have the meaning provided to the term “Lenders” in the ABL DIP Credit Agreement.

“ABL DIP Line Cap” shall have the meaning provided to the term “Line Cap” in the ABL DIP Credit Agreement as in effect on the date hereof.

“ABL DIP Loan Outstanding” shall have the meaning provided to the term “Extensions of Credit” in the ABL DIP Credit Agreement as in effect on the date hereof.

“ABL DIP Termination Date” means the earliest to occur of any of the following: (a) the occurrence of a “Termination Date” under and as defined in the ABL DIP Credit Agreement; and (b) any prepayment, repayment or other termination (including as a result of a refinancing of the ABL DIP Credit Agreement which does not comply with the terms of this Agreement and the Intercreditor Agreement).

“ABL DIP Total Extensions of Credit” shall have the meaning provided to the term “Total Extensions of Credit” in the ABL DIP Credit Agreement as in effect on the date hereof.

“ABL Net Real Estate Value” shall have the meaning provided to the term “Net Real Estate Value” in the ABL Credit Agreement as in effect on the date hereof; provided that in calculating ABL Net Real Estate Value no effect shall be given and no value shall be assigned to any Qualifying Freehold Real Estate that is included in the Borrowing Base.

“ABL Prepetition Agent” means the “Agent” under and as defined in the ABL Prepetition Credit Agreement.

“ABL Prepetition Credit Agreement” means the credit agreement dated as of September 10, 2010 among the Borrower, the banks, financial institutions and other institutional lenders party thereto, Wells Fargo Capital Finance Corporation Canada, as administrative agent, co-collateral agent, and swingline lender, GE Canada Finance Holding Company, as co-collateral agent and the other parties from time to time party thereto, as amended, restated, supplemented or otherwise modified from time to time; provided that any such amendment, restatement, supplement or modification shall be subject to the terms of the Intercreditor Agreement.

**“ABL Prepetition Creditors”** means the banks, financial institutions and other institutional lenders listed on the signature pages to the ABL Prepetition Credit Agreement as lender thereunder, the L/C Issuing Bank party to the ABL Prepetition Credit Agreement, and the ABL Prepetition Agent.

**“Acceptable Excess Amount”** means an amount equal to the sum of (i) the amount by which the Total Extensions of Credit exceed the Line Cap as at the end of each week ending between the Effective Date and the Final Availability Date as set out in the DIP Budget plus (ii) CAN\$5,000,000.

**“Acceptable Liquidator”** means a liquidator engaged by the Borrower and acceptable to the Term DIP Agent and the Term DIP Lenders in their sole and absolute discretion.

**“ACH”** means automated clearing house transfers.

**“Acquisition”** means, with respect to any Person (a) a purchase of a controlling interest in, the equity interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, or (c) any amalgamation, merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a controlling interest in the equity interests, of any Person, in each case in any transaction or group of transactions which are part of a common plan.

**“Actuarial Report”** means the actuarial report required to be delivered by the Borrower to the Term DIP Agent pursuant to Section 2.15(c) of this Agreement with respect to the defined benefit provisions of its Canadian Pension Plans or such other report of the Borrower’s actuaries as may be approved by the Term DIP Agent.

**“Adjusted LIBOR Rate”** means, with respect to a Term DIP Loan denominated in Dollars, for any Interest Period, an interest rate per annum equal to the greater of (a) 1.00% and (b) the rate determined by Agent (rounded upwards, if necessary, to the next 1/16 of one percent (1%)) as the LIBOR Rate for such Interest Period multiplied by the Statutory Reserve Rate. The Adjusted LIBOR Rate will be adjusted automatically as of the effective date of any change in the Statutory Reserve Rate.

**“Administration Charge”** means an administration charge granted by the CCAA Court on all present and future assets and property of the Loan Parties, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of a Loan Party, in an aggregate amount not to exceed CAN\$5,000,000 and shall have a priority pursuant to the Initial Order and any other CCAA Court Order acceptable to the Term DIP Agent and the Term DIP Lenders in their sole and absolute discretion.

**“Affiliate”** means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term “control” (including the terms “controlling”, “controlled by” and “under common control with”) of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person by contract or otherwise; *provided* that with respect to the Borrower and notwithstanding anything to the contrary, Affiliates shall include any Permitted Holder or any Permitted Holder’s subsidiaries or Affiliates or any affiliated funds thereof.

**“Agent”** has the meaning provided in the Preamble, and includes any successor thereto.

**“Agent’s Account”** means, collectively, the accounts of the Term DIP Agent maintained by the Term DIP Agent at Wells Fargo, Account No. 4367581220.

**“Anti-Corruption Laws”** means the U.S. Foreign Corrupt Practices Act of 1977, the Canada Corruption of Foreign Public Officials Act of 1998, and other similar anti-corruption legislation in other jurisdictions applicable to the Borrower and its Subsidiaries from time to time.

**“Applicable Lending Office”** means, with respect to each Lender, the office of such Lender specified as its “Lending Office” on the signature pages hereof or in the Assignment and Acceptance pursuant to which it became a Lender, or such other office of such Lender as such Lender may from time to time specify in writing to the Borrower and the Term DIP Agent.

**“Applicable Margin”** means, (a) 11.0% per annum for LIBOR Rate Loan and (b) 10.0% per annum for Prime Rate Loan.

**“Approved Fund”** means any Fund 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.

**“Arranger”** means GACP Finance Co., LLC.

**“Assignment and Acceptance”** means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Term DIP Agent, in substantially the form of Exhibit B hereto.

**“Authorized Officer”** means, as to the Borrower or any other Loan Party, its president, chief executive officer, executive chairman, chief financial officer, vice president and controller, vice president and treasurer, vice president, finance, executive vice president, finance or any other person designated by it and acceptable to the Term DIP Agent. Any document delivered hereunder that is signed by an Authorized Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership, trust and/or other action on the part of such Loan Party and such Authorized Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

**“Availability Reserves”** means, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria (including any “Availability Reserves” (including as to basis and calculation (so long as Wells Fargo Capital Finance Corporation Canada is agent under the ABL DIP Credit Agreement) established under the ABL DIP Credit Agreement against the ABL DIP Borrowing Base), such reserves as the Term DIP Agent from time to time determines in its Permitted Discretion (or the Required Term DIP Lenders in their Permitted Discretion direct the Term DIP Agent to implement) as being appropriate (a) to reflect the impediments to the Term DIP Agent’s ability to realize upon the Collateral, (b) to reflect claims and liabilities that the Term DIP Agent determines will need to be satisfied in connection with the realization upon the Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or (d) to reflect that a Default or an Event of Default then exists. Without limiting the generality of the foregoing, Availability Reserves (but, in each case, without duplication of any “Availability Reserves” established under the ABL DIP Credit Agreement against the ABL DIP Borrowing Base (including as to basis and calculation (so long as Wells Fargo Capital Finance

Corporation Canada is agent under the ABL DIP Credit Agreement) established under the ABL DIP Credit Agreement against the ABL DIP Borrowing Base)) may include, in the Term DIP Agent's Permitted Discretion (but are not limited to) (or the Required Lenders in their Permitted Discretion direct the Term DIP Agent to implement) reserves based on: (i) customs duties, and other costs to release Inventory which is being imported into Canada, (ii) to reflect the Term DIP Agent's estimate of the amount of any Priority Payables Reserve (provided that, following the Final Availability Date, the Term DIP Agent's estimate of the amount of Priority Payable Reserve shall only include those items that may rank ahead of the DIP Charges), (iii) reasonably anticipated changes in the Net Orderly Liquidation Value between appraisals, (iv) warehousemen's or bailees' charges and other Permitted Liens which may have priority over the interests of the Term DIP Agent in the Collateral, (v) any Realty Reserves, (vi) after the occurrence and during the continuance of a Cash Dominion Event, amounts due to vendors on account of consigned goods and commissions due to Persons which operate Dealer Stores, (vii) until the Final Availability Date only, rent expense at leased Stores and DC locations, (viii) royalties payable to non-Loan Parties in respect of licensed merchandise, (ix) the Gift Card Liability Reserve, (x) Customer Deposits Reserve, (xi) until the Final Availability Date only, Wind-up Reserve, (xii) the Push Down Reserve, (xiii) the Inventory Reserve, (xiv) after the occurrence and during the continuance of a Cash Dominion Event, amounts due to any province's lottery commission or other equivalent agency, authority or entity, or to any other Governmental Authority involved in the administration or regulation of lotteries and (xv) the amount of any Court Charges that rank ahead of the Obligations (including the Term Prepetition Obligations). For avoidance of doubt, any Realty Reserves imposed under this Agreement shall first be taken against the ABL DIP Borrowing Base through the Push Down Reserves and, second, against the Borrowing Base.

**"Bail-In Action"** means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

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

**"Bankruptcy Sale"** means (i) the sale of all or substantially all of the equity or the assets of any Loan Party whether in one or a series of transactions, (ii) a transaction through which the tax attributes of any Loan Party are directly or indirectly potentially made available for deduction by another Person, or (iii) any other Disposition, in each case pursuant to a sale approved by the CCAA Court.

**"BIA"** means the *Bankruptcy and Insolvency Act* (Canada).

**"Blocked Accounts"** means the Blocked Accounts described in Section 5.01(n)(i) and any additional deposit accounts that become subject to Blocked Account Agreements pursuant to Section 5.01(i)(iv).

**"Blocked Account Agreement"** means with respect to a Blocked Account established by a Loan Party, an agreement, in form and substance reasonably satisfactory to the Term DIP Agent, establishing control of such account by the Term DIP Agent and whereby the bank maintaining such account agrees, upon the occurrence and during the continuance of a Cash Dominion Event, to comply only with the instructions originated by the Term DIP Agent without the further consent of any other Person.

**“Blocked Account Bank”** means each of Bank of Montreal, Royal Bank of Canada, Canadian Imperial Bank of Commerce and Bank of Nova Scotia, and each other bank with whom deposit accounts are maintained in which funds of any of the Loan Parties are concentrated and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

**“Borrower Information”** has the meaning specified in Section 8.08.

**“Borrower”** has the meaning provided in the Preamble .

**“Borrowing”** means a borrowing consisting of the Term DIP Loan made by each of the applicable Lenders pursuant to Section 2.01(a).

**“Borrowing Base”** means, at any time, an amount equal to (a) 10% of the aggregate outstanding Eligible Credit Card Accounts Receivable at such time plus (b) 20% of the Net Orderly Liquidation Value of Net Eligible Inventory at such time (such amount not to exceed 20% of the Net Recovery Rate at such time), plus (c) 40% of the Net Freehold Real Estate Value, such amount not to exceed CAN\$70,000,000 at any time, plus (d) 100% of Qualified Cash until the earlier of repayment in full of the Term Prepetition Obligations or August 19, 2017, minus (e) 100% of the then Availability Reserves, minus 100% of the amounts outstanding under the Term Prepetition Credit Agreement. The Term DIP Agent may, in its Permitted Discretion (or the Required Lenders direct the Term DIP Agent to implement) (but without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria (including any “Availability Reserves” (including as to basis and calculations (so long as Wells Fargo Capital Finance Corporation Canada is agent under the ABL Credit Agreement)) established under the ABL Credit Agreement against the ABL Borrowing Base) adjust Availability Reserves used in computing the Borrowing Base. Notwithstanding anything to the contrary, in calculating the Borrowing Base, (1) the aggregate advance rate percentage of Eligible Credit Card Accounts Receivable that are included in the ABL Borrowing Base and the Borrowing Base shall not exceed 95%, (2) the aggregate advance rate percentage of Net Eligible Inventory that is included in the ABL Borrowing Base and the Borrowing Base shall not exceed 105% and (3) the aggregate advance rate percentage for Net Orderly Liquidation Value that is included in the ABL Borrowing Base and the Borrowing Base shall not exceed 105%, and in each case, amounts in excess of limitations set forth in clauses (1), (2) and (3) shall be excluded from the Borrowing Base. For the avoidance of doubt and notwithstanding the foregoing, the basis and calculation of the Push Down Reserve shall be as determined by Agent.

**“Borrowing Base Certificate”** means a certificate, signed by an Authorized Officer of the Borrower, substantially in the form of Exhibit C or another form which is reasonably acceptable to the Term DIP Agent in its Permitted Discretion.

**“Business Day”** means a day of the year on which banks are not required or authorized by law to close in Toronto, Ontario or Boston, Massachusetts, and a day of the year on which dealings are carried on in the London interbank market.

**“Business Optimization Plan”** means the business optimization plan to optimize the business of the Loan Parties, including store closures, staffing adjustments and disclaimer of certain leases, annexed hereto as Schedule 1.01A with such modifications, supplements, amendments and adjustments as are acceptable to the Term DIP Agent and the Term DIP Lenders in their sole and absolute discretion.

**“Canadian Defined Benefit Pension Plan”** means a Canadian Pension Plan which contains a “defined benefit provision” as defined in subsection 147.1(1) of the ITA.

**“Canadian Defined Benefit Pension Termination Event”** means (a) the filing of a notice of intent with the applicable Governmental Authority to wholly or partially terminate a Canadian Defined Benefit Pension Plan; (b) the filing of an amendment with the applicable Governmental Authority which wholly or partially terminates a Canadian Defined Benefit Pension Plan; (c) the institution of proceedings, including, without limitation, the sending of a notice of intent, by any Governmental Authority to wholly or partially terminate a Canadian Defined Benefit Pension Plan; (d) the appointment by any Governmental Authority of a replacement administrator or trustee to wholly or partially Wind-up a Canadian Defined Benefit Pension Plan; or (e) the taking of any corporate or other action by a Loan Party to wholly or partially terminate a Canadian Defined Benefit Pension Plan.

**“Canadian Dollars”** and **“CAN\$”** refers to lawful money of Canada.

**“Canadian Pension Plans”** means each of the Canadian pension plans, if any, whether or not registered in accordance with the ITA, which the Borrower or any Subsidiary sponsors, maintains or administers or into which the Borrower or any Subsidiary makes or is obligated to make contributions at any time including, without limitation, the pension plans listed on Schedule 4.01(l), provided however that: if, at any time during the currency of this Agreement there is a special regulation established pursuant to the Pension Benefits Act (Ontario) in relation to any Canadian Pension Plan which has the following effects: (i) the Borrower and any Subsidiary Guarantor cease to be the sponsor and administrator of such Canadian Pension Plan or part thereof (the **“Separate Plan”**) and are released and discharged from all further liability to make contributions to or otherwise sponsor or participate in the ongoing administration of such Separate Plan, and all liabilities of the Borrower and any Subsidiary owing to the members, former members and other beneficiaries of the Separate Plan in respect of benefits accrued thereunder and to all other parties in respect thereof (including, without limitation, to liabilities owing to the Pension Benefits Guarantee Fund pursuant to the Pension Benefits Act (Ontario)) cease and are forever extinguished; and (ii) any and all statutory deemed trusts, liens and charges whatsoever against the Borrower or any Subsidiary in respect of their liabilities to such Separate Plan are forever released, discharged and extinguished whether pursuant to special regulation established pursuant to the Pension Benefits Act (Ontario) or other applicable legislation in any other jurisdiction of Canada; then from that date forward such Separate Plan shall cease to be a Canadian Pension Plan for purposes of this Agreement.

**“Capital Expenditures”** means, with respect to any Person for any period, all cash expenditures made or costs incurred for the acquisition or improvement of fixed or capital assets of such Person, in each case that are (or should be) set forth as capital expenditures in a consolidated statement of cash flows of such Person for such period, in each case prepared in accordance with GAAP.

**“Cash Dominion Event”** shall have the meaning provided to the term “Cash Dominion Event” in the ABL DIP Credit Agreement as in effect on the date hereof.

**“Cash Equivalents”** means investments of the Borrower and its Subsidiaries recorded as cash or cash equivalents in accordance with GAAP.

**“Cash Management Reserves”** means such reserves as the Term DIP Agent, from time to time, determines in its Permitted Discretion as being appropriate to reflect the reasonably

anticipated liabilities and obligations of the Loan Parties with respect to Cash Management Services then provided or outstanding.

**Cash Management Services** means any one or more of the following types of services or facilities provided to any Loan Party by any Lender or any of its Affiliates: (a) ACH transactions, (b) cash management services, including, without limitation, controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) foreign exchange facilities, (d) credit card processing services, (e) credit or debit cards and (f) purchase cards (but only to the extent that, prior to the occurrence and continuance of any Default or Event of Default, the Borrower and the Credit Party issuing such purchase cards notify the Term DIP Agent in writing that such purchase cards are to be deemed Cash Management Services hereunder).

**CCAA** means the *Companies' Creditors Arrangement Act* (Canada).

**CCAA Court** has the meaning given to that term in the recitals hereof.

**CCAA Court Orders** means, collectively, the court orders made by the CCAA Court in the CCAA Proceedings, including the Initial Order, and "CCAA Court Order" means any one of such orders.

**CCAA Proceedings** has the meaning provided in the Preamble.

**Collateral** means all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by the Initial Order and/or any Security Document excluding (a) the last day of the term of any lease or agreement to lease, but the applicable Loan Party shall stand possessed of such last day in trust for and assign it to such person as the DIP Term Agent shall direct, (b) any consumer goods, and (c) any right, title or interest in or to any contract or agreement to the extent such contract or agreement is not assignable pursuant to applicable law or its terms or provisions (except to the extent that any such terms or provisions are not effective at law (including pursuant to the Initial Order or any other CCAA Court Order) to limit or restrict the grant of a security interest) or requires the consent of a third party to its assignment and such consent has not been obtained, provided, that the applicable Loan Party shall to the extent permitted under applicable law hold such right, title or interest in trust for the DIP Term Agent.

**Combined Borrowing Base** means an amount equal to the aggregate amount of the ABL DIP Borrowing Base and the Borrowing Base.

**Comeback Motion** has the meaning as defined in clause (a) of "Final Availability Date".

**Commitment** means, as to any Lender, the obligation of such Lender to make the Term DIP Loan in an aggregate principal amount and/or face amount up to the amount set forth opposite such Lender's name on Schedule 1.01B.

**Consolidated** refers to the consolidation of accounts of the Borrower and its Subsidiaries, in accordance with GAAP and as presented on a GAAP basis.

**Convert**, **Conversion** and **Converted** each refers to a conversion of Term DIP Loan of one Type into a Loan of another Type pursuant to Section 2.07.

**“Corbeil”** means Corbeil Électrique Inc., a corporation organized under the laws of Quebec.

**“Court Charges”** collectively means the DIP Charges, the Administration Charge, the FA Charge, the D&O Charge and the KERP Charge, in each case in such amounts and having such priority as is acceptable to the Term DIP Agent and the Term DIP Lenders in their sole and absolute discretion.

**“Credit Card Accounts Receivable”** means each Account (as defined in the PPSA) together with all income, payments and proceeds thereof, owed by a credit card payment processor or an issuer of credit cards to a Loan Party resulting from charges by a customer of a Group Member on credit cards issued by such issuer in connection with the sale of goods by a Group Member, or services performed by a Group Member, in each case in the ordinary course of its business.

**“Credit Card Processors”** has the meaning specified in Section 5.01(n)(i)(A).

**“Credit Party”** or **“Credit Parties”** means (a) individually, (i) each Lender and its Affiliates, (ii) the Term DIP Agent and (iii) the successors and assigns of each of the foregoing, and (b) collectively, all of the foregoing.

**“Customer Deposits Reserve”** shall mean, at any time, a reserve equal to the aggregate outstanding amount of customer deposits of the Loan Parties at such time.

**“D&O Charge”** means a charge granted by the CCAA Court on all present and future assets and property of the Loan Parties, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of a Loan Party, in an aggregate amount not to exceed CAN\$63,500,000 provided for in the Initial Order, securing an indemnity in favour of the Loan Parties’ directors and officers against any obligations or liabilities that they may incur as directors and officers of the Loan Parties on or after the Petition Date, and shall (i) as to CAN\$44,000,000, rank in priority to the DIP Charges and (ii) as to CAN\$19,500,000 rank below and junior to the DIP Charges, in each case pursuant to the Initial Order and any other CCAA Court Order acceptable to the Term DIP Agent and the Term DIP Lenders in their sole and absolute discretion.

**“DC”** means any distribution center owned or leased and operated by any Loan Party.

**“DDA”** means each chequing, savings or other demand deposit account maintained by any of the Loan Parties.

**“Dealer Store”** means any store constituting a “Sears Authorized Dealer Store”, independently owned and operated by a Person (other than a Loan Party or any of its Subsidiaries) pursuant to a “Sears Canada Inc. Authorized Dealer Agreement”.

**“Debt”** of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money (excluding interest payable thereon unless such interest has been accrued and added to the principal amount of such indebtedness), (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments (other than performance, surety and appeals bonds arising in the ordinary course of business and other than the endorsement of negotiable instruments for

deposit or collection or similar transactions in the ordinary course of business) or in respect of bankers' acceptances or letters of credit, (d) all obligations of such Person 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), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all direct recourse payment obligations of such Person in respect of any accounts receivable sold by such Person, (g) all Debt of others referred to in clauses (a) through (f) above or clause (h) below and other payment obligations guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (1) to pay or purchase such Debt or to advance or supply funds for the payment or purchase of such Debt, (2) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Debt or to assure the holder of such Debt against loss, (3) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (4) otherwise to assure a creditor against loss, and (h) all Debt referred to in clauses (a) through (g) above secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Debt.

**"Default"** means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

**"Defaulting Term DIP Lender"** means any Lender (as reasonably determined by the Term DIP Agent) that (a) has failed to fund any portion of the Term DIP Loan required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, or has notified the Term DIP Agent that it intends not to fund any of the foregoing, (b) has otherwise failed to pay over to the Term DIP Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, (c) has failed, within three (3) Business Days after request by the Term DIP Agent, to confirm that it will comply with the terms of this Agreement relating to its Commitment, provided that such Lender shall cease to be a Defaulting Term DIP Lender under this clause (c) upon the Term DIP Agent's receipt of such confirmation, or (d) has been declared insolvent by any Governmental Authority pursuant to a court order or become the subject of a bankruptcy or insolvency proceeding.

**"Deteriorating Term DIP Lender"** means any Defaulting Term DIP Lender or any Lender as to which such Lender or a Person that controls such Lender has been declared, determined or adjudicated as being insolvent by any Governmental Authority pursuant to a court order or become the subject of a bankruptcy, insolvency or similar proceeding or becomes the subject of an appointment of a receiver, receiver and manager, monitor, trustee or liquidator under the *Bank Act* (Canada) or any applicable bankruptcy, insolvency or similar law now existing or hereafter enacted; provided that a Lender shall not be a Deteriorating Term DIP Lender solely by virtue of the ownership or acquisition of any equity interest in such Lender or the Person controlling such Lender by a Governmental Authority.

**"DIP Budget"** means the financial projections prepared by the Loan Parties covering the period commencing on the week ended June 3, 2017 and ending on the week ending October 28, 2017, on a weekly basis, which projections shall include, at a minimum, cash receipts, operating disbursements, payroll disbursements, a reasonably detailed professional fee budget, non-operating disbursements (including, for the avoidance of doubt, professional fees) and inventory

for the period covered thereby, substantially in the form of the initial DIP Budget annexed hereto as Schedule 1.01D, and any subsequent updates thereto furnished pursuant to Section 6.01 hereof, in each case, in form and substance reasonably satisfactory to the Term DIP Agent and the Term DIP Lenders, as such budget may be amended, modified and otherwise updated from time to time, each of which amendments, modifications and updates shall require the approval of the Term DIP Agent and the Term DIP Lenders in their sole and absolute discretion. The Term DIP Agent acknowledges and agrees that the DIP Budget attached hereto as Schedule 1.01D and in effect as of the date of this Agreement is in form and substance satisfactory to the Term DIP Agent.

“DIP Charges” means, collectively, the Term DIP Charge and the ABL DIP Charge.

“Disposition” means any sale or transfer of property other than goods held for sale in the ordinary course of business.

“Dollars” and “§” refers to lawful money of the United States.

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount and (b) with respect to any amount denominated in Canadian Dollars, the equivalent in Dollars of such amount as determined by Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with Canadian Dollars. In making any determination of the Dollar Equivalent, Agent shall use the relevant Spot Rate in effect on the date on which a Dollar Equivalent is required to be determined pursuant to the provisions of this Agreement. As appropriate, amounts specified herein as amounts in Dollars shall be or include any relevant Dollar Equivalent amount.

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

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

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

“Effective Date” means the date on which the conditions precedent set forth in Section 3.01 shall have been satisfied.

“Eligible Assignee” means (a) any commercial bank, investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in loans and similar extensions of credit in the ordinary course of business of such entity, (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a), (c) an existing Lender or an Affiliate of an existing Lender or an Approved Fund and (d) any other Person (other than a natural person) approved by Agent; provided, however, that notwithstanding the foregoing, “Eligible Assignee” shall not include the Borrower, any of the Borrower’s subsidiaries or

Affiliates or any affiliated funds thereof (including, any Permitted Holder or any Permitted Holder's subsidiaries or Affiliates or any affiliated funds thereof).

“Eligible Credit Card Accounts Receivable” means at the time of any determination thereof in accordance with the ABL DIP Credit Agreement as in effect on the date hereof (and only so long as such ABL DIP Credit Agreement remains in effect), each Credit Card Account Receivable that satisfies the following criteria at the time of its creation and continues to meet the same at the time of such determination: such Credit Card Account Receivable (i) has been earned and represents the bona fide amounts due to a Loan Party from a credit card payment processor and/or credit card issuer, and in each case originated in the ordinary course of business of the applicable Loan Party and (ii) is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (j), inclusive, below. Without limiting the foregoing, to qualify as an Eligible Credit Card Account Receivable, an Account shall indicate no Person other than a Loan Party as payee or remittance party. In determining the amount to be so included, the face amount of an Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges, credit card processor fees or other allowances (including any amount that the applicable Loan Party may be obligated to rebate to a customer, a credit card payment processor, or credit card issuer pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by the applicable Loan Party to reduce the amount of such Credit Card Account Receivable. Unless otherwise approved from time to time in writing by the Term DIP Agent in its Permitted Discretion, no Credit Card Account Receivable shall be an Eligible Credit Card Account Receivable if, without duplication:

- (a) such Credit Card Account Receivable is not owned by a Loan Party and such Loan Party does not have good or marketable title to such Credit Card Account Receivable;
- (b) such Credit Card Account Receivable does not constitute an “Account” (as defined in the PPSA) or such Credit Card Account Receivable has been outstanding for more than three (3) Business Days;
- (c) the issuer or payment processor of the applicable credit card with respect to such Credit Card Account Receivable is the subject of any bankruptcy or insolvency proceedings, or has otherwise suspended its business or made an assignment for the benefit of its creditors;
- (d) such Credit Card Account Receivable is not the valid, legally enforceable obligation of the applicable issuer with respect thereto;
- (e) such Credit Card Account Receivable is subject to any Lien whatsoever other than Liens in favor of the Term DIP Agent and Permitted Liens;
- (f) such Credit Card Account Receivable is not subject to a valid and perfected Lien in favor of the Term DIP Agent, for the benefit of the Credit Parties, senior in priority to all other Liens other than Permitted Liens which have priority over the Liens of the Term DIP Agent by operation of applicable law and Liens of the type specified in clause (g) of the definition of Permitted Liens;

(g) the Credit Card Account Receivable does not conform to all representations, warranties, covenants or other provisions in the Loan Documents relating to Credit Card Accounts Receivable;

(h) such Credit Card Account Receivable is subject to risk of set-off, non-collection or not being processed due to unpaid and/or accrued credit card processor fee balances, limited to the lesser of the balance of Credit Card Account Receivable or unpaid credit card processor fees;

(i) such Credit Card Account Receivable does not meet such other reasonable eligibility criteria for Credit Card Accounts Receivable as the Term DIP Agent may determine from time to time in its Permitted Discretion; or

(j) such Credit Card Receivable did not arise from merchandise sold or services rendered by the applicable Loan Party in the ordinary course of its business;

**“Eligible Inventory”** means, at any time, without duplication, items of Inventory (in accordance with the ABL DIP Credit Agreement as in effect on the date hereof (and only so long as such ABL DIP Credit Agreement remains in effect)) (other than In-Transit Inventory) of any Loan Party that are held for retail sale to the public in the ordinary course of business, merchantable, and readily saleable to the public in the ordinary course of business, that is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (s) below. Without limiting the foregoing, to qualify as “Eligible Inventory” no Person other than the Loan Parties shall have any direct or indirect ownership, interest or title to such Inventory and no Person other than the Loan Parties shall be indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein. Unless otherwise from time to time approved in writing by the Term DIP Agent in its Permitted Discretion, no Inventory shall be deemed Eligible Inventory if, without duplication:

(a) the Loan Parties do not have sole and good, valid and unencumbered title thereto (except for Liens of the type described in clauses (a), (b), (c), (d), (e) and (q) of the definition of Permitted Liens); or

(b) it is not located in Canada; or

(c) it is not located at property owned or leased by the Loan Parties (except to the extent such Inventory is (i) [reserved], (ii) in transit between such locations, or (iii) located at a Dealer Store, *provided that* the amount of Inventory located at all Dealer Stores which may constitute Eligible Inventory shall not exceed the lesser of **[CAN\$100,000,000 or ten percent (10%) of the Inventory Value of all Eligible Inventory in the aggregate]**, or (iii) is deemed eligible pursuant to clause (g)) or is located at a third party warehouse or is located at a closed Store (except pursuant to clause (f)) or is located at a closed DC; or

(d) it is not subject to a valid and perfected Lien in favor of the Term DIP Agent for the benefit of the Credit Parties, senior in priority to all other Liens other than Permitted Liens which have priority over the Liens of the Term DIP Agent by operation of applicable law, including Liens of the types described in clauses (a) through (c), inclusive of the definition of Permitted Liens; or

(e) it is subject to any Lien whatsoever other than Liens in favor of the Term DIP Agent and Permitted Liens; or

(f) it is Inventory located at a Store which is being closed; provided, however that such Inventory will be deemed eligible for the first six (6) weeks after the commencement of the Store Closure Sale for that Store, provided further that the Inventory Value of such Inventory shall be reduced by the “closed store reserve” established by the Borrower with respect to such Inventory consistent with past practices; or

(g) it is consigned from a vendor or is at a customer location but still accounted for in the applicable Loan Party’s inventory balance; or

(h) it is in-transit from a vendor and has not yet been received into a DC or Store; or

(i) it is identified in the stockledger of the applicable Loan Party as any of the following departments or consists of Inventory which is ordinarily classified by such Loan Party consistent with its historical practices as the following: floral; gasoline; live plants; miscellaneous or other as classified on the Loan Party’s stockledger; produce; books; magazines; restaurant operations; or seafood; or it is identified per the applicable Loan Party’s stockledger as candy; or

(j) it is Inventory that has been packed-away and stored for more than 12 months at a DC or a Store for future sale; or

(k) it is identified as wholesaler freight fees; or

(l) it is Inventory on layaway or is Inventory which has been sold but not delivered or as to which any Loan Party has accepted a deposit from a third party; or

(m) it is identified per the Loan Parties’ stockledger as Inventory that is in a leased department, including digital imaging, photofinishing and 1 hour lab; or

(n) it is otherwise deemed ineligible by the Term DIP Agent in its Permitted Discretion; or

(o) it is (i) operating supplies, packaging or shipping materials, cartons, labels or other such materials not considered used for sale in the ordinary course of business by the Term DIP Agent in its Permitted Discretion, (ii) work-in-process, raw materials, (iii) not in material compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, or (iv) bill and hold goods; or

(p) it is Inventory which exhibits, includes or is identified by any trademark, trademark or other Intellectual Property right which trademark, trademark or other Intellectual Property right (i) is subject to a restriction that could reasonably be expected to adversely affect the Term DIP Agent’s ability to liquidate such Inventory or (ii) the relevant Loan Party does not have the right to use in connection with the sale of such Inventory, either through direct ownership or through a written license or sublicense; or

(q) it is Inventory that is not insured in compliance with the provisions of Section 5.01(c), or

(r) it is Inventory that does not conform to all representations, warranties, covenants or other provisions in the Loan Documents relating to Inventory; or

(s) it is Inventory acquired in a Permitted Acquisition and the Term DIP Agent has not completed its diligence with respect thereto.

**“Environmental Action”** means any action, suit, demand, demand letter, claim, notice of noncompliance or violation, notice of liability or potential liability, investigation, proceeding, consent order or consent agreement relating in any way to any Environmental Law, Environmental Permit or Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment, including (a) by any governmental or regulatory authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any governmental or regulatory authority or any third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

**“Environmental Compliance Reserve”** means, any reserve established, in connection with the Term DIP Loan, for estimated amounts that are reasonably likely to be expended by (or on behalf of) any Loan Party in order for such Loan Party and its operations and property (a) to comply with any notice from a Governmental Authority asserting material non-compliance with Environmental Laws, or (b) to correct any such material non-compliance with Environmental Laws or to provide for any material Environmental Liability.

**“Environmental Law”** means any federal, provincial, local or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, health, safety or natural resources, including those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

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

**“Environmental Permit”** means any permit, approval, identification number, license or other authorization required under any Environmental Law.

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

**“Events of Default”** has the meaning specified in Section 6.01.

**“Excess Availability”** means the ABL DIP Line Cap plus the Term DIP Line Cap minus ABL DIP Outstandings and Term DIP Loan Outstandings.

**“Excluded Accounts”** means payroll, trust and tax withholding accounts funded in the ordinary course of business, and accounts which contain only cash and Cash Equivalents subject to a Lien permitted pursuant to clause (k) of the definition of Permitted Liens and Liens permitted pursuant to Section 5.02(a)(ii).

**“FA Charge”** means a charge granted by the CCAA Court on all present and future assets and property of the Loan Parties, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of a Loan Party to secure payment of the fees of the Financial Advisor in an aggregate amount not to exceed CAN\$3,300,000, and shall have a priority pursuant to the Initial Order and any other CCAA Court Order acceptable to the Term DIP Agent and the Term DIP Lenders in their sole and absolute discretion.

**“Federal Funds Rate”** means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day on such transactions received by the Term DIP Agent from three Federal funds brokers of recognized standing reasonably selected by it.

**“Fee Letter”** means the Fee Letter dated as of as of the date hereof, between the Borrower and GACP Finance Co., as amended from time to time.

**“Final Availability Date”** means the date on which the following shall have occurred:

(a) the CCAA Court shall have heard the comeback motion for the Initial Order (the “Comeback Motion”) and the Initial Order shall not have been amended, restated, supplemented or otherwise modified as a result of the Comeback Motion or otherwise without the consent of the Term DIP Agent and the Required Term DIP Lenders; provided that the CCAA Court shall have issued an order amending, restating, supplementing or otherwise modifying the Initial Order, as necessary, to (x) approve service and/or substitute service on all secured creditors likely to be affected by the Court Charges and on all other necessary or appropriate parties as agreed between the Loan Parties and the Term DIP Agent; (ii) approve full availability of the Commitments on the terms of this Agreement; and (iii) provide for the DIP Charges;

(b) the Initial Order (as permitted herein to be amended, restated, supplemented or otherwise modified at the Comeback Motion) shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been further amended, restated, supplemented or otherwise modified without the prior written consent of the Term DIP Agent and the Required Term DIP Lenders (not to be unreasonably withheld); and

(c) all appeal periods with respect to the Initial Order shall have expired and no notice of appeal, or motion to vary, amend, stay, reverse or otherwise affect such orders shall have been filed and pending.

**“Financial Advisor”** means BMO Nesbitt Burns Inc. in its capacity as financial advisor to the Loan Parties, or any successor thereto acceptable to the Term DIP Agent and the Required Term DIP Lenders.

**“FSCO”** means the Financial Services Commission of Ontario and any Person succeeding to the functions thereof and includes the Superintendent under such statute and any other Governmental Authority empowered or created by the *Supplemental Pensions Act* (Québec) or the *Pension Benefits Act* (Ontario) or any Governmental Authority of any other Canadian jurisdiction exercising similar functions in respect of any Canadian Pension Plan of the Loan Parties or any of their Subsidiaries and any Governmental Authority succeeding to the functions thereof.

**“Foreign Vendor”** means a Person that sells In-Transit Inventory to a Loan Party.

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

**“GAAP”** has the meaning specified in Section 1.03.

**“Gift Card Liability Reserve”** shall mean, at any time, and without duplication of any other Availability Reserves or Inventory Reserves, a reserve equal to the aggregate remaining value at such time of outstanding gift certificates and gift cards of the Loan Parties entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory.

**“Governmental Authority”** means any nation or government, any provincial or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

**“Group Members”** means, collectively, the Borrower and its Subsidiaries.

**“Guarantee and Collateral Agreement”** means an agreement in form and substance reasonably satisfactory to the Term DIP Agent and the Term DIP Lenders and consistent with the guarantee and collateral agreement delivered to the Term Prepetition Agent pursuant to the Term Prepetition Credit Agreement with such modifications as are reasonable for the transactions contemplated by this Agreement and for certainty, including a Lien over all intellectual property of each Loan Party.

**“Hazardous Materials”** means (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

**“IFRS”** means the International Financial Reporting Standards, namely, the standards, interpretations and the framework for the preparation and presentation of financial statements (in the absence of a standard or interpretation) adopted by the International Accounting Standards Board.

**“Insolvency Legislation”** means the CCAA, BIA or such other federal, provincial state or other insolvency, restructuring, reorganization or any other statute addressing corporate or debt compromise or reorganization.

**"In-Transit Inventory"** means Inventory of a Loan Party which is in the possession of a common carrier and is in transit from a Foreign Vendor of a Loan Party from a location outside of Canada to a location of a Loan Party that is within Canada.

**"Initial Order"** means an order issued and entered by the CCAA Court and any amendments or supplements thereto, in each case in form and substance acceptable to the Term DIP Agent and the Term DIP Lenders in their sole and absolute discretion, which shall stay all proceedings against the Loan Parties and which shall, *inter alia*, approve the Loan Parties' entering into and performing their respective obligations under this Agreement and the other Loan Documents and provide for such Court Charges in such amounts and with such priority as are acceptable to the Term DIP Agent and Term DIP Lenders in their sole and absolute discretion.

**"Intellectual Property"** has the meaning set forth in the Guarantee and Collateral Agreement.

**"Intercreditor Agreement"** means the intercreditor agreement dated as of March 20, 2017 among and between the "Agent" under the Term Prepetition Credit Agreement and the ABL Prepetition Agreement and acknowledged by the "Loan Parties" as same may be amended or restated from time to time in accordance with the provisions thereof, as may be modified by the Initial Order, provided that in the event of any conflict between the Initial Order and the Intercreditor Agreement, the Initial Order shall govern.

**"Interest Period"** means, for each LIBOR Rate Loan, the period commencing on the date of such LIBOR Rate Loan and ending on the last day of the period selected by the Borrower pursuant to the provisions below and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by the Borrower pursuant to the provisions below. The duration of each such Interest Period shall be one, two or three months, as the Borrower may, upon notice received by the Term DIP Agent not later than 12:00 noon on the third Business Day prior to the first day of such Interest Period, select; provided, however, that:

(a) the Borrower may not select any Interest Period that ends after the Termination Date;

(b) Interest Periods commencing on the same date for Term DIP Loan comprising part of the same Borrowing shall be of the same duration;

(c) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day; provided, however, that, if such extension would cause the last day of such Interest Period of one month or longer to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day; and

(d) whenever the first day of any Interest Period occurs on a day of a calendar month for which there is no numerically corresponding day in the calendar month that succeeds such initial calendar month by the number of months equal to the number of months in such Interest Period, such Interest Period shall end on the last Business Day of such succeeding calendar month.

**“Inventory”** as defined in the PPSA.

**“Inventory Reserves”** means, as of the Effective Date, reserves for shrink, consignment inventory, Corbeil franchise floor plan inventory, and damaged inventory; and thereafter such reserves as the Term DIP Agent may establish in its Permitted Discretion.

**“Inventory Shortfall Amount”** has the meaning specified in Section 5.01(cc)(ii).

**“Inventory Value”** shall mean, with respect to any Inventory of the Loan Parties, the value of such Inventory valued at the lower of cost or market value on a basis consistent with the Loan Parties’ current and historical accounting practice in effect on the Effective Date, per the stockledger (without giving effect to LIFO reserves and general ledger reserves for discontinued inventory, markdowns, intercompany profit, rebates and discounts, any cut off adjustments, revaluation adjustments, purchase price adjustments or adjustments with respect to the capitalization of buying, occupancy, distribution and other overhead costs reflected on the balance sheet of the Loan Parties in respect of Inventory). The value of the Inventory as set forth above will, without duplication for any Inventory Reserves, be calculated net of the reserve established by the Loan Parties on a basis consistent with the Loan Parties’ current and historical practice, in effect on the Effective Date, in respect of lost, misplaced or stolen Inventory at such time.

**“Investment”** means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of equity interests of another Person, (b) a loan, advance or capital contribution to, guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) any Acquisition.

**“ITA”** means the *Income Tax Act* (Canada).

**“KERP Charge”** means a charge granted by the CCAA Court on all present and future assets and property of the Loan Parties, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of a Loan Party, in an aggregate amount of CAN\$9,200,000 and which shall be approved by the Monitor and the CCAA Court, that secures the obligations of the Loan Parties to make payments to key employees in certain circumstances under a key employee retention plan, which charge and key employee retention plan shall be approved by the Term DIP Agent and the Term DIP Lenders, and shall (i) as to CAN\$4,600,000, rank in priority to the DIP Charges and (ii) as to CAN\$4,600,000 rank below and junior to the DIP Charges, in each case have a priority pursuant to the Initial Order and any other CCAA Court Order acceptable to the Term DIP Agent and the Term DIP Lenders in their sole and absolute discretion.

**“Lender FA”** means Alvarez & Marsal Canada ULC and any successor thereto, as financial advisor to the Term DIP Agent and the Term DIP Lenders and to the ABL DIP Agent.

**“LIBOR Rate”** means, for each Interest Period, an interest rate per annum equal to the rate per annum determined by the Term DIP Agent, at approximately 11:00 a.m. (New York City, New York time) on the date which is two (2) Business Days prior to the beginning of such Interest Period by reference to the Intercontinental Exchange Benchmark Administration Interest Settlement Rates for deposits in dollars (as set forth by any service selected by Agent which has been nominated by the Intercontinental Exchange Benchmark Administration (or any successor thereto) as an authorized information vendor for the purpose of displaying such rates (or the

successor thereto if the Intercontinental Exchange Benchmark Administration is no longer making a LIBOR Rate available) for a period equal to such Interest Period, provided that to the extent that an interest rate is not ascertainable pursuant to the foregoing provision of this definition, the “LIBOR Rate” shall be the interest rate per annum, determined by Agent, to be the average of the rates per annum at which deposits in dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by Agent at approximately 11:00 a.m. (New York City, New York time) on the date which is two (2) Business Days prior to the beginning of such Interest Period.

“LIBOR Rate Loan” means a Term DIP Loan that bears interest at a rate based on the Adjusted LIBOR Rate.

“Lien” means any lien, security interest, hypothec or other charge or encumbrance of any kind or any other type of preferential arrangement, including the lien or retained security title of a conditional vendor, and any easement, right of way or other encumbrance on title to real property, but excluding consignments or bailments of goods of third parties and the interests of lessors under operating leases.

“Loan Documents” means this Agreement, the Security Documents, the Notes, the Fee Letter, the Intercreditor Agreement, and any amendment, waiver, supplement or other modification to any of the foregoing.

“Loan Parties” means (i) each of the Borrower’s Subsidiaries and (ii) any Affiliate of the Borrower which is an applicant in the CCAA Proceedings or that is a party to a Loan Document.

“Material Adverse Effect” means any event, circumstance, occurrence or change which results, or which would reasonably be expected to result, in a material adverse change on (a) the business, condition (financial or otherwise), operations or assets of the Borrower and its Subsidiaries taken as a whole, or (b) the ability of the Loan Parties taken as a whole or the ability of any Loan Party to perform their obligations under this Agreement, any other Loan Document or any CCAA Court Order, or the ability of any Loan Party to complete the SISP, the Business Optimization Plan or a Plan, (c) the validity or enforceability of the Loan Documents or the rights and remedies of the Term DIP Agent or the Term DIP Lenders thereunder or (d) the validity or enforceability of any of the Term DIP Charge or the ranking of any of the Liens granted thereby or the rights or remedies intended or purported to be granted to the Term DIP Agent or the Term DIP Lenders under or pursuant to the Term DIP Charge or under any Loan Document.

“Material Contract” means, with respect to the Loan Parties, (i) the Agreement dated January 26, 1987 between the Borrower and Sears, Roebuck and Co. relating to the use by the Borrower, in the ordinary course of the Borrower’s business, of certain trademarks and other intellectual property owned by Sears, Roebuck and Co., and any successor agreement thereto, and (ii) any other agreement, the failure of which to maintain would reasonably be expected to have a Material Adverse Effect.

“Milestones” has the meaning specified in Section 5.01(ee).

“Minimum Inventory Amount” has the meaning specified in Section 5.01(cc)(ii).

“Monitor” means FTI Consulting Canada Inc., or any successor thereto acceptable to the Term DIP Agent and the Required Term DIP Lenders, as monitor in the CCAA Proceedings.

**Mortgage** means any deed of trust, mortgage, fixed charge, debenture, immoveable hypothec or other document creating a Lien on real property or any interest in real property.

**Net Eligible Inventory** means, at any time, an amount equal to the Inventory Value of Eligible Inventory less Inventory Reserves.

**Net Freehold Real Estate Value** means the appraised fair market value of the Qualifying Freehold Real Estate as set out in the most recent appraisal required to be delivered to the Term DIP Agent and which is acceptable to the Term DIP Agent and the Required Term DIP Lenders in their Permitted Discretion.

**Net Orderly Liquidation Value** means the product of (i) Net Recovery Rate and (ii) the Net Eligible Inventory.

**Net Proceeds** means, (a) with respect to any Disposition by any Loan Party or any of its Subsidiaries of any property or any casualty or condemnation of such property, the excess, if any, of (i) the sum of cash and Cash Equivalents received in such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Debt that is secured by the applicable asset by a Lien permitted hereunder which is senior to the Agent's Lien, if any, on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Debt under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by such Loan Party or such Subsidiary in connection with such transaction (including, without limitation, attorneys' fees, accountants' fees, investment banking fees, appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by any Loan Party to third parties (other than Affiliates), (C) transfer Taxes paid as a result thereof, and (b) the excess of (i) the sum of the cash and Cash Equivalents received in connection with the issuance of any equity interests of any Loan Party or any Permitted Refinancing Debt over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Loan Party in connection therewith.

**Net Real Estate Value** means Net Freehold Real Estate Value.

**Net Recovery Rate** means the appraised orderly liquidation value (on an "as is, where is" basis) of each Loan Party's Eligible Inventory, net of costs and expenses estimated to be incurred in connection with such liquidation, which value is expressed as a percentage of the Inventory Value of Eligible Inventory and shall be determined by the Term DIP Agent from time to time based on the most recent appraisal provided by an independent third party appraiser retained by the Term DIP Agent in consultation with the Borrower.

**Non-Consenting Term DIP Lender** has the meaning specified in Section 8.16.

**Note** means a promissory note of the Borrower payable to the order of any Lender evidencing the Term DIP Loan of such Lender.

**Notice of Borrowing** has the meaning specified in Section 2.02(a).

**Obligations** has the meaning set forth in the Guarantee and Collateral Agreement.

**“Operating Net Cash Flow”** means the operating net cash flow of the Loan Parties, after restructuring fees (any professional fees paid to advisors to the Term DIP Agent, the Term DIP Lenders, the ABL DIP Agent , the ABL DIP Lenders and the Borrower, including legal counsel and the Lender FA) but before financing fees, as set out in the DIP Budget and the updated cash flows required to be delivered pursuant to Section 5.01(k), as applicable, which shall exclude: (i) proceeds from the sale of any assets not contemplated in the DIP Budget including, without limitation, Dispositions of owned and leased real estate; (ii) proceeds from the liquidation of Inventory from any stores other than those stores specifically designated for closing in the DIP Budget and set out on Schedule 1.01C as of the Effective Date; and (iii) any other extraordinary or non-recurring proceeds, including proceeds from insurance and other casualty events (other than proceeds of insurance in respect of Inventory).

**“Other Taxes”** has the meaning specified in Section 2.11.

**“Parent”** means Sears Holdings Corporation, so long as Sears Holding Corporation continues to hold at least ten percent (10%) of the equity securities of the Borrower.

**“Pension Wind-up Deficit”** means, as of any particular date and with respect to a particular Canadian Pension Plan, the total amount required to be paid into that Canadian Pension Plan by the Borrower and any other Group Member in order to fully fund all of the liabilities of that Canadian Pension Plan on that date (including wind-up expenses), as determined based on an Actuarial Report prepared as at that date and assuming the Canadian Pension Plan is wholly terminated on that date.

**“Perfection Certificate”** means one or more certificates with respect to the Borrower and the other Loan Parties in form reasonably satisfactory to the Term DIP Agent.

**“Permitted Acquisition”** means any Acquisition permitted under Section 5.02(c).

**“Permitted Debt”** means each of the following as long as no Default or Event of Default exists at the time of incurrence thereof or would arise from the incurrence thereof:

(a)      Debt outstanding on the date hereof and listed in the Perfection Certificate (including under the ABL Prepetition Credit Agreement and the Term Prepetition Credit Agreement, in each case subject to the terms of the Intercreditor Agreement, and under this Agreement and under the ABL DIP Credit Agreement);

- (b)      [reserved];
- (c)      [reserved];
- (d)      [reserved];
- (e)      [reserved];
- (f)      [reserved];
- (g)      the Obligations;
- (h)      [reserved];

- (i) [reserved];
- (j) Debt in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;
- (k) Debt arising from overdraft facilities and/or the honoring by a bank or other financial institution of a cheque, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services (including, but not limited to, intraday, ACH and purchasing card/T&E services) in the ordinary course of business; provided, that (x) such Debt (other than credit or purchase cards) is extinguished within ten Business Days of notification to the applicable Loan Party of its incurrence and (y) such Debt in respect of credit or purchase cards is extinguished within 60 days from its incurrence;

(l) [reserved]; and

- (m) Debt consisting of the financing of insurance premiums in the ordinary course of business consistent with past practice.

**“Permitted Discretion”** means a determination made in good faith and in the exercise of commercially reasonable business judgment.

**“Permitted Dispositions”** means any of the following:

- (a) transfers and Dispositions of Inventory in the ordinary course of business consistent with past practice;
- (b) transfers and Dispositions among the Loan Parties;
- (c) transfers and Dispositions by any Subsidiary of the Borrower which is not a Loan Party to any Loan Party;
- (d) [reserved];
- (e) [reserved];
- (f) the sale of surplus, obsolete or worn out equipment or other property in the ordinary course of business by the Borrower or any Subsidiary;
- (g) [reserved];
- (h) [reserved];
- (i) [reserved];
- (j) [reserved];
- (k) the sale or Disposition of defaulted receivables and the compromise, settlement and collection of receivables in the ordinary course of business or in bankruptcy or other proceedings concerning the other account party thereon and not as part of an accounts receivable

financing transaction; provided that no Dispositions under this clause (k) shall be made to any Permitted Holder;

(l) leases, licenses or subleases or sublicenses of any real or personal property not constituting Collateral in the ordinary course of business; provided that any such licenses or sublicenses of Intellectual Property shall be subject to the Term DIP Agent's rights to utilize same in connection with the realization upon any Collateral; provided; further; that no Dispositions under this clause (l) shall be made to any Permitted Holder;

(m) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind (other than, in each case, with respect to rights to license the Related Intellectual Property, unless the limited license granted to the Term DIP Agent in such Related Intellectual Property pursuant to the Loan Documents remains in effect and is acknowledged by the licensee) to the extent that any of the foregoing could not reasonably be expected to have a Material Adverse Effect;

(n) [reserved]; and

(o) Dispositions contemplated under the SISP and the Business Optimization Plan, provided that, with respect to any Disposition resulting in Net Proceeds in excess of CAN\$2,000,000 whether in a single transaction or a series of related transactions, the terms of such Disposition shall be acceptable to the Term DIP Agent and Term DIP Lenders.

**"Permitted Holder"** means Parent or any Subsidiary of Parent, Edward Lampert or ESL Investments, Inc., and any of its Affiliates, other than a Loan Party.

**"Permitted Investments"** means each of the following as long as no Default or Event of Default exists at the time of the making such of Investment or would arise from the making of such Investment and provided that such Investment is set out in the DIP Budget:

(a) Investments existing on, or contractually committed as of the Effective Date and set forth in the Perfection Certificate; provided that no Investments under this clause (a) shall be made in any Permitted Holder except existing on the date hereof in Subsidiaries of the Borrower;

(b) (i) Investments by any Loan Party and its Subsidiaries in their respective Subsidiaries outstanding on the Effective Date, (ii) Investments by any Loan Party and its Subsidiaries in Loan Parties and (iii) Investments by Subsidiaries that are not Loan Parties in Holdings or any Subsidiary;

(c) [reserved];

(d) [reserved];

(e) [reserved];

(f) [reserved];

(g) [reserved];

(h) [reserved];

(i) to the extent not prohibited by applicable law, advances to officers, directors and employees and consultants of the Loan Parties made for ordinary business purposes, including travel, entertainment and relocation in an amount not to exceed CAN\$250,000 in the aggregate.

(j) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, customers and suppliers, in each case in the ordinary course of business or Investments acquired by any Group Member as a result of a foreclosure by any Loan Party with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(k) [reserved];

(l) [reserved]

(m) accounts receivable, security deposits and prepayments arising and trade credit granted in the ordinary course of business, consistent with past practice;

(n) [reserved];

(o) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the applicable Loan Party;

(p) [reserved];

(q) [reserved];

(r) [reserved];

(s) [reserved]; and

(t) other Investments consented to in writing by the Required Lenders.

“Permitted Liens” means:

(a) Liens for taxes, assessments and governmental charges or levies not yet due and payable or to the extent such taxes, assessments or governmental charges are being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained;

(b) (x) Liens imposed by law, such as materialmen’s, builder’s, construction’s, mechanics’, carriers’, workmen’s and repairmen’s Liens and other similar Liens arising in the ordinary course of business securing obligations (i) that are not overdue for a period of more than 30 days, that are being contested in good faith by appropriate proceedings and as to which appropriate reserves are being maintained or (ii) the enforcement of which is stayed pursuant to the CCAA Proceedings, (y) the provisions of applicable laws, including zoning, land use and building restrictions, by-laws and regulations and (z) Liens of any nature claimed or held by Her Majesty the Queen in Right of Canada or Her Majesty the Queen in Right of any province;

(c) (x) landlords’ Liens arising in the ordinary course of business securing (i) rents not yet due and payable, and (ii) rent for Stores in an amount not to exceed the monthly base rent due for the immediately preceding calendar month and (y) in respect of real property located in the Province of Quebec, landlords’ Liens securing the payment and performance of all obligations

owing under any lease in respect of such property in favor of the landlord thereof; provided that such Liens (in the case of both clause (x) and clause (y)) are limited to the assets located at such leased property, and (z) (A) any ground lease, emphyteutic lease, head lease or other lease which is superior to the leasehold real estate, or rights in favour of the applicable landlord contained in any such superior lease, (B) Liens in favour of the landlords and Liens which the leases, subleases or other occupancy agreements subject to the leasehold real estate are stated to be subject to or bound pursuant to the terms of such leases, subleases or other occupancy agreements, (C) in respect of the leasehold real estate outside of the Province of Quebec, Liens encumbering the freehold interest in such leasehold real estate, and (D) leases, sublease, licenses, concessions or other occupancy agreements relating to the leasehold real estate;

(d) any attachment or judgment lien not constituting an Event of Default under Section 6.01(f);

(e) Liens presently existing or hereafter created in favor of the Term DIP Agent, on behalf of the Credit Parties including under the Term DIP Charge;

(f) [reserved];

(g) [reserved];

(h) Liens incurred or deposits made by any Group Member in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, customs and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money);

(i) (A) easements, servitudes, rights-of-way, covenants, conditions, restrictions (including zoning restrictions), restrictive covenants, rights of expropriation or access, declarations, licenses, permit limitations, reservations (including pursuant to any original grant of real property from the applicable Governmental Authority), licences, encroachments, rights of reverter, minor defects or irregularities in title and other similar charges or encumbrances, whether or not of record, that do not, in the aggregate, interfere in any material respect with the ordinary course of business; (B) all Liens included as exceptions to the title insurance policies provided for the Qualifying Real Estate provided that such exceptions constitute either Permitted Liens pursuant to this Agreement, or if not Permitted Liens, are title encumbrances, defects or irregularities which do not, in the aggregate, materially and adversely impair the use or marketability of such Qualifying Real Estate for the purpose for which it is presently held as reasonably determined by the Term DIP Agent; (C) subdivision agreements, site plan control agreements, cost sharing agreements, development agreements, servicing agreements, reciprocal agreements and other similar agreements and related rights; and (D) Liens registered on title to any such Qualifying Real Estate as of the date that is one (1) Business Day prior to the date of this Agreement;

(j) any interest or title of a lessor or sublessor under, and Liens arising from precautionary PPSA financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, leases and subleases permitted by this Agreement;

(k) Liens on cash and Cash Equivalents securing obligations in respect of standby or trade letters of credit entered into in the ordinary course of business to the extent that such letters

of credit are to be issued in a currency other than Canadian Dollars or Dollars, or trade-related bank guarantees;

(l) normal and customary rights of setoff upon deposits of cash or other Liens originating solely by virtue of any statutory or common law provision relating to bankers' liens, rights of setoff or similar rights in favor of banks or other depository institutions;

(m) Liens granted to consignors who have properly perfected on consigned Inventory owned by such consignors and created in the ordinary course of business;

(n) Liens on premium rebates securing financing arrangements with respect to insurance premiums;

(o) deposits and other customary Liens to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory and regulatory obligations, surety, customs and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature incurred in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(p) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Debt or (ii) relating to pooled deposit or sweep accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary;

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

(r) [reserved];

(s) [reserved];

(t) Liens on cash and Cash Equivalents securing Swap Contracts incurred in the ordinary course of business;

(u) [reserved];

(v) Liens granted in connection with equipment financing arrangements or leases on Inventory not constituting goods held by the Borrower or any of its Subsidiaries for sale, but only to the extent such Inventory is provided by the secured party and is related to the equipment subject to such financing arrangement or lease;

(w) the Liens granted as security for the "Obligations" as that term is defined in the ABL Prepetition Credit Agreement provided that such Liens shall be subject to the Intercreditor Agreement;

(x) [reserved];

(y) the Court Charges;

(z) Valid and perfected Liens existing prior to the Effective Date to the extent that such Liens constitute “Permitted Liens” (under and as defined in the Term Prepetition Credit Agreement);

(aa) Liens on the Collateral to secure the “Obligations” under and as defined in the Term Prepetition Credit Agreement provided, that such Liens shall be subject to the Intercreditor Agreement; and

(bb) Liens created under federal or provincial pension legislation in Canada for the benefit of the beneficiaries of the Canadian Pension Plans.

“Permitted Net Cash Variance Amount” means, as of the date of determination, (i) CAN\$25,000,000 minus (ii) the cumulative amount of all Inventory Shortfall Amounts during each Testing Period (if any) ending prior to the date of determination.

“Permitted Priority Liens” means<sup>1</sup>:

(i) the Administration Charge, the FA Charge, the D&O Charge (solely with respect to the portion thereof intended to rank ahead of the DIP Charges as provided in the definition thereof) and the KERP Charge (solely with respect to the portion thereof intended to rank ahead of the DIP Charges as provided in the definition thereof);

(ii) any properly perfected purchase-money security interest under the PPSA in favour of any Person, that has not been served with notice of the application for the Initial Order (except for any such Person subsequently served with the Comeback Motion);

(iii) Permitted Liens of the type described in clauses (a), (b), (i)(A), (i)(B), (i)(C), (l) or (q) of the definition of “Permitted Liens” (solely to the extent any such permitted Liens were incurred and valid, binding, enforceable and properly perfected as of the Petition Date) or, solely to the extent arising after the Petition Date, Permitted Liens of the type described in clauses (j), (k) or (o) of the definition of “Permitted Liens”;

(iv) Liens incurred or deposits made by any Loan Party in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security payments (solely to the extent any such permitted Liens were incurred and valid, binding, enforceable and properly perfected as of the date of the Petition Date);

(v) the ABL DIP Charge but only to the extent it creates a Lien on the ABL Priority Collateral (as such term is defined in the Intercreditor Agreement), and for certainty, excluding any Intellectual Property or proceeds therefrom; and

(vi) the Term DIP Charge.

“Permitted Store Closings” has the meaning assigned to it in Section 5.01(aa).

“Permitted Variances” has the meaning assigned to it in Section 5.01(cc).

“Person” means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company,

---

<sup>1</sup> NTD: Ranking of all charges to be agreed.

unlimited liability corporation, company or other entity, or a government or any political subdivision or agency thereof.

“Petition Date” means June 22, 2017 being the date on which the Loan Parties commenced voluntary proceedings under the CCAA in the CCAA Court.

“Plan” means a plan of compromise or arrangement filed in the CCAA Proceedings.

“PPSA” means the *Personal Property Security Act* (Ontario) and the Regulations thereunder, as from time to time in effect; provided, however, if attachment, perfection or priority of the Term DIP Agent’s security interests in any Collateral are governed by the personal property security laws of any jurisdiction other than Ontario (including Quebec), PPSA shall mean those personal property security laws in such other jurisdiction, including the *Civil Code of Quebec*, for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

“Prime Rate” means, with respect to any Term DIP Loan denominated in Dollars, for any day a fluctuating interest rate per annum equal to the highest of (a) the rate of interest in effect for such day as publicly announced from time to time by Wells Fargo Bank, National Association as its “prime rate”; (b) the Federal Funds Rate for such day, plus 0.50%; (c) the Adjusted LIBOR Rate for a 30 day interest period as determined on such day, plus 1.0% and (d) 4.00%. The “prime rate” is a rate set by Wells Fargo Bank National Association based upon various factors including its costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the prime rate, the Federal Funds Rate or the Adjusted LIBOR Rate, respectively, shall take effect at the opening of business on the day specified in the public announcement of such change.

“Prime Rate Loan” means a Term DIP Loan in Dollars that bears interest as provided in Section 2.05(a)(ii).

“Priority Payables Reserve” means at any time, without duplication, the obligations, liabilities and indebtedness at such time which have (or would in a bankruptcy, receivership or analogous proceeding have) a trust, deemed trust, right of garnishment, right of distress, charge or statutory lien imposed to provide for payment or Liens ranking or capable of ranking senior to or *pari passu* with Liens securing the Obligations on any of the Collateral under federal, provincial, state, county, municipal, or local law including, to the extent that there is such a trust, statutory Liens or Liens in respect of the specified item that has or is capable of having such rank, claims for unremitted and accelerated rents, utilities, taxes (including sales taxes and goods and services taxes (“GST”) and harmonized sales taxes (“HST”) net of input tax credits deducted in calculating the amount of GST and HST payable), the claims of a clerk, servant, travelling salesperson, labourer or worker (whether full-time or part-time) who is owed wages, salaries, commissions, disbursements, compensation or other amounts (such as union dues payable on behalf of employees) by the Loan Parties (but only to the extent that the claims of such parties may rank or be capable of ranking senior to or *pari passu* with Liens securing the Obligations on any of the Collateral pursuant to Section 81.3 or 81.4 of the BIA or any applicable provincial law), vacation pay, severance pay, employee source deductions, workers’ compensation obligations, government royalties or Pension Wind-up Deficit (but only to the extent ranking or capable of ranking senior to or *pari passu* with Liens securing the Obligations on any of the Collateral pursuant to Section 81.5 or Section 81.6 of the BIA or any applicable provincial law), in each case net of the aggregate amount of all restricted cash set aside and readily available for

the payment of such obligations pursuant to arrangements satisfactory to the Term DIP Agent, together with the aggregate value, determined in accordance with GAAP, of all Eligible Inventory which may be or may become subject to a right of a supplier to recover possession thereof or to exercise rights of revendication with respect thereto under any federal, provincial, state, county, municipal, or local law, where such supplier's right may have priority over Liens securing the Obligations including Eligible Inventory subject to a right of a supplier to repossess goods pursuant to Section 81.1 of the BIA or the Civil Code of Quebec.

“Proceeds of Crime Act” means the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).

“Pro Forma and Projected Excess Availability” shall mean, for any date of calculation, after giving effect to the applicable transaction or payment, the pro forma and projected ABL DIP Excess Availability for the subsequent twelve (12) fiscal month period, determined as of the last day of each fiscal month in such period and based on the Borrower’s good faith projections that are used to run the business of the Borrower and prepared in accordance with past practices. With respect to any such transaction or payment for which either (x) the applicable Loan Party would be required under its corporate governing documents or internal policies and procedures to obtain the approval of such Loan Party’s applicable board of directors or similar governing body to make such payment or undertake such transaction, (y) except with respect to Investments permitted under clause (t) of the definition of Permitted Investments, the transaction or payment is in an amount greater than or equal to \$5,000,000; or (z) the making of such payment or the consummation of such transaction would cause the Pro Forma and Projected Excess Availability to be equal to or less than 20% of the ABL DIP Line Cap, such projections shall be delivered to the Term DIP Agent no less than (i) with respect to clause (x) above, one (1) Business Day prior to the meeting of a Loan Party’s applicable board of directors or similar governing body to approve such transaction or payment, and (ii) with respect to clauses (y) and (z) above, three (3) Business Days prior to making such payment or undertaking such transaction.

“Pro Rata Share” means with respect to any Lender, the percentage obtained by *dividing* (i) the sum of the Term DIP Loan Outstandings of such Lender, *by* (ii) the sum of the then existing Term DIP Loan Outstandings of all Lenders.

“Push Down Reserve” means the amount, if any, by which the aggregate outstanding principal balance of the Term DIP Loan made as of the Effective Date and which shall be converted to Canadian Dollars for purposes of the Push Down Reserve at the Spot Rate as of the Business Day prior to the delivery of the Borrowing Base (including on account of any Realty Reserve or any Availability Reserve imposed or to be imposed by the Term DIP Agent), as calculated by the Term DIP Agent based upon the most recent Borrowing Base Certificate delivered to the Term DIP Agent by the Borrower.

“Qualified Cash” means cash of the Borrower or another Loan Party deposited into a deposit account maintained with a financial institution satisfactory to the Term DIP Agent acting reasonably and subject to a deposit account control agreement in favour of the Term DIP Agent in form and substance satisfactory to the Term DIP Agent and, among other things, providing to the Term DIP Agent cash dominion after the occurrence of an Event of Default, as approved by Term DIP Agent, in all cases on terms and conditions satisfactory to the DIP Agent in its sole discretion.

“Qualifying Real Estate” means real property to which a Loan Party has good and marketable freehold title, and which is acceptable to the Term DIP Agent and the Term DIP

Lenders in their sole discretion, with respect to which (a) the Term DIP Agent has been granted a legal, valid, binding and perfected first priority Mortgage (senior in priority to all other Liens other than Liens of the type specified in clause (a), (b), (c) (d) or (i) of the definition of Permitted Liens) (except for the owned real property charged by the “ABL First Lien Mortgages” (as that term is defined in the Intercreditor Agreement) which shall constitute legal, valid, binding and perfected second priority Mortgages) securing the Obligations on terms reasonably satisfactory to the Term DIP Agent, (b) the Borrower maintains the insurance and has otherwise complied with Section 5.01(c) of the Credit Agreement, and (c) the Borrower shall have complied with all payment obligations in respect of taxes, assessments and governmental charges or levies in respect of such owned real estate.

**“Realty Reserves”** means, any reserve established as being appropriate to reflect the impediments to the Term DIP Agent’s ability to realize upon the Qualifying Real Estate or to reflect claims and liabilities that Agent or the Required Term DIP Lenders determine will need to be satisfied in connection with the realization upon the Qualifying Real Estate. Without limiting the generality of the foregoing, Realty Reserves may include (but are not limited to), without duplication, (a) Environmental Compliance Reserves, (b) reserves for (i) unpaid taxes and assessments, (ii) repairs required under this Agreement and (iii) remediation of material title defects, (c) reserves for debt secured by Liens (other than inchoate Liens for amounts not yet due) having priority over the Lien of Agent and (d) material diminution in value of Qualifying Real Estate.

**“Register”** has the meaning specified in Section 8.07(d).

**“Related Intellectual Property”** means such rights with respect to the Intellectual Property of the Borrower and its Subsidiaries as are reasonably necessary to permit the Term DIP Agent to enforce its rights and remedies under the Loan Documents with respect to the Collateral.

**“Reporting and Variance Trigger Date”** means the earlier of: (i) the first date on which Excess Availability is less than \$90,000,000 (after excluding the amount of Excess Availability required to satisfy the financial covenant set forth in Section 5.03 of this Agreement) and (ii) September 1, 2017.

**“Required Term DIP Lenders”** means, at any time, the holders of more than 50% of the Term DIP Loan Outstandings of all Lenders; provided that, at any time when there are two (2) or more non-affiliated Lenders, Required Term DIP Lenders shall mean at least two (2) non-affiliated Lenders holding the amounts set forth above.

**“Requirements of Law”** means 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.

**“Restricted Payment”** means any dividend or other distribution (whether in cash, securities or other property) with respect to any equity interests in the Borrower or any Subsidiary of the Borrower, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such equity interests in the Borrower or any Subsidiary of the Borrower or any option, warrant or other right to acquire any such equity interests in the Borrower or any Subsidiary of the Borrower.

**“Restructuring Option”** means any transaction involving the refinancing of a Loan Party, the sale of all or substantially all of the assets of any Loan Party or any other restructuring of the Loan Parties’ businesses and operations, including any liquidation, bankruptcy or other insolvency proceeding in respect of any Loan Party.

**“Revaluation Date”** means, each of the following: (a) in the case of a Borrowing which is a LIBOR Rate Loan, two Business Days before the date of a proposed Borrowing, and in the case of a Borrowing which is a Prime Rate Loan one Business Day before the date of a proposed Borrowing, (b) [reserved], (c) in the case of the Borrowing Base calculation, each date a Borrowing Base Certificate is (or required to be) delivered, and (d) such additional dates as Agent shall determine or the Required Term DIP Lenders shall require, in each case, in their Permitted Discretion. For the avoidance of doubt, all interest, costs and fee shall be calculated and paid in Dollars.

**“Sanctions”** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Government of Canada, the United States Government (including without limitation, the Office of Foreign Assets Control (“OFAC”)), the United Nations Security Council, the European Union, or Her Majesty’s Treasury (“HMT”).

**“Sanctioned Person”** means any Person that is (i) included on any Sanctions-related list of blocked or denied parties, (ii) located or resident in, or organized under the laws of, a country or territory subject to comprehensive Sanctions (which includes, as of the date of this Agreement, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region), or (iii) majority-owned or controlled by any of the foregoing.

**“Security Documents”** means the collective reference to the Guarantee and Collateral Agreement, any Mortgage, any control agreement, any deeds of hypothec charging certain moveable and immovable property granted by certain of the Loan Parties in favor of the Term DIP Agent, and all other collateral and/or security documents hereafter delivered to the Term DIP Agent (or its designee) granting a Lien on any property of any Person to secure the obligations and liabilities of any Loan Party under any Loan Document.

**“SISP”** means the sale and investor solicitation process to be approved by the CCAA Court, in form and substance satisfactory to the Term DIP Agent and the Term DIP Lenders in their sole and absolute discretion.

**“Spot Rate”** means, “rate of exchange” as defined (and determined as provided) in Section 8.19 for a conversion of Canadian Dollars into Dollars that is established on the date that is two Business Days prior to the date as of which the foreign exchange computation is made.

**“Statutory Reserve Rate”** means 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 percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Federal Reserve Board of the United States with respect to the Adjusted LIBOR Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Federal Reserve Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Term DIP Loan based on the LIBOR Rate 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.

“Stay of Proceedings” means the stay of proceedings against the Loan Parties and their property and assets and the stay of the exercise of rights and remedies against the Loan Parties and their property and assets contained in the Initial Order, as it may be extended or amended by any other order of the CCAA Court.

“Store” means any store owned or leased and operated by any Loan Party.

“Store Closure Sale” means a store closure sale conducted in accordance with the Business Optimization Plan by an Acceptable Liquidator.

“Subsidiary” of any Person means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of the issued and outstanding capital stock or other equity interest having ordinary voting power to elect a majority of the Board of Directors or other governing body of such corporation, partnership, joint venture, limited liability company, trust or estate (irrespective of whether at the time capital stock or other equity interests of any other class or classes of such corporation, partnership, joint venture, limited liability company, trust or estate shall or might have voting power upon the occurrence of any contingency), is at the time directly or indirectly owned by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person’s other Subsidiaries.

“Supermajority Term DIP Lenders” means, at any time, the holders of 80% or more of the Term DIP Loan Outstanding; provided that, at any time when there are two (2) or more non-affiliated Lenders, Supermajority Term DIP Lenders shall mean at least two (2) non-affiliated Lenders holding the amounts set forth above.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Taxes” has the meaning specified in Section 2.11.

“Term DIP Availability” shall mean the Term DIP Line Cap minus Term DIP Loans Outstanding.

“Term DIP Charge” means the super-priority charge granted by the CCAA Court pursuant to the Initial Order in favour of the Term DIP Agent and the Term DIP Lenders over all of the present and future assets and property of the Loan Parties, real and personal, tangible or

intangible, and whether now owned or which are hereafter acquired or otherwise become the property of a Loan Party.

“Term DIP Lenders” means, collectively, the Persons signatory hereto as a Lender, and each Person that shall become a party hereto as a lender pursuant to Section 8.07.

“Term DIP Line Cap” means, at any time of determination, (a) prior to the Final Availability Date, the least of (i) the Borrowing Base and (ii) the Dollar Equivalent of CAN\$0 and (b) from and after the Final Availability Date, the least of (i) the Borrowing Base and (ii) the Dollar Equivalent of CAN\$150,000,000.

“Term DIP Loan” has the meaning set forth in Section 2.01 (a).

“Term DIP Loan Amount” has the meaning set forth in Section 2.01(a).

“Term DIP Loan Commitment Termination Date” means the earlier of (a) the date upon which the Term DIP Loan has been made in an amount equaling the Term DIP Loan Amount, and (b) July 14, 2017.

“Term DIP Loan Obligations” means the outstanding principal balance of the loans made under the Term DIP Loan and all accrued interest and all other outstanding obligations under the Term DIP Loan.

“Term DIP Loan Outstandings” means as to any Lender at any time, an amount equal to the principal amount of the Term Loan owing to such Lender.

“Term Prepetition Agent” means the “Agent” under and as defined in the Term Prepetition Credit Agreement.

“Term Prepetition Credit Agreement” means the credit agreement dated as of March 20, 2017 among the Borrower, the institutional parties thereto as lenders, and GACP Finance Co., LLC as agent and the other parties from time to time party thereto, as amended, restated, supplemented or otherwise modified from time to time.

“Term Prepetition Creditors” means each of the Persons signatory to the Term Prepetition Credit Agreement as a lender thereunder, and the Term Prepetition Agent.

“Term Prepetition Lenders” means the lenders under the Term Prepetition Credit Agreement.

“Term Prepetition Obligations” means “Obligations” as that term is defined in the Term Prepetition Credit Agreement.

“Termination Date” means the earliest to occur of (i) December 20, 2017, (ii) the occurrence of any Event of Default which is continuing, (iii) the implementation of a Plan, (iv) the closing of a Bankruptcy Sale within the CCAA Proceedings, or (v) the termination of the CCAA Proceedings.

“Total Eligible Inventory Available” means the Total Eligible Inventory Available as set out in the DIP Budget and the updated cash flows required to be delivered pursuant to Section 5.01(k), as applicable.

**“Type”** means either a Prime Rate Loan or a LIBOR Rate Loan.

**“Voting Stock”** means capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

**“Wind-up Reserve”** means a reserve in an amount equal to (i) the Pension Wind-up Deficit, less (ii) the lesser of (a) 50% of the ABL Net Real Estate Value and (b) CAN\$150,000,000.

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

**SECTION 1.02. Computation of Time Periods.** In this Agreement, unless otherwise specified, (a) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding” (b) “including” means “including without limitation”; and (c) any reference to a time of day means Eastern time.

**SECTION 1.03. Accounting Terms.** All accounting terms not specifically defined herein or in the other Loan Documents shall be construed in accordance with the IFRS as issued by the International Accounting Standards Board (“GAAP”) which for purposes of Section 5.03 shall be consistently applied. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth herein, and either the Borrower or the Required Term DIP Lenders shall so request, the Term DIP Agent, the Term DIP Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Term DIP Lenders which shall not be unreasonably withheld), provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change in principles and (ii) the Borrower shall provide to the Term DIP Agent and the Term DIP Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. For the avoidance of doubt, no retroactive change in GAAP shall apply to the construction of accounting terms under this Agreement in the absence of an amendment hereto in accordance with the terms of this Section 1.03.

**SECTION 1.04. Other Interpretive Provisions** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document, the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions

consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, and (vii) any reference to “province” or “provincial” shall be deemed to include “territory” or “territorial”. For all purposes pursuant to which the interpretation or construction of this Agreement and the other Loan Documents may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (1) “personal property” shall include “movable property”, (2) “real property” shall include “immovable property”, (3) “tangible property” shall include “corporeal property”, (4) “intangible property” shall include “incorporeal property”, (5) “security Interest”, “mortgage” and “lien” shall include a “hypothec”, “prior claim” and a “resolutory clause”, (6) all references to filing, registering or recording under the PPSA shall include publication under the Civil Code of Quebec, (7) all references to “perfection” or “perfected” liens or security interests shall include a reference to an “opposable” or “set up” lien or security interest as against third parties, (8) any “right of offset”, “right of setoff” or similar expression shall include a “right of compensation”, (9) “goods” shall include “corporeal moveable property”, other than chattel paper, documents of title, instruments, money and securities, (10) an “agent” shall include a “mandatary”, (11) “construction liens” shall include “legal hypothecs”, (12) “joint and several” shall include “solidary”, (13) “gross negligence or willful misconduct” shall be deemed to be “intentional or gross fault”, (14) “beneficial ownership” shall include “ownership on behalf of another as mandatary”, (15) “easement” shall include “servitude”, (16) “priority” shall include “prior claim”, (17) “survey” shall include “certificate of location and plan”, and (18) “fee simple title” shall include “absolute ownership.”

**SECTION 1.05. Currency Equivalent.** For the purposes of making valuations or computations under this Agreement (but not for purposes of the preparation of any financial statements delivered pursuant hereto), 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 Dollar Equivalent thereof. If the Term DIP Agent receives any payment from or on behalf of any Loan Party in a currency other than Dollars, the Term DIP Agent may convert the payment (including the monetary proceeds of realization upon any Collateral and any funds then held in a cash collateral account) into Dollars at the Dollar Equivalent thereof or at the exchange rate that the Term DIP Agent would be prepared to sell Dollars against the currency received on the Business Day immediately preceding the date of actual payment. The Obligations shall be satisfied only to the extent of the amount actually received by the Term DIP Agent upon such conversion. The Term DIP Agent shall distribute such payments to Term DIP Lender or other applicable Persons in like funds as received. The Term DIP Agent, the Term DIP Lenders and the Borrower hereby agree and acknowledge that it is the intent of the parties for the Term DIP Agent and Term DIP Lenders to bear no risk of currency fluctuations and that the amount of Obligations incurred hereunder, including all Term DIP Loan Outstandings, shall be repaid in full for amounts advanced and incurred by the Borrower, regardless of any change in the applicable exchange rate.

## ARTICLE II

### AMOUNTS AND TERMS OF THE ADVANCES

#### **SECTION 2.01. The Term DIP Loan.**

(a) The Term DIP Lenders agree, on the terms and conditions hereinafter set forth, to make a term loan (the “Term DIP Loan”) to the Borrower in Dollars on the Effective Date, in an aggregate amount equal to the Dollar equivalent of CAN\$150,000,000 (the “Term DIP Loan Amount”) (provided that if such amount exceeds the Borrowing Base on the Effective Date, then the amount of such

excess shall be applied as Availability Reserve and reserved against the ABL DIP Borrowing Base as a Push Down Reserve) from and after the Effective Date through the Term DIP Loan Commitment Termination Date.

(b) With respect to Section 2.01 (a) immediately above, the Dollar-equivalent principal amount of the applicable Term DIP Loan shall be calculated based on the relevant currency exchange rate in effect on the date such Term DIP Loan is incurred.

(c) All repayments and prepayments of the Term DIP Loan shall be in Dollars and shall be the actual amount in Dollars as originally incurred plus all applicable fees and interest thereon, each of which shall be calculated and payable in Dollars.

(d) Anything to the contrary in this Section 2.01 notwithstanding, the Term DIP Agent shall have the right (but not the obligation), in the exercise of its Permitted Discretion, to establish and increase Availability Reserves relating to the Collateral. For the avoidance of doubt if any Availability Reserve (other than the Push Down Reserve (including any the Realty Reserve)) or the basis thereof is established or determined under the ABL DIP Credit Agreement against the ABL DIP Borrowing Base, it shall not be recalculated or established against the Borrowing Base.

**SECTION 2.02. Making the Term DIP Loan.** The Borrowing under Section 2.01(a) shall be made on notice, given not later than (x) 12:00 noon on the third Business Day prior to the Effective Date in the case of a proposed Borrowing of Term DIP Loan consisting of LIBOR Rate Loan or (y) 11:00 a.m. one Business Day prior to the Effective Date in the case of Borrowing of Term DIP Loan consisting of Prime Rate Loan, by the Borrower to the Term DIP Agent, which shall give to each Lender prompt notice thereof. Each such notice of Borrowing (a “Notice of Borrowing”) shall be by telephone, confirmed immediately in writing, by email attachment or by telecopier, in substantially the form of Exhibit A hereto, specifying therein the requested (i) date of such Borrowing, (ii) aggregate amount of the Borrowing (which shall not exceed the Term DIP Availability), and (iii) in case of LIBOR Rate Loan, the initial Interest Period for the Term DIP Loan. Each Lender shall, before 2:00 P.M. on the date of such Borrowing make available for the account of its Applicable Lending Office to the Term DIP Agent at the Term DIP Agent’s Account, in same day funds and in Dollars, such Lender’s ratable portion of the Term DIP Loan borrowing. After the Term DIP Agent’s receipt of such funds and upon fulfillment of the applicable conditions set forth in Section 3.01 or Section 3.02, as applicable, the Term DIP Agent will make such funds available to the Borrower at the Term DIP Agent’s address referred to in Section 8.02. Anything above to the contrary notwithstanding, (i) the Borrower may not select LIBOR Rate Loan if the aggregate amount of such Borrowing is less than \$1,000,000 or if the obligation of the Term DIP Lenders to make LIBOR Rate Loan shall then be suspended pursuant to Section 2.06 or 2.14 and (ii) LIBOR Rate Loan may not be outstanding as part of more than five separate Interest Periods in the aggregate.

(b) The Notice of Borrowing shall be irrevocable and binding on the Borrower. The Borrower shall indemnify each Lender against any loss, cost or expense incurred by such Lender as a result of any failure to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in Article III, including any loss (including loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Term DIP Loan, to be made by such Lender as part of such Borrowing when such Term DIP Loan, as a result of such failure, is not made on such date.

(c) Unless the Term DIP Agent shall have received notice from a Lender prior to the time of the Borrowing that such Lender will not make available to the Term DIP Agent such Lender’s ratable portion of the Borrowing, the Term DIP Agent may assume that such Lender has made such portion available to the Term DIP Agent on the date of such Borrowing in accordance with subsection (a)

of this Section 2.02 and the Term DIP Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such ratable portion available to the Term DIP Agent, such Lender and the Borrower severally agree to repay to the Term DIP Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Term DIP Agent, at (i) in the case of the Borrower, the interest rate applicable at the time to Term DIP Loan comprising such Borrowing and (ii) in the case of such Lender, the Adjusted LIBOR Rate for an Interest Period of 30 days, as applicable. If such Lender shall repay to the Term DIP Agent such corresponding amount, such amount so repaid shall be made available to the Borrower and shall constitute such Lender's Term DIP Loan as part of such Borrowing for purposes of this Agreement.

(d) The failure of any Lender to make the Term DIP Loan to be made by it shall not relieve any other Lender of its obligation, if any, hereunder to make its Term DIP Loan, but no Lender shall be responsible for the failure of any other Lender to make the Term DIP Loan to be made by such other Lender on the date of any Borrowing.

(e) The Term DIP Loan shall be made in a single draw. Term DIP Lenders shall not be required to advance the Term DIP Loan unless the Borrower requests an advance of the full amount thereof. Any principal amount of the Term DIP Loan that is repaid or prepaid may not be reborrowed.

#### SECTION 2.03. Fees.

(a) The Borrower shall pay the fees set forth in this Agreement, the Fee Letter and the Term Prepetition Credit Agreement in the amounts and at the times specified therein.

(b) The Borrower agrees that notwithstanding any acceleration, including any automatic or deemed acceleration, of the Obligations including, but not limited to, as the result of the commencement by or against the Borrower of any proceeding under any Insolvency Legislation, but excluding the CCAA Proceedings, it is agreed that the fees set forth herein, the Fee Letter and the Term Prepetition Credit Agreement, including without limitation any fees for termination, prepayment or early repayment are valid and enforceable obligations of the Borrower and shall be paid in full by the Borrower and the Borrower shall not contest the validity or enforceability of such claims in any proceeding under Insolvency Legislation, including without limitation the CCAA Proceedings.

**SECTION 2.04. Repayment of Term DIP Loan.** The Borrower shall repay to the Term DIP Agent, on the Termination Date, the aggregate principal amount of the Term DIP Loan made by the Term DIP Lenders then outstanding, in each case, in Dollars. No amounts repaid under the Term DIP Loan may be reborrowed and the Term DIP Loan shall be automatically and permanently reduced by the amount of any repayment thereunder.

#### SECTION 2.05. Interest on Term DIP Loan.

(a) **Scheduled Interest Owed to Lenders.** The Borrower shall pay interest in Dollars on the unpaid principal amount of the Term DIP Loan made and owing to each Lender from the date of the Term DIP Loan until such principal amount shall be paid in full, at the following rates per annum:

(i) **Adjusted LIBOR Rate.** During such periods as such Term DIP Loan is a LIBOR Rate Loan, a rate per annum equal at all times during each Interest Period for such Term DIP Loan to the sum of (x) the Adjusted LIBOR Rate for such Interest Period for such Term DIP Loan plus (y) the Applicable Margin for LIBOR Rate Loan in effect from time to time, payable in

arrears on the last day of such Interest Period and on the date such LIBOR Rate Loan shall be Converted or paid in full; provided that in the case of any Interest Period greater than one month in duration, interest shall be payable in arrears monthly on the last Business Day of each month during such Interest Period and on the last day of such Interest Period.

(ii) **Prime Rate.** During such periods as such Term DIP Loan is a Prime Rate Loan, a rate per annum equal at all times to the sum of (x) the Prime Rate in effect from time to time plus (y) the Applicable Margin for Prime Rate Loan in effect from time to time, payable in the case of any Prime Rate Loan, in arrears monthly on the last Business Day of each month during such periods and on the date such Prime Rate Loan shall be Converted or paid in full.

(iii) **Term Prepetition Obligations.** For greater certainty, with respect to any “Borrowing” under the Term Prepetition Credit Agreement, the Borrower shall pay interest on any unpaid principal amount of each such Borrowing made and owing to each Lender from the date of such Borrowing until the Effective Date at the rate set out therefor under the Term Prepetition Credit Agreement and from and after the Effective Date until the principal amount thereof shall be paid in full, at the rates per annum set out in Term Prepetition Credit Agreement.

(b) **Default Interest.** Upon the occurrence and during the continuance of an Event of Default, at the option of the Term DIP Agent or on the request of the Required Term DIP Lenders, the Borrower shall pay interest on the unpaid principal amount of the Term DIP Loan owing to each Term DIP Lender, payable in arrears on the dates referred to in Section 2.05(a) above, at a rate per annum equal to 3% per annum above the rate per annum required to be paid on the Term DIP Loan pursuant to Section 2.05(a) above. Further, the Borrower shall pay interest, to the fullest extent permitted by law, on the amount of any interest, fee or other amount (other than principal) payable hereunder that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal to 3% per annum above the rate per annum required to be paid on Term DIP Loan pursuant to Section 2.05(a).

(c) If any provision of this Agreement or any of the other Loan Documents would obligate the Borrower or any other Person to make any payment of interest or other amount payable to the Term DIP Agent or any Term DIP Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Term DIP Agent or such Lender of interest at a criminal rate (as construed under the Criminal Code (Canada)), if applicable thereto, then notwithstanding that provision, that amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or result in a receipt by the Term DIP Agent or such Term DIP Lender of interest at a criminal rate, the adjustment to be effected, to the extent necessary, as follows:

(i) first, by reducing the amount or rate of interest required to be paid to the Term DIP Agent or applicable Term DIP Lender under this Section 2.05(c); and

(ii) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to the Term DIP Agent or applicable Term DIP Lender which would constitute interest for purposes of the Criminal Code (Canada).

Notwithstanding the provisions of this Section 2.05(c), and after giving effect to all adjustments contemplated hereby, if the Term DIP Agent or any Term DIP Lender shall have received an amount in excess of the maximum permitted by the Criminal Code (Canada) or other legal prohibition, then the Borrower shall be entitled, by notice in writing to the Term DIP Agent or applicable Term DIP Lender to obtain reimbursement from the Term DIP Agent or applicable Term DIP Lender, as the case

may be, in an amount equal to the excess, and pending reimbursement, the amount of the excess shall be deemed to be an amount payable by the Term DIP Agent or applicable Term DIP Lender, as the case may be, to the Borrower. Any amount or rate of interest referred to in this Section 2.05(c) shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that any Obligation remains outstanding on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the Criminal Code (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the date of the incurrence of the Obligation to its relevant maturity date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Term DIP Agent shall be conclusive for the purposes of that determination.

**SECTION 2.06. Interest Rate Determination.** The Term DIP Agent shall give prompt notice to the Borrower and the Term DIP Lenders of the applicable interest rate determined by the Term DIP Agent for purposes of Section 2.08(a).

(b) If, with respect to any LIBOR Rate Loan, the Required Term DIP Lenders notify the Term DIP Agent that the LIBOR Rate for any Interest Period for such Term Loan will not adequately reflect the cost to such Required Term DIP Lenders of making, funding or maintaining their respective LIBOR Rate Loan for such Interest Period, the Term DIP Agent shall forthwith so notify the Borrower and the Term DIP Lenders, whereupon (i) each LIBOR Rate Loan, will automatically, on the last day of the then existing Interest Period therefor, Convert into a Prime Rate Loan, and (ii) the obligation of the Term DIP Lenders to make, or to Convert Term Loans into LIBOR Rate Loan shall be suspended until the Term DIP Agent shall notify the Borrower and the Term DIP Lenders that the circumstances causing such suspension no longer exist.

(c) If the Borrower shall fail to select the duration of any Interest Period for any LIBOR Rate Loan in accordance with the provisions contained in the definition of "Interest Period" in Section 1.01, the Term DIP Agent will forthwith so notify the Borrower and the Term DIP Lenders and such Term DIP Loans will automatically, on the last day of the then existing Interest Period therefor, Convert into Prime Rate Loan.

(d) On the date on which the aggregate unpaid principal amount of LIBOR Rate Loan shall be reduced, by payment or prepayment or otherwise, to less than \$1,000,000, the Term DIP Loan shall on the last day of the applicable Interest Period automatically Convert into Prime Rate Loan.

(e) Upon the occurrence and during the continuance of any Event of Default, at the option of the Term DIP Agent or on the request of the Required Term DIP Lenders (i) each LIBOR Rate Loan will automatically, on the last day of the then existing Interest Period therefor, Convert into a Prime Rate Loan, and (ii) the obligation of the Term DIP Lenders to Convert Term DIP Loans into LIBOR Rate Loan shall be suspended.

**SECTION 2.07. Optional Conversion of Term DIP Loan.** The Borrower may on any Business Day, upon notice given to the Term DIP Agent not later than 12:00 noon on the third Business Day prior to the date of the proposed Conversion and subject to the provisions of Sections 2.04 and 2.14, Convert part or all Term DIP Loan of one Type comprising the same Borrowing into Term DIP Loan of the other Type; provided, however, that any Conversion of LIBOR Rate Loan into Prime Rate Loan shall be made only on the last day of an Interest Period for such LIBOR Rate Loan, any Conversion of Prime Rate Loan into LIBOR Rate Loan shall be in an amount not less than the minimum amount specified in Section 2.02(b) and no Conversion of any Term DIP Loan shall result in more separate Borrowings than permitted under Section 2.02(b). Each such notice of a Conversion shall, within the restrictions specified above, specify (i) the date of such Conversion, (ii) the Term DIP Loan to be Converted, and (iii) if such

Conversion is into LIBOR Rate Loan, the duration of the initial Interest Period for each such Term DIP Loan. Each notice of Conversion shall be irrevocable and binding on the Borrower.

**SECTION 2.08. Optional and Mandatory Prepayments of Term DIP Loan.**

(a) Subject to Section 2.3 above, the Borrower may, upon notice given not later than 12:00 noon on the date that is at least 5 Business Days prior to the date of such prepayment to the Term DIP Agent stating the proposed date and aggregate principal amount of the prepayment, and if such notice is given the Borrower shall, prepay the outstanding principal amount of the Term DIP Loan in whole or ratably in part and any accrued interest to the date of such prepayment on the principal amount prepaid, in each case in Dollars; provided, however, that (x) each partial prepayment shall be in an aggregate principal amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof or a whole multiple thereof and (y) in the event of any such prepayment, the Borrower shall be obligated to reimburse the Term DIP Lenders in respect thereof pursuant to Section 8.04(c).

(b) Subject to Section 2.03 above, on the date of delivery of any Borrowing Base Certificate, if the total Term DIP Loan Outstandings exceeds the sum of the (i) Term DIP Line Cap (without giving effect to clauses (a)(i) and (b)(i) therein) plus (ii) the Push Down Reserve implemented under the ABL DIP Credit Agreement, the Borrower shall prepay Term DIP Loan in an amount equal to such excess in Dollars. In connection with the foregoing, the Term DIP Agent may bi-monthly (or more frequently in the Term DIP Agent's Permitted Discretion) make the necessary exchange rate calculations in accordance with Sections 1.05 and 2.10 to determine whether any such excess described in this Section exists on such date. Notwithstanding the foregoing, the Borrower shall not be required to make the prepayment required under this Section 2.08(b) at any time prior to the Final Availability Date so long as the aggregate borrowings do not exceed the ABL DIP Line Cap by an amount greater than the Acceptable Excess Amount.

(c) Until the repayment in full of the "Obligations" under and as defined in the ABL Prepetition Credit Agreement and the Term Prepetition Obligations, the Borrower shall promptly apply all cash receipts from the sale of any property or assets (other than Term Loan Priority Collateral (as defined in the Intercreditor Agreement), as follows:

(i) *first*, to repay all the "Obligations" under and as defined in the ABL Prepetition Credit Agreement (other than undrawn Prepetition L/Cs (as such defined in the ABL Prepetition Credit Agreement) in full;

(ii) *second*, to cash collateralize all Prepetition L/Cs (as such defined in the ABL Prepetition Credit Agreement) in accordance with Section 3.11 of the ABL DIP Credit Agreement; and

(iii) *third*, to repay all Term Prepetition Obligations.

(d) Until the repayment in full of the Term Prepetition Obligations, the Borrower shall promptly apply any all cash receipts which are identifiable as proceeds of Term Loan Priority Collateral (as defined in the Intercreditor Agreement) to repay all Term Prepetition Obligations in full.

(e) The Term DIP Loan shall be paid in full on the Termination Date. Upon the occurrence and during the continuance of a Cash Dominion Event, and if no Obligations (under and as defined in the ABL DIP Credit Agreement as in effect of the date hereof) are outstanding and all L/C Obligations (under and as defined in the ABL DIP Credit Agreement as in effect of the date hereof) have been cash collateralized, the Borrower shall prepay the Term DIP Loan.

(f) The Net Proceeds of any Disposition by any Loan Party shall be applied promptly, and in any event no later than three (3) Business Days after receipt thereof, to prepay the Obligations, provided that if such Net Proceeds constitute Term Priority Collateral, such Net Proceeds shall be applied first to prepay the Term Prepetition Obligations in full, second to prepay the Term DIP Loan Obligations in full and third to prepay the Obligations.

Upon the repayment of all or part of the Obligations under the ABL DIP Credit Agreement (but excluding the “Prepetition Advances” as defined in the ABL DIP Credit Agreement) with Net Proceeds from the real property subject to the “ABL First Lien Mortgages” (as defined in the Intercreditor Agreement), the ABL DIP Agent shall immediately implement an Availability Reserve equal to such Net Proceeds minus the amount of the Borrowing Base attributable by the Term DIP Lenders to such real property.

**SECTION 2.09. Increased Costs.** If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) made or issued after the Effective Date, there shall be any increase in the cost to any Term DIP Lender of agreeing to make or making, funding or maintaining LIBOR Rate Loan (excluding for purposes of this Section 2.09 any such increased costs resulting from (i) Taxes or Other Taxes (as to which Section 2.11 shall govern) and (ii) changes in the basis of taxation of overall net income, overall gross income or capital by Canada or by the foreign jurisdiction or state or province under the laws of which such Term DIP Lender is organized or has its Applicable Lending Office or any political subdivision thereof), then the Borrower shall from time to time, upon demand by such Term DIP Lender (with a copy of such demand to the Term DIP Agent), pay to the Term DIP Agent for the account of such Term DIP Lender additional amounts sufficient to compensate such Term DIP Lender for such increased cost; provided that a Term DIP Lender claiming additional amounts under this Section 2.09(a) agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office and/or take other commercially reasonable action if the making of such a designation or the taking of such actions would avoid the need for, or reduce the amount of, such increased cost that may thereafter accrue and would not, in the reasonable judgment of such Term DIP Lender, be otherwise disadvantageous to such Term DIP Lender. A certificate as to the amount of such increased cost, submitted to the Borrower and the Term DIP Agent by such Term DIP Lender, shall be entitled to a presumption of correctness. If the Borrower so notifies the Term DIP Agent after any Term DIP Lender notifies the Borrower of any increased cost pursuant to the foregoing provisions of this Section 2.09(a), the Borrower may, upon payment of such increased cost to such Term DIP Lender, replace such Term DIP Lender with a Person that is an Eligible Assignee in accordance with the terms of Section 8.07 (and the Term DIP Lender being so replaced shall take all action as may be necessary to assign its rights and obligations under this Agreement to such Eligible Assignee).

(b) If any Term DIP Lender determines that compliance with any change after the Effective Date in law or regulation or any guideline or request after the Effective Date from any central bank or other Governmental Authority (whether or not having the force of law) affects or would affect the amount of capital required or expected to be maintained by such Term DIP Lender or any entity controlling such Term DIP Lender and that the amount of such capital is increased by or based upon the existence of such Term DIP Lender’s commitment to lend hereunder and other commitments of this type, then, upon demand by such Term DIP Lender (with a copy of such demand to the Term DIP Agent), the Borrower shall pay to the Term DIP Agent for the account of such Term DIP Lender, from time to time as specified by such Term DIP Lender, additional amounts sufficient to compensate such Term DIP Lender or such entity in the light of such circumstances, to the extent that such Term DIP Lender reasonably determines such increase in capital to be allocable to the existence of such Term DIP Lender’s commitment to lend hereunder. A certificate as to such amounts submitted to the Borrower and the Term DIP Agent by such Term DIP Lender shall be entitled to a presumption of correctness.

(c) The Borrower shall not be required to compensate a Term DIP Lender pursuant to this Section for any increased costs or capital or reserve requirement or pursuant to Section 2.11 for any taxes incurred more than six months prior to the date that such Term DIP Lender notifies the Borrower of the change or issuance giving rise to such increased costs or capital or reserve requirement or tax and of such Term DIP Lender's intention to claim compensation therefor; provided that if the change or issuance giving rise to such increased costs or capital or reserve requirement or tax is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof.

**SECTION 2.10. Payments and Computations.** The Borrower shall make each payment hereunder and under the other Loan Documents, without any right of counterclaim or set-off, not later than 1:00 P.M. on the day when due in Dollars to the Term DIP Agent at the Term DIP Agent's Account in same day funds. The Term DIP Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal or interest or commitment fees ratably (other than amounts payable pursuant to Section 2.09, 2.11 or 8.04(c)) to the Term DIP Lenders for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Term DIP Lender to such Term DIP Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon its acceptance of an Assignment and Acceptance and recording of the information contained therein in the Register pursuant to Section 8.07(c), from and after the effective date specified in such Assignment and Acceptance, the Term DIP Agent shall make all payments hereunder and under the other Loan Documents in respect of the interest assigned thereby to the Term DIP Lender assignee thereunder, and the parties to such Assignment and Acceptance shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) The Borrower hereby authorizes each Term DIP Lender, if and to the extent payment owed by it to such Term DIP Lender is not made when due hereunder or under the other Loan Documents, to charge from time to time against any or all of the Borrower's accounts with such Term DIP Lender any amount so due. Any such Term DIP Lender so charging such accounts shall deliver the proceeds therefrom to the Term DIP Agent for distribution to the Credit Parties in the manner set forth herein and in the other Loan Documents.

(c) All computations of interest based on the Prime Rate shall be made by the Term DIP Agent on the basis of a year of 365 days and all computations of interest based on the Federal Fund Rate and the Adjusted LIBOR Rate shall be made by the Term DIP Agent on the basis of a year of 360 days, in each case, for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or commitment fees are payable. Each determination by the Term DIP Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error. For purposes of disclosure under the *Interest Act* (Canada), where interest is calculated pursuant hereto at a rate based upon a three hundred sixty-five (365) or three hundred sixty (360) day year (the "First Rate"), it is hereby agreed that the rate or percentage of interest on a yearly basis is equivalent to such First Rate multiplied by the actual number of days in the year divided by three hundred sixty-five (365) or three hundred sixty (360), as applicable.

(d) Whenever any payment hereunder or under the other Loan Documents shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or commitment fee, as the case may be; provided, however, that, if such extension would cause payment of interest on or principal of LIBOR Rate Loan to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(e) Unless the Term DIP Agent shall have received notice from the Borrower prior to the date on which any payment is due by it to the Term DIP Lenders hereunder that the Borrower will not make such payment in full, the Term DIP Agent may assume that the Borrower has made such payment in full to the Term DIP Agent on such date and the Term DIP Agent may, in reliance upon such assumption, cause to be distributed to each Term DIP Lender on such due date an amount equal to the amount then due such Term DIP Lender. If and to the extent the Borrower shall not have so made such payment in full to the Term DIP Agent, each Term DIP Lender shall repay to the Term DIP Agent forthwith on demand such amount distributed to such Term DIP Lender together with interest thereon, for each day from the date such amount is distributed to such Term DIP Lender until the date such Term DIP Lender repays such amount to the Term DIP Agent, at the Federal Funds Rate.

**SECTION 2.11. Taxes.** Any and all payments by the Borrower to or for the account of any Term DIP Lender and the Term DIP Agent hereunder or under the other Loan Documents or any other documents to be delivered hereunder shall be made, in accordance with Section 2.10 or the applicable provisions of such other documents, free and clear of and without deduction for any and all present or future withholding taxes, including levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Term DIP Lender and the Term DIP Agent, taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, and branch profits taxes, by the jurisdiction under the laws of which such Term DIP Lender or the Term DIP Agent (as the case may be) is organized or any political subdivision thereof and, in the case of each Term DIP Lender, taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, and branch profits taxes, by the jurisdiction of such Term DIP Lender's Applicable Lending Office or any political subdivision thereof (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities in respect of payments hereunder or under the other Loan Documents being hereinafter referred to as "Taxes"). If the Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under any other Loan Document or any other documents to be delivered hereunder to any Term DIP Lender or the Term DIP Agent, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.11) such Term DIP Lender or the Term DIP Agent (as the case may be) receive an amount equal to the sum each would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or under the other Loan Documents or from the execution, delivery or registration of, performing under, or otherwise with respect to, this Agreement or the other Loan Documents or any other documents to be delivered hereunder, but excluding all other Canadian and United States federal taxes other than withholding taxes (hereinafter referred to as "Other Taxes").

(c) The Borrower shall indemnify each Term DIP Lender and the Term DIP Agent for and hold each of them harmless against the full amount of Taxes or Other Taxes (including taxes of any kind imposed or asserted by any jurisdiction on amounts payable under this Section 2.11) imposed on or paid by such Term DIP Lender or the Term DIP Agent (as the case may be) and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. Payment of this indemnification shall be made within 30 days from the date such Term DIP Lender or the Term DIP Agent makes written demand therefor.

(d) Within 30 days after the date of any payment of Taxes or Other Taxes, the Borrower shall furnish to the Term DIP Agent, at its address referred to in Section 8.02, the original or a certified

copy of a receipt evidencing such payment to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Term DIP Agent.

(e) Any Term DIP Lender claiming any additional amounts payable pursuant to this Section 2.11 agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Applicable Lending Office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the reasonable judgment of such Term DIP Lender, be otherwise disadvantageous to such Term DIP Lender.

(f) If any Term DIP Lender determines, in its sole discretion, that it has actually and finally realized, by reason of a refund, deduction or credit of any Taxes paid or reimbursed by the Borrower pursuant to subsection (a) or (c) above in respect of payments under this Agreement or the other Loan Documents, a current monetary benefit that it would otherwise not have obtained, and that would result in the total payments under this Section 2.11 exceeding the amount needed to make such Term DIP Lender whole, such Term DIP Lender shall pay to the Borrower, with reasonable promptness following the date on which it actually realizes such benefit, an amount equal to the amount of such excess, net of all out-of-pocket expenses reasonably allocable in securing such refund, deduction or credit, provided that the Borrower, upon the request of such Term DIP Lender, agrees to repay the amount paid over to the Borrower to such Term DIP Lender in the event such Term DIP Lender is required to repay such refund to such jurisdiction. Nothing in this subsection (f) shall be construed to require any Term DIP Lender to make available to the Borrower or any other Person its tax returns or any confidential tax information.

(g) If the Term DIP Agent or any Term DIP Lender, as the case may be, shall become aware that it is entitled to claim a refund from a Governmental Authority in respect of Taxes or Other Taxes paid by the Borrower pursuant to this Section 2.11, including Taxes or Other Taxes as to which it has been indemnified by the Borrower, or with respect to which the Borrower or a Group Member that is a signatory hereto has paid additional amounts pursuant to this Section 2.11, it shall notify the Borrower of the availability of such refund claim and, if the Term DIP Agent or any Term DIP Lender, as the case may be, determines in good faith that making a claim for refund will not have any adverse consequence to its taxes or business operations, it shall, after receipt of a request by the Borrower, make a claim to such Governmental Authority for such refund at the Borrower's expense.

**SECTION 2.12. Sharing of Payments, Etc.** If any Term DIP Lender shall obtain any payment from any Group Member (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Term DIP Loan or other amounts owing to it (other than pursuant to Section 2.03, 2.04, 2.09, 2.11 or 8.04(c)) in excess of its ratable share, such Term DIP Lender shall forthwith purchase from the other Term DIP Lenders such participations in the Term DIP Loan or other amounts owing to them as shall be necessary to cause such purchasing Term DIP Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Term DIP Lender, such purchase from each such other Term DIP Lender shall be rescinded and such Term DIP Lender shall repay to the purchasing Term DIP Lender the purchase price to the extent of such recovery together with an amount equal to such Term DIP Lender's ratable share (according to the proportion of (i) the amount of such Term DIP Lender's required repayment to (ii) the total amount so recovered from the purchasing Term DIP Lender) of any interest or other amount paid or payable by the purchasing Term DIP Lender in respect of the total amount so recovered. The Borrower agrees that any Term DIP Lender so purchasing a participation from another Term DIP Lender pursuant to this Section 2.12 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Term DIP Lender were the direct creditor of the Borrower in the amount of such participation.

**SECTION 2.13. Use of Proceeds of Term DIP Loan.** Unless otherwise agreed to in writing by the Term DIP Lenders, the Borrower shall use the Term DIP Loan and the proceeds thereof solely:

(a) (A) to finance operating expenses and restructuring costs in the CCAA Proceedings, (B) to pay professional fees of the Monitor and the fees of legal counsel to the Loan Parties and the Monitor and (C) for general corporate purposes of the Borrower and the Loan Parties, all in accordance with and subject to the DIP Budget, subject to the Permitted Variances;

(b) to pay the Obligations and the fees and expenses related to this Agreement and the CCAA Proceedings provided however that no proceeds shall be applied to the Term Prepetition Obligations;

(c) to pay fees and expenses of counsel to the Term DIP Agent and the Term DIP Lenders, counsel to the ABL DIP Agent and the ABL DIP Lenders, counsel to the board of directors of the Borrower, the Lender FA and any other advisors retained by the Term DIP Agent and the Term DIP Lenders;

provided that, no proceeds of the Term DIP Loan will be used:

(d) to investigate, object to or challenge in any way any claims of the Term DIP Lenders against any of the Loan Parties in respect of the "Term Loan" or of the "Agent" and the "Lenders" as each such term is defined in and under the Term Prepetition Credit Agreement; or

(e) to investigate, object to or challenge in any way the validity, perfection or enforceability of the Liens created pursuant to the Term DIP Charge or any of the Security Documents, provided further that nothing in this paragraph shall restrict the Loan Parties, the Monitor, or the Monitor's counsel from: (A) assessing the validity and enforceability of the Liens in respect of advances under the Term Prepetition Credit Agreement, and (B) conducting a claims process in accordance with any CCAA Court Order.

**SECTION 2.14. Illegality.** Notwithstanding any other provision of this Agreement, if any Term DIP Lender shall notify the Term DIP Agent that the introduction of or any change in or in the interpretation of any law or regulation makes it unlawful, or any central bank or other Governmental

Authority asserts that it is unlawful, for any Term DIP Lender or its Applicable Lending Office to perform its obligations hereunder to make LIBOR Rate Loan or to maintain LIBOR Rate Loan hereunder, (a) each LIBOR Rate Loan will automatically, upon such demand, to the extent required by applicable law, Convert into a Prime Rate Loan, and (b) the obligation of the Term DIP Lenders to Convert Term DIP Loans into LIBOR Rate Loan shall be suspended until the Term DIP Agent shall notify the Borrower and the Term DIP Lenders that the circumstances causing such suspension no longer exist.

#### **SECTION 2.15. Wind-up Reserve.**

(a) The Wind-up Reserve will be included as an Availability Reserve without any prior notice, grace period or other condition or formality, in addition to any other Availability Reserves then in effect or thereafter imposed by the Term DIP Agent from time to time in accordance with the terms of this Agreement.

(b) For the avoidance of doubt, neither the Wind-up Reserve nor the termination thereof upon the Final Availability Date shall limit the rights of the Term DIP Agent to impose any Availability Reserves in accordance with terms hereof, including, but not limited to, Availability Reserves in respect of current service pension payments or other pension payments to the extent permitted hereunder.

(c) For the purposes of determining the Wind-up Reserve, the amount of the Pension Wind-up Deficit will be equal to the Pension Wind-up Deficit reflected in the most recent Actuarial Reports delivered to the Term DIP Agent pursuant to Section 2.15 of the Term DIP Credit Agreement. The Wind-up Reserve shall no longer be applicable after the Final Availability Date.

(d) Qualifying Freehold Real Estate will be subject to updated additional appraisals at the Borrower's expense at the request of the Term DIP Agent; provided that such appraisals shall be limited to one per year so long as no Event of Default has occurred and is continuing.

### **ARTICLE III CONDITIONS TO EFFECTIVENESS**

**SECTION 3.01. Conditions Precedent to Effectiveness.** This Agreement and the obligations of the Term DIP Lenders to agree to extend the Term DIP Loan shall become effective on and as of the first date on which each of the following conditions precedent have been satisfied:

(a) The Term DIP Agent's receipt of the following, each of which shall be originals or telecopies or electronic transmission of pdf formatted copies (followed promptly by originals) unless otherwise specified, each properly executed by an Authorized Officer of the signing Loan Party, each dated the Effective Date (or, in the case of certificates of governmental officials, a recent date before the Effective Date) and each in form and substance satisfactory to the Term DIP Agent and the Required Term DIP Lenders:

(i) this Agreement duly executed by each of the Borrower, the Term DIP Agent and the Term DIP Lenders.

(ii) a Borrowing Base Certificate (without limitation reflects the inclusion of Qualifying Real Estate into the Borrowing Base), duly completed and executed by an Authorized Officer of the Borrower, together with supporting information satisfactory to the Term DIP Agent in its Permitted Discretion;

(iii) results of such other diligence as the Term DIP Agent and each of the Term DIP Lenders may reasonably require, including compliance with “know your customer” and anti-money laundering rules and regulations, including, without limitation, the Proceeds of Crime Act;

(iv) the DIP Budget;

(v) the Business Optimization Plan;

(vi) the Perfection Certificate duly completed and executed by an Authorized Officer of the Borrower;

(vii) such other customary certificates, documents or consents as the Term DIP Agent may require;

(viii) the Fee Letter; and

(ix) the Borrower shall have entered into the ABL DIP Credit Agreement with the ABL DIP Agent and lenders thereunder and such ABL DIP Credit Agreement shall be (i) effective and in full force and effect and (ii) in form and substance satisfactory to the Term DIP Agent and the Term DIP Lenders; and the CCAA Court shall have approved the ABL DIP Credit Agreement and the ABL DIP Charge.

(b) the Borrower shall have entered into the ABL DIP Credit Agreement with the ABL DIP Agent and the ABL DIP Lenders thereunder and such ABL DIP Credit Agreement shall be (i) effective and in full force and effect and (ii) in form and substance satisfactory to the Term DIP Agent and the Term DIP Lenders; and the CCAA Court shall have approved the ABL DIP Credit Agreement and the ABL DIP Charge;

(c) [reserved].

(d) The representations and warranties made by each Loan Party in or pursuant to the Loan Documents are true and correct on and as of such date in all material respects, before and after giving effect to such extension of credit and to the application of the proceeds therefrom, as though made on and as of such date, except to the extent that (i) such representations or warranties are qualified by a materiality standard, in which case they shall be true and correct in all respects and (ii) such representations or warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(e) The Term DIP Agent and the Term DIP Lenders shall have received a detailed 13 week cash flow forecast and DIP Budget, each to be in form and substance satisfactory to the Agreement and the Term DIP Lenders in their discretion, an availability model, Consolidated income statement, balance sheet, and statement of cash flow, by month, each prepared in conformity with GAAP.

(f) There shall not be pending any litigation or other proceeding which is not stayed by the Stay of Proceedings.

(g) No material changes in governmental regulations or policies affecting any Loan Party or any Credit Party shall have occurred prior to the Effective Date.

(h) There are no Liens in the Collateral ranking in priority to the Liens securing the Obligations (including the Term DIP Charge), except for the Permitted Priority Liens.

**SECTION 3.02. Conditions Precedent to Advance of the DIP Term Loan.**

The obligation of each Lender to make the initial advance of the Term DIP Loan under this Agreement shall be subject to the condition precedent that the Effective Date shall have occurred and the following additional conditions precedent shall have been satisfied:

(a) The Term DIP Agent's receipt of the following, each of which shall be originals or telecopies or electronic transmission of pdf formatted copies (followed promptly by originals) unless otherwise specified, each properly executed by an Authorized Officer of the signing Loan Party, each dated the Effective Date (or, in the case of certificates of governmental officials, a recent date before the Effective Date) and each in form and substance satisfactory to the Agent and the Required Lenders:

(i) to the extent not previously delivered, the Security Documents required to be delivered hereunder (including, without limitation, the Guarantee and Collateral Agreement, and Quebec governed law hypothecs creating Liens over movable and immovable property located in the Province of Quebec), each duly executed by the applicable Loan Parties;

(ii) a certificate signed by an Authorized Officer of the Borrower certifying (A) that the conditions specified below have been satisfied and (B) that the Perfection Certificate is true and correct in all material respects;

(iii) to the extent not previously delivered, all other Loan Documents required to be delivered hereunder, each duly executed by the applicable Loan Parties;

(iv) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Authorized Officers of each Loan Party as the Agent may reasonably require evidencing (A) the authority of each Loan Party to enter into this Agreement and to enter into or confirm its obligations under the other Loan Documents to which such Loan Party is a party or is to be a party and (B) the identity, authority and capacity of each Authorized Officer thereof authorized to act as an Authorized Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(v) copies of each Loan Party's organization or other governing documents and such other documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where failure to so qualify could reasonably be expected to have a Material Adverse Effect;

(vi) evidence that all insurance required to be maintained pursuant to Section 5.01(c) has been obtained and is in effect;

(vii) a Borrowing Base Certificate (without limitation reflecting the inclusion of Qualifying Real Estate with the Borrowing Base) (giving effect to the adjustments to

the Borrowing Base resulting from the occurrence of the Final Availability and any adjustments to advance rates resulting from recent appraisals), duly completed and executed by an Authorized Officer of the Borrower, together with supporting information satisfactory to the Term DIP Agent in its Permitted Discretion and dated as of the date of the initial advance of the Term DIP Loan;

(viii) to the extent not previously delivered, duly executed Blocked Account Agreements required pursuant to Section 5.01(n);

(b) All actions required by law or reasonably requested by the Term DIP Agent to be undertaken in the Province of Quebec in respect of the hypothecs referred to in clause (a)(i) of this Section 3.02 shall have been filed, registered or recorded to create or perfect or provide notice of the Liens intended to be created by such Loan Documents governed by the laws of the Province of Quebec and all such documents and instruments shall have been so filed, registered or recorded in the Province of Quebec to the satisfaction of the Term DIP Agent.

(c) All fees required to be paid to the Term DIP Agent on or before the date of the initial advance of the Term DIP Loan shall have been paid in full, and all fees required to be paid to the Term DIP Lenders on or before the date of the initial advance of the Term DIP Loan shall have been paid in full.

(d) The Borrower shall have paid all costs and expenses of the Term DIP Agent (to the extent set forth in Section 8.04(a)) incurred in connection with or relating to this Agreement and the other Loan Documents, including fees, charges and disbursements of counsel to the Term DIP Agent, the Lender FA, and any other advisors retained by the Term DIP Agent or the Term DIP Lenders and for the initial advance of the Term DIP Loan only, to the extent invoiced prior to or on the date of the initial advance of the Term DIP Loan, and all such amounts shall be paid by the Borrower directly from the initial advance of the Term DIP Loan if not paid previously.

(e) No event has occurred and is continuing, or would result from such extension of credit or from the application of the proceeds therefrom, that constitutes a Default or an Event of Default.

(f) The Agent shall have received results of searches or other evidence reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Liens permitted by Section 5.02(a).

(g) The Final Availability Date shall have occurred.

(h) The Term DIP Loan requested to be calculated shall not exceed the Term DIP Availability.

(i) The Term DIP Agent shall have received a Notice of Borrowing in accordance with the requirements hereof.

(j) The Term DIP Loan shall be funded on or prior to the Term DIP Loan Commitment Termination Date.

(k) All conditions to include the Qualifying Real Estate into the Borrowing Base, set forth in the applicable defined term (including the granting of Mortgages (if required by the Term

DIP Agent) and Liens in such Qualifying Real Estate and completion and delivery of appraisals by a third party appraiser acceptable to the Term DIP Agent of all Qualifying Real Estate, the results of which are satisfactory to the Term DIP Agent), shall have been satisfied on or prior to such date.

(l) The Borrower and the other Loan Parties are in compliance with all CCAA Court Orders, the Loan Documents and Requirements of Law.

(m) The Term DIP Agent and the Term DIP Lenders acting reasonably shall be satisfied with the identity of the applicants in the CCAA Proceedings.

(n) Any appeal period to seek a stay, leave for appeal or appeal of the Initial Order shall have expired without (x) any further right of any Person to seek any of the foregoing relief or (y) any of the foregoing relief having been sought, and the Initial Order shall not have been reversed, stayed, vacated, or unless agreed to by the Term DIP Agent and the Term DIP Lenders, amended or modified in any manner.

(o) The Term DIP Agent and the Term DIP Lenders shall have completed searches in respect of real property owned by any one or more of the Loan Parties (excluding the real property charged by the “ABL First Lien Mortgages” (as that term is defined in the Intercreditor Agreement)), and the results of such due diligence shall be satisfactory to the Term DIP Agent and the Required Term DIP Lenders in their sole discretion.

**SECTION 3.03. Waiver of a Condition Precedent.** The terms and conditions of Section 3.01 are inserted for the sole benefit of the Term DIP Agent and the Term DIP Lenders and may be waived by the Required Term DIP Lenders, in whole or in part, with or without terms or conditions, in respect of all or any portion of a Borrowing.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

**SECTION 4.01. Representations and Warranties of the Borrower.** The Borrower hereby represents and warrants as follows:

(a) Each Loan Party (i) is duly organized and validly existing under the laws of the jurisdiction of its organization or formation and (ii) is in compliance with all Requirements of Law except to the extent that the failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party, and the consummation of the transactions contemplated hereby or thereby, are within such Loan Party’s powers, have been duly authorized by all necessary organizational action, and do not contravene (i) the charter or by-laws or other organizational or governing documents of such Loan Party or (ii) upon entry of the Initial Order, any law or any contractual restriction binding on or affecting any Loan Party, except, for purposes of this clause (ii), to the extent such contravention would not reasonably be expected to have a Material Adverse Effect.

(c) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other third party is required for the due execution, delivery and

performance by any Loan Party of any Loan Document to which it is a party that has not already been obtained, except for the Initial Order.

(d) Each Loan Document has been duly executed and delivered by each Loan Party party thereto. This Agreement constitutes, and each other Loan Document will constitute upon execution and upon the issuance of the Initial Order the legal, valid and binding obligation of each Loan Party party thereto enforceable against such Loan Party in accordance with its respective terms subject to the effect of any applicable bankruptcy, insolvency, reorganization or moratorium or similar laws affecting the rights of creditors generally and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

(e) [reserved]

(f) Other than the commencement of the CCAA Proceedings since the Effective Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect since the date of this Agreement.

(g) There is no action, suit, investigation, litigation or proceeding, including any Environmental Action, which is pending or, to the Borrower's knowledge, threatened affecting the Borrower or any of its Subsidiaries before any court, Governmental Authority or arbitrator that will not be stayed by the Stay of Proceedings.

(h) All Canadian federal and provincial income tax returns and all other material tax returns which are required to be filed have been filed by or on behalf of the Borrower and its Subsidiaries, and all taxes due with respect to the Borrower and its Subsidiaries pursuant to such returns or pursuant to any assessment received by the Borrower or any of its Subsidiaries have been paid except to the extent permitted in Section 5.01(b). The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of taxes or other governmental charges have been made in accordance with, and to the extent required by, GAAP.

(i) All written factual information heretofore furnished by the Borrower or its Subsidiaries to the Term DIP Agent or any Term DIP Lender (including the Perfection Certificate) for purposes of or in connection with this Agreement or any other Loan Document, taken as a whole, was true and correct in all material respects on the date as of which such information was stated or certified, provided that the Borrower makes no representations or warranties with respect to any projections or other nonfactual information contained in such information.

(j) (i) Each Loan Party has title in fee simple to, or a valid leasehold interest in, all its real property, and good title to, or a valid leasehold interest in, all its other property necessary for the conduct of its business, and except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect, and (ii) no Inventory, Credit Card Account Receivable, DC, Related Intellectual Property is subject to any Lien except as permitted by Section 5.02(a).

(k) (i) Each Loan Party owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted; (ii) no material claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property, nor does the Borrower know of any valid basis for any such claim; and (iii) the use of Intellectual Property by each Group Member does not infringe on the rights of any Person in any material respect.

(l) As of the Effective Date, Schedule 4.01(l) lists all Canadian Pension Plans currently maintained or contributed to by the Loan Parties. The Canadian Pension Plans are duly registered under all applicable provincial pension benefits legislation. All obligations of the Loan Parties (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Pension Plans or the funding agreements therefor have been performed in a timely fashion in accordance with the terms of the Canadian Pension Plans and applicable laws and regulations unless such non-compliance, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, there are as of the Effective Date no outstanding disputes concerning the assets held pursuant to any Canadian Pension Plan or such funding agreement. Except as authorized by the Initial Order, or any other CCAA Court Order, all contributions or premiums required to be made by the Loan Parties to the Canadian Pension Plans have been made in a timely fashion in accordance with the terms of the Canadian Pension Plans and applicable laws and regulations unless such non-compliance, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. All employee contributions to the Canadian Pension Plans required to be made by way of authorized payroll deduction have been properly withheld by the Loan Parties and fully paid into the Canadian Pension Plans in a timely fashion. All reports and disclosures relating to the Canadian Pension Plans required by any applicable laws or regulations have been filed or distributed in a timely fashion unless such non-compliance, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, there have been no improper withdrawals from or applications of the assets of any of the Canadian Pension Plans. As of the Effective Date, the Canadian Pension Plans are fully funded both on an ongoing basis and on a solvency basis, except as set forth in, the most recent Actuarial Report delivered by the Borrower to the Term DIP Agent pursuant to Section 2.15(c). To the knowledge of the Borrower, none of the Canadian Pension Plans is at the Effective Date the subject of an investigation, any other proceeding or any action or claim by any Governmental Authority or any other Person, and to the knowledge of the Borrower, at the Effective Date there exists no state of facts which after notice or lapse of time or both could reasonably be expected to give rise to any such proceeding, action or claim. As of the Effective Date, no Loan Party maintains, sponsors or contributes, nor has any interest in a Person that maintains, sponsors or contributes, to any Canadian Defined Benefit Pension Plan other than those disclosed in Schedule 4.01(l) on the Effective Date or has any liabilities or obligations in respect of a Canadian Defined Benefit Pension Plan that has been terminated or wound up. No Canadian Defined Benefit Pension Termination Event has occurred. Except with respect to contributions to a Canadian Defined Benefit Pension Plan that are not made pursuant to an authorization set out in the Initial Order, no Lien exists, choate or inchoate, in respect of any Loan Party or their property in connection with any Canadian Defined Benefit Pension Plan (other than inchoate Liens pursuant to applicable Canadian federal or provincial pension benefit standards legislation for amounts required to be remitted but not yet due) unless such Liens, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(m) Except as, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, no Group Member (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

(n) The Security Documents are effective to create in favor of the Term DIP Agent, for the benefit of the Credit Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. Upon entry of the Initial Order, the Security Documents shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to the Lien or claim of any other Person (except Permitted Priority Liens).

(o) The properties of the Loan Parties are insured as required pursuant to Section 5.01(c) hereof. Each insurance policy required to be maintained by the Loan Parties pursuant to Section 5.01(c) is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

(p) As of the Effective Date: (1) except as set forth in the Perfection Certificate, there are no outstanding rights to purchase any equity interests in any Subsidiary of a Loan Party, and (2) the copies of the organization and governing documents of each Loan Party and each amendment hereto provided pursuant to Section 3.01 are true and correct copies of each such document, each of which is valid and in full force and effect.

(q) As of the Effective Date, except as set forth on Schedule 4.01(q), (a) there are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of the Borrower, threatened, (b) the hours worked by and payments made to employees of the Loan Parties comply with any applicable federal, provincial, local or foreign law dealing with such matters, (c) all payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 4.01(q) (as updated by the Borrower from time to time) no Loan Party or any Subsidiary is a party to or bound by any collective bargaining agreement, management agreement or any material bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement (excluding in each case individual employment agreements). There are no representation proceedings pending or, to the knowledge of the Borrower, threatened to be filed with any labor relations board, and no labor organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of the Borrower, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound.

(r) Except for the Financial Advisor, no broker or finder brought about the obtaining, making or closing of the Term DIP Loan or transactions contemplated by the Loan Documents, and other than amounts payable pursuant to the Fee Letter and the “Fee Letter” under and as defined in the ABL DIP Credit Agreement, no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder’s or brokerage fees in connection therewith.

(s) Other than any breach or default resulting from the commencement and continuation of the CCAA Proceedings (which breaches and defaults have been stayed by the Stay of Proceedings), the Loan Parties are not in breach or in default in any material respect of or under any Material Contract and have not received any notice of the intention of any other party thereto to terminate any Material Contract.

(t) The Borrower and each of its Subsidiaries are in compliance with (a) the Criminal Code (Canada), and (b) the Proceeds of Crime Act; and the Borrower and each of its Subsidiaries are in compliance in all material respects with all other federal, provincial or territorial laws relating to “know your customer” and anti-money laundering rules and regulations.

(u) Neither the Borrower nor any of its Subsidiaries, nor any director, officer, employee, agent, or any other Person acting on behalf or for the benefit of the Borrower or any of its Subsidiaries

has provided, offered, promised, or authorized the provision of any contribution, gift, entertainment or other expenses relating to political activity, or any other money, property, or thing of value, directly or indirectly, to any government official, including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any political party or party official or candidate for political office, or any other Person acting in an official capacity, to influence official action or secure an improper advantage, or to encourage the recipient to breach a duty of good faith or loyalty or the policies of his/her employer, or otherwise in violation of any Anti-Corruption Law.

(v) Neither the Borrower nor any of its Subsidiaries, nor any director, officer, employee, agent, or any other Person acting on behalf or for the benefit of the Borrower or any of its Subsidiaries (1) is a Sanctioned Person nor (2) has engaged in, nor is it now engaged in, any dealings or transactions with or for the benefit of any Sanctioned Person, nor has otherwise violated Sanctions.

(w) None of the Borrower or any of its Subsidiaries is party to any actual or threatened legal proceedings or outstanding enforcement action relating to any breach or suspected breach of Anti-Corruption Laws or Sanctions.

(x) The Initial Order is not the subject of a pending appeal in any respect, and none of the Initial Order, the borrowings, or the performance by any Loan Party of any of its obligations under any of the Loan Documents is subject of a presently effective stay pending appeal.

(y) No order has been issued by the CCAA Court terminating the CCAA Proceedings or converting the CCAA Proceedings to bankruptcy proceedings under the BIA.

(z) The CCAA Proceedings were commenced in accordance with applicable law and proper notice thereof and of any applicable hearing has been given in accordance with applicable law.

(aa) All financial statements of the Loan Parties provided to the Term DIP Agent by or on behalf of any Loan Party fairly reflect, as of the dates thereof, the financial condition of the Loan Parties, as applicable, in all material respects and the results of their operations for the periods covered thereby, and have been prepared in accordance with GAAP.

(bb) The DIP Budget is reasonable and has been prepared in good faith.

(cc) None of the Borrower or any other Loan Party has defaulted in respect of its obligations for payroll and source deductions or is in arrears in respect of the payment of any such obligations.

(dd) No information, report, financial statement, exhibit or schedule furnished by or on behalf of the Borrower to the Term DIP Agent or any Term DIP Lender in connection with the negotiation of any Loan Document (including the DIP Budget) or included therein or delivered pursuant thereto, when taken as a whole, contained any material misstatement of fact or omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not materially misleading; provided that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, the Borrower represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule, it being understood that actual results may differ from such forecasts and projections and such differences may be material.

(ee) No Default or Event of Default has occurred or is continuing.

(ff) Each applicant under the CCAA Proceedings is the Borrower or a Subsidiary of the Borrower.

**SECTION 4.02. Deemed Representations and Warranties.** Each request by the Borrower for an advance of the Term DIP Loan or any portion thereof shall be deemed to be a representation and warranty by the Borrower to the Term DIP Agent and each Term DIP Lender that the representations and warranties contained in Section 4.01 (other than (i) those made as of a specific date, (ii) with respect to the representation in Section 4.01(f) clauses (a) or (b) of the definition of Material Adverse Effect) are, as of the date of such request, and will be, as of the date of the applicable Borrowing, true and correct in all material respects and each request by the Borrower for a Conversion shall be deemed to be a representation and warranty by the Borrower to the Term DIP Agent and each Term DIP Lender that as of the date of such request and as of the applicable date of the Conversation, there exists no Default or Event of Default. All (a) representations and warranties and (b) certifications (including all statements and confirmations contained in any Notice of Borrowing or Compliance Certificate), in each case, of the Borrower or any other Loan Party contained in any other Loan Document delivered pursuant hereto or thereto shall be deemed to constitute representations and warranties made by the Loan Parties to the Term DIP Agent and the Term DIP Lenders under Section 4.01 of this Agreement.

## ARTICLE V

### COVENANTS

**SECTION 5.01. Affirmative Covenants.** So long as this Agreement shall remain in effect the Term DIP Loan or other Obligation (other than contingent indemnification obligations for which no claim shall have then been asserted) shall remain unpaid, the Borrower will, and will cause each of its Subsidiaries and each other Loan Party to:

(a) **Compliance with Laws, Etc.** Subject to the Initial Order and any other CCAA Court Order, comply in all respects with all applicable Requirements of Law, such compliance to include compliance with the *Pensions Benefit Act* (Ontario) and Environmental Laws, except for such noncompliance as would not reasonably be expected to have a Material Adverse Effect.

(b) **Payment of Taxes, Etc.** Subject to the Initial Order and any other CCAA Court Order, pay and discharge before the same shall become delinquent, (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property (ii) all payments required to be made to any Canadian Pension Plan, and (iii) all lawful claims that, if unpaid, might by law become a Lien upon its property; provided that neither the Borrower nor any of its Subsidiaries shall be required to pay or discharge any such tax, assessment, charge or claim (x) that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained, unless and until any Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors or (y) if such non-payments, either individually or in the aggregate, would not be reasonably expected to have a Material Adverse Effect.

(c) **Maintenance of Insurance.** Maintain insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is consistent with prudent business practice; provided that the Borrower and its Subsidiaries may self insure to the extent consistent with prudent business practice; provided further that policies maintained with respect to any Collateral located at a warehouse or DC shall provide coverage for Inventory at (x) the cost of such Inventory, consistent with the Loan Parties' past practices, or (y) a selling price permitted by the Term DIP Agent in its Permitted Discretion. None of the Credit Parties shall be

a co-insurer with any Loan Party or any other Person with respect to any fire and extended coverage policies maintained with respect to any Collateral without the prior written consent of the Term DIP Agent. On or before the Effective Date, fire and extended coverage policies maintained with respect to any Collateral shall be endorsed or otherwise amended to include a non-contributing lenders' loss payable clause, in form and substance reasonably satisfactory to the Term DIP Agent, which endorsements or amendments shall provide that during a Cash Dominion Event, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Term DIP Agent, as its interests may appear. Within thirty (30) days following delivery of written notice from the Term DIP Agent to the Borrower, the Borrower shall notify the insurers and use commercially reasonable efforts to have such policies amended to include such other provisions as the Term DIP Agent may reasonably require from time to time to protect the interests of the Credit Parties. On or before the Effective Date, commercial general liability policies (or certificates evidencing such policies) shall be endorsed to name the Term DIP Agent as additional insured, as its interests may appear. Each certificate delivered by the Loan Parties' insurance broker or insurer with respect to each property insurance policy referred to in this Section 5.01(c) shall also provide that such policy shall not be canceled, modified or not renewed other than upon not less than ten (10) days' prior written notice thereof which the insurance broker, or insurer, as applicable, shall, by the terms of the policy endeavor to provide, to the Term DIP Agent. The Borrower shall deliver to the Term DIP Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, evidence of renewal or replacement of a policy previously delivered to the Term DIP Agent, including an insurance binder therefor, together with evidence satisfactory to the Term DIP Agent of payment of the premium therefor and, upon request of the Term DIP Agent, a copy of such renewal or replacement policy. In the event that the Borrower fails to maintain any such insurance as required pursuant to this Section 5.01(c), the Term DIP Agent may obtain such insurance on behalf of the Borrower and the Loan Parties shall reimburse the Term DIP Agent as provided herein for all costs and expenses in connection therewith; the Term DIP Agent's obtaining of such insurance shall not be deemed a cure or waiver of any Default or Event of Default arising from the Loan Parties' failure to comply with the provisions of this Section 5.01(c).

(d) Preservation of Corporate Existence, Etc. Preserve and maintain its corporate existence, material rights (charter and statutory) and franchises except as may be expressly set out in the Business Optimization Plan or as ordered pursuant to a CCAA Court Order.

(e) Inspection Rights. In addition to the Term DIP Agent's rights under Section 5.01(k) hereof, subject to reasonable confidentiality limitations and requirements imposed by the Borrower due to competitive concerns or otherwise, at any reasonable time and from time to time, permit the Term DIP Agent or any of the Term DIP Lenders, any agents, representatives or consultants thereof (including the Lender FA), at the Loan Parties' expense, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Borrower and any of its Subsidiaries or any other Loan Parties, and to discuss the affairs, finances and accounts of the Borrower and any of its Subsidiaries or any other Loan Parties, as the case may be, with any of their officers or directors and with their independent chartered accountants, provided, that the Term DIP Agent and the Term DIP Lenders shall coordinate with the Term ABL DIP Agent and the ABL DIP Lenders to exercise the foregoing rights in a coordinated manner to reduce administrative and monetary costs of compliance by the Borrower and its Subsidiaries.

(f) Keeping of Books. Keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Borrower and each such Subsidiary in accordance with GAAP in effect from time to time.

(g) Maintenance of Properties, Etc. Except as otherwise permitted hereunder or as expressly contemplated under the Business Optimization Plan, or where the failure to do so, either individually or in the aggregate, would not be reasonably expected to result in a decrease in the value of any Collateral in excess of \$250,000, maintain and preserve all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted.

(h) Transactions with Affiliates. Conduct all transactions otherwise permitted under this Agreement with any of their Affiliates (other than Loan Parties) on terms that are fair and reasonable and no less favorable to the Borrower or its Subsidiaries than it would obtain in a comparable arm's-length transaction with a Person not an Affiliate other than as required by any applicable Requirement of Law; provided, that the foregoing shall not prohibit any Loan Party or any Subsidiary thereof from entering into employment arrangements with its officers and retention and other agreements with officers and directors pursuant to the reasonable requirements of its business.

(i) Further Assurances.

(i) With respect to any (x) Inventory, Credit Card Accounts Receivable and other Collateral (as defined in the Guarantee and Collateral Agreement as in effect on the Effective Date) acquired after the Effective Date by any Group Member that is or is required to become a Loan Party hereunder and (y) any property required to become subject to a perfected Lien in favor of the Term DIP Agent pursuant to Section 5.02(a)(vi) hereunder, promptly (A) execute and deliver to the Term DIP Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Term DIP Agent may reasonably request in order to grant to the Term DIP Agent, for the benefit of the Credit Parties, a security interest in such property and (B) take all actions as the Term DIP Agent may reasonably request to grant to the Term DIP Agent, for the benefit of the Credit Parties, a perfected security interest in such property with the priority required herein, including the filing of PPSA financing statements in such jurisdictions as may be required by any Security Document or by law or as may be requested by the Term DIP Agent and the delivery of Blocked Account and other control agreements as may be reasonably requested by the Term DIP Agent.

(ii) [reserved]

(iii) With respect to any Dealer Stores, upon the request of the Term DIP Agent, assign of record any PPSA financing statements which have been filed in favor of the Loan Parties.

(iv) In the event the Borrower or the other Loan Parties open a new deposit account in which funds of any of the Loan Parties are concentrated, or commence concentrating funds in an existing deposit account that is not subject to a Blocked Account Agreement, at the request of the Term DIP Agent, the Borrower shall deliver or cause to be delivered a Blocked Account Agreement reasonably satisfactory in form and substance to the Term DIP Agent with respect to such account.

(j) [reserved].

(k) Reporting Requirements. Furnish to the Term DIP Agent:

(i) (A) as soon as available and in any event within 50 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, (a) the consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such quarter and consolidated statements of income and cash flows of the Borrower and its Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, duly certified (subject to year-end audit adjustments and ordinary course quarterly adjustments) by an Authorized Officer of the Borrower as having been prepared in accordance with GAAP and (b) a certificate of an Authorized Officer of the Borrower as to compliance with the terms of this Agreement and the other Loan Documents in the form of Exhibit G; and

(B) as soon as available and in any event within 30 days after the end of each fiscal month of each fiscal year of the Borrower, (a) the consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such month and consolidated statements of income and cash flows of the Borrower and its Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such month, duly certified (subject to year-end audit adjustments and ordinary course quarterly adjustments) by an Authorized Officer of the Borrower as having been prepared in accordance with GAAP and (b) a certificate of an Authorized Officer of the Borrower as to compliance with the terms of this Agreement and the other Loan Documents in the form of Exhibit G;

(ii) as soon as available and in any event within 95 days after the end of each fiscal year of the Borrower, (a) a copy of the annual audit report for such year for the Borrower and its Subsidiaries, containing the consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year and consolidated statements of income and cash flows of the Borrower and its Subsidiaries for such fiscal year by its board-appointed auditor of national standing, and (b) a certificate of an Authorized Officer of the Borrower as to compliance with the terms of this Agreement and the other Loan Documents in the form of Exhibit G;

(iii) on Wednesday of each week (or, if such day is not a Business Day, the immediately following Business Day), a Borrowing Base Certificate as of the end of the preceding week (subject to month-end reconciliation consistent with past practice) and supporting information satisfactory to the Term DIP Agent in its Permitted Discretion with respect to the determination of the Borrowing Base;

(iv) promptly and in any event within two (2) Business Days after any Authorized Officer of the Borrower has knowledge of the occurrence and continuance of a Default or Event of Default, a statement of an Authorized Officer of the Borrower setting forth details of such Default or Event of Default and the action that the Borrower has taken and proposes to take with respect thereto;

(v) promptly after the sending or filing thereof, copies of all quarterly and annual reports and proxy solicitations that the Borrower sends to its public security holders generally, and copies of all reports and prospectuses for the public offering of securities that the Borrower or any of its Subsidiaries files with the Ontario Securities Commission, the Toronto Stock Exchange, or any other national or provincial securities exchange;

(vi) promptly after the commencement thereof, notice of all actions and proceedings before any court, governmental agency or arbitrator affecting the Borrower or any of its Subsidiaries of the type described in Section 4.01(g);

(vii) with written notice promptly following the occurrence of any of the following, (A) any Environmental Action with respect to Qualifying Real Estate, (B) any breach of Environmental Law occurring on Qualifying Real Estate, (C) any Lien on Qualifying Real Estate by a Governmental Authority, or (D) any release of Hazardous Materials or other condition on Qualifying Real Estate, which in each case which has, or could reasonably be expected to result in, Environmental Liability in excess of \$150,000;

(viii) [reserved];

(ix) with respect to Canadian Pension Plans, promptly (A) after the filing thereof, a copy of: (i) all actuarial valuations and corresponding actuarial information summaries; (ii) all annual information returns; (iii) all summaries of contributions and revised summaries of contributions; (iv) all investment information summaries; and (v) statement of investment policies and procedures information summaries required to be filed with FSCO by the Borrower pursuant to the *Pension Benefits Act* (Ontario), (B) after the receipt by the Borrower thereof, all audited financial statements prepared in respect of any of the Canadian Pension Plans, (C) at any time after the occurrence of a Canadian Defined Benefit Pension Termination Event, after receipt, a copy of any material correspondence from a Governmental Authority in respect of a Canadian Defined Benefit Pension Plan; and (D) notice of the occurrence of any Canadian Defined Benefit Pension Termination Event;

(x) promptly, notice of any event that Borrower or any other Loan Party reasonably believes has resulted in a Material Adverse Effect;

(xi) the financial and collateral reports described on Schedule 5.01(k), at the times set forth in such Schedule and which shall in any event include the following: (A) store activity (i.e. stores opened, closed, or sold by banner), (B) comparable store sales by banner, (C) amendments to any real property leases, (D) detail of aggregate and per store rent paid or other amounts due and payable to lessors of real property used by any of the Loan Parties, (E) a report summarizing proceeds received from a condemnation or casualty event and (F) amount of any unpaid rents other than amounts being contested or disputed in good faith in accordance with this Agreement (including store address, last payment date, amount owed, and landlord name and contact information);

(xii) simultaneously with the delivery thereof in respect of the ABL Credit Agreement, all documents, reports and other deliverables delivered to any “agent” or “lender” under the ABL DIP Credit Agreement (including all calculations of the ABL DIP Borrowing Base and supporting calculations and documents delivered or required to be delivered in connection therewith and all documents delivered or required to be delivered in connection with requests for advances, loans and/or letters of credit under the ABL DIP Credit Agreement);

(xiii) at any time after the Final Availability Date, on the Wednesday of each week at any time following the occurrence of the Reporting and Variance Trigger Date, and otherwise on the Wednesday of every second week: (i) an updated weekly cash flow forecast for the subsequent 13 week period on a rolling basis which shall be in form and

substance satisfactory to the Term DIP Agent, and (ii) a variance calculation (the “Variance Report”) setting forth actual cash receipts, disbursements, net cash flows, Eligible Inventory, Total Eligible Inventory Available and Excess Availability of the Loan Parties for the preceding calendar week (the “Testing Period”) and on a cumulative basis, and setting forth all the variances, on a line-item and aggregate basis in comparison to the amounts set forth in respect thereof for such Testing Period in the DIP Budget; each such Variance Report to be promptly discussed on a telephone call with the Lender FA and with respect to each fiscal month (based on a fiscal calendar consistent with past practice) a Variance Report shall be delivered no later than 10 days after the last day of such fiscal month which shall include reasonably detailed explanations for any material variances during such fiscal month (including variances permitted under Section 5.01(cc)), which shall be certified by an Authorized Officer of the Borrower;

(xiv) regular updates as requested by the Term DIP Agent to specified individuals at the Lender FA and counsel to the Term DIP Agent and the Term DIP Lenders, who shall not share specifics of such updates or written materials provided to them with the Term DIP Agent or the Term DIP Lenders (but who may provide general status updates to the Term DIP Agent and the Term DIP Lender and respond to status inquiries on a general basis), setting out the status and results of the SISP and the Business Optimization Plan, including an update on the status of the sale process, store closures, liquidations and consolidation and other items set out therein;

(xv) Other than in respect of the initial application materials in connection with the commencement of the CCAA Proceedings, which have been delivered prior to the execution of this Agreement and are in form and substance satisfactory to the Term DIP Agent and the Term DIP Lenders, as soon as practicable in advance of filing with the CCAA Court, and, in any event, at least three (3) Business Days prior to any such filing or proposed filing by, or on behalf of, the Borrower or any other Loan Party, or if such time period is not possible as soon as practicable before any filing and in all cases at the same time as such materials are provided to the ABL DIP Agent and/or the ABL DIP Lenders, drafts of all pleadings, motions, applications, proposed orders or financial information and other documents proposed to be filed by, or on behalf of, any Loan Party with the CCAA Court, and provide the Term DIP Lenders and their counsel with a reasonable opportunity to review and comment on all such documents;

(xvi) promptly after the same are available, copies of all pleadings, applications, judicial information, financial information and other documents filed in the CCAA Proceedings;

(xvii) such other information respecting the Borrower, any of its Subsidiaries, any Loan Party, or the DIP Borrowing Base as the Term DIP Agent or any Term DIP Lender through the Term DIP Agent may from time to time reasonably request; and

(xviii) any Default or Event of Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto.

Reports and financial statements required to be delivered by the Borrower pursuant to clauses (i)(a), (ii)(a) and (v) of this subsection (j) shall be deemed to have been delivered on the date on which the Borrower causes such reports, or reports containing such financial statements, to be posted on the Internet at [www.sedar.com](http://www.sedar.com) or at such other website identified by the Borrower in a notice to the Term DIP Agent and the Term DIP Lenders and that is accessible by the Term

DIP Lenders without charge. Whenever any report or other document is required hereunder or under any other Loan Document to be delivered on a day other than a Business Day, such report or other document payment shall be required to be delivered on the next succeeding Business Day.

(l) Collateral Monitoring and Review. Upon the request of the Term DIP Agent or the Required Term DIP Lenders, after reasonable notice and during normal business hours, permit the Term DIP Agent or professionals (including, consultants, accountants, and/or appraisers) retained by the Term DIP Agent to conduct appraisals, commercial finance examinations and other evaluations, including, without limitation, of (i) the Loan Parties' practices in the computation of the Borrowing Base and (ii) the assets included in the Borrowing Base and financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, related to the calculation of the Borrowing Base. The Borrower shall pay the reasonable out-of-pocket fees and expenses of the Term DIP Agent (including, without limitation, the reasonable charges of professionals) in connection with one inventory appraisal and one commercial finance examination each three-month period (which shall be conducted by Great American Group Advisory & Valuations Services or such other appraisers and examiners reasonably satisfactory to the Term DIP Agent (provided that any such appraisal conducted by (or on behalf of) Wells Fargo Capital Finance Corporation Canada, as agent under the ABL DIP Credit Agreement that is provided to the Term DIP Agent shall satisfy this condition), provided, however, notwithstanding the foregoing, (x) if ABL DIP Excess Availability is at any time less than or equal to 65% of the ABL DIP Line Cap but greater than 20% of the ABL DIP Line Cap, the Term DIP Agent may, in its Permitted Discretion, undertake a second inventory appraisal and second commercial finance examination in a given three-month period at such time at the Borrower's expense and (y) if ABL DIP Excess Availability is less than or equal to 20% of the ABL DIP Line Cap, the Term DIP Agent may in its Permitted Discretion, undertake additional inventory appraisals, commercial finance examinations and appraisal of the Qualifying Real Estate at the Borrower's expense. Notwithstanding the foregoing, the Term DIP Agent may cause (i) additional appraisals and commercial finance examinations to be undertaken (A) as it in its Permitted Discretion deems necessary or appropriate, at its own expense or, (B) if any Event of Default has occurred and is continuing or if required by applicable law, at the expense of the Borrower. In connection with any inventory appraisal and commercial finance examination relating to the computation of the DIP Borrowing Base, the Borrower shall make such adjustments to the calculation of the DIP Borrowing Base as the Term DIP Agent shall reasonably require in its Permitted Discretion based upon the terms of this Agreement and the results of such inventory appraisal and commercial finance examination. Any inventory appraisal or commercial finance examination requested by the Term DIP Agent shall be scheduled at such time as the Term DIP Agent, in consultation with the Borrower, may agree in order to minimize any disruption to the conduct of the Borrower's business. Without limiting the foregoing, the Term DIP Agent and the Term DIP Lenders shall be entitled to receive any appraisals, examinations or other evaluations set out in this paragraph (k) to the extent obtained by the ABL DIP Agent and the ABL DIP Lenders and shall be entitled to rely on such information in making decisions under this Agreement including with respect to establishing the Borrowing Base and any Availability Reserves.

(m) [reserved].

(n) Cash Management.

(i) On or prior to the Effective Date or such later date as the Term DIP Agent may agree:

(A) [reserved]; and

(B) enter into a Blocked Account Agreement reasonably satisfactory in form and substance to the Term DIP Agent with each Blocked Account Bank covering the deposit accounts set forth on Schedule 5.01(n)(i)(B) and any additional deposit account now or hereafter maintained by any Loan Party (collectively, the “Blocked Accounts”).

(ii) The Loan Parties shall ACH or wire transfer daily (or with respect to DDAs that have historically not been swept daily (and other DDAs with the consent of the Term DIP Agent, not to be unreasonably withheld), periodically, consistent with past practices) (and whether or not there are then any outstanding Obligations and whether or not a Cash Dominion Event then exists) to a Blocked Account all amounts on deposit in each DDA of such Loan Party, other than DDAs that are Excluded Accounts; provided that such covenant shall not apply to (i) any minimum balance as may be required to be kept in the subject DDA by the depository institution at which such DDA is maintained or (ii) if greater, any amounts maintained by the Loan Parties in such DDAs (and other DDAs with the consent of the Term DIP Agent, not to be unreasonably withheld) in the ordinary course of business consistent with past practices). The Loan Parties shall ACH or wire transfer daily to a Blocked Account all payments due from credit card processors and other proceeds of any of the Collateral. All funds in each DDA and Blocked Account (other than Excluded Accounts) shall be conclusively presumed to be Collateral and proceeds of Collateral and the Term DIP Agent and the Term DIP Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA or Blocked Account.

(iii) [reserved].

(iv) Each Blocked Account Agreement shall permit the Term DIP Agent, after the occurrence and during the continuance of a Cash Dominion Event, subject to the terms of the Intercreditor Agreement, to require or cause the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the Term DIP Agent’s Account, of all cash receipts and collections held in each applicable Blocked Account (net of any minimum balance, not to exceed CANS\$10,000 (or such greater amount with the consent of the Term DIP Agent, not to be unreasonably withheld), as may be required to be kept in the subject Blocked Account by the Blocked Account Bank), including, without limitation, the following:

(A) all available cash receipts from the sale of Inventory and other Collateral;

(B) all proceeds of collections of Credit Card Accounts Receivable;

(C) all proceeds from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of any Collateral; and

(D) all Net Proceeds from any equity issuance by any Loan Party or its Subsidiaries.

The Borrower shall be deemed to have complied with the provisions of this clause (iv) if they cause the ACH or wire transfer daily of all funds which an Authorized Officer of the Borrower in good faith believes to be the amount deposited in the Blocked Accounts in excess of CAN\$10,000 (or such greater amount as permitted above in this clause (iv)).

(v) The Term DIP Agent's Account shall at all times be under the sole dominion and control of the Term DIP Agent. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Term DIP Agent's Account, (ii) the funds on deposit in the Term DIP Agent's Account shall at all times be collateral security for all of the Obligations, and (iii) the funds on deposit in the Term DIP Agent's Account shall be applied as provided in this Agreement. In the event that, notwithstanding the provisions of this Section 5.01(n), during the continuance of a Cash Dominion Event, any Loan Party receives or otherwise has dominion and control of any such proceeds or collections, such proceeds and collections shall be held in trust by such Loan Party for the Term DIP Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into the Term DIP Agent's Account or dealt with in such other fashion as such Loan Party may be instructed by the Term DIP Agent. During the continuance of an Event of Default, the amounts deposited into the Term DIP Agent's Account shall be applied to the prepayment of the Obligations then outstanding; *provided that* upon payment in full of such outstanding Obligations, any remaining amounts will be released and transferred in accordance with applicable law including pursuant to any CCAA Court Order.

(vi) Upon the request of the Term DIP Agent, the Loan Parties shall cause bank statements and/or other reports to be delivered to the Term DIP Agent not less often than monthly, accurately setting forth all amounts deposited in each Blocked Account to ensure the proper transfer of funds as set forth above.

(o) [reserved].

(p) Physical Inventories. Cause physical inventories and periodic cycle counts to be undertaken, at the expense of the Loan Parties, in each case consistent with past practices (but in no event less frequently than one physical inventory per fiscal year), conducted by such inventory takers and following such methodology as is consistent with the immediately preceding inventory or as otherwise may be satisfactory to the Term DIP Agent in its Permitted Discretion. The Term DIP Agent, at the expense of the Loan Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. The Loan Parties, within five (5) days following the completion of any such inventory, shall provide the Term DIP Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory or cycle counts undertaken by a Loan Party) and shall post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.

(q) Treatment of Obligations. The Borrower agrees that it shall not file, consent to or support any Plan to compromise the Obligations and that the Obligations shall remain unaffected in any Plan consented to or supported by the Borrower.

(r) Canadian Pension Plans. Subject to the Initial Order and any other CCAA Court Order, administer the Canadian Pension Plans in accordance with the requirements of the applicable pension plan texts, funding agreements, any other documents governing the Canadian

Pension Plans, the ITA and applicable federal or provincial pension benefits legislation except for any non-compliance which would not reasonably be expected to have a Material Adverse Effect. Without the prior written consent of the Term DIP Agent, the Borrower shall not, and shall not permit any of its Subsidiaries to, terminate, or cause to be terminated, any of the Canadian Pension Plans, if such Canadian Pension Plan would have a wind up deficiency on termination in an amount which would reasonably be expected to have a Material Adverse Effect. The Borrower shall, and shall cause its Subsidiaries to, promptly provide the Term DIP Agent with any documentation relating to any of the Canadian Pension Plans as the Term DIP Agent may request. The Borrower shall, and shall cause its Subsidiaries to, notify the Term DIP Agent within thirty (30) days of: (i) a material increase in the obligations, liabilities and indebtedness of any of the Canadian Pension Plans; and (ii) commencing payment of contributions to a Canadian Pension Plan to which the Borrowers had not previously been contributing.

(s) Compliance with Terms of Leaseholds. Except as otherwise expressly permitted (i) hereunder or contemplated by the SISP and the Business Optimization Plan or (ii) to the extent stayed under the Stay of Proceedings or otherwise in accordance with the Initial Order or any other CCAA Court Order, make all payments and otherwise perform all obligations in respect of all leases of real property to which the Borrower or any of its Subsidiaries is a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify the Term DIP Agent of any default by any party with respect to such leases and cooperate with the Term DIP Agent in all respects to cure any such default.

(t) Material Contracts. Perform and observe all the terms and provisions of each Material Contract to be performed or observed by them, maintain each such Material Contract in full force and effect in accordance with its terms (subject to amendments, modifications or waivers permitted by Section 5.02(l)), enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time reasonably requested by the Term DIP Agent and, upon the reasonable request of the Term DIP Agent, make to each other party to each such Material Contract such demands for information and reports or for action as the Borrower or any of its Subsidiaries is entitled to make under such Material Contract, in each case except as may be permitted by the Initial Order or any other CCAA Court Order, or as contemplated by the Business Optimization Plan.

(u) Environmental Reports. In addition to the Term DIP Agent's rights under Section 5.01(e), permit the Term DIP Agent or its respective agents or representatives to have access to any Qualifying Real Estate to conduct environmental assessments (to the satisfaction of the Term DIP Agent, as applicable), at the Borrower's expense following the receipt of a notice under Section 5.01(k)(vii) or following the occurrence of an Event of Default which is continuing.

(v) Policies and Procedures. Adopt and maintain adequate policies and procedures to prevent their directors, officers, employees, and agents from undertaking any activity, practice or conduct relating to the business of the Company or any Subsidiary that would constitute an offense under the Anti-Corruption Laws or Sanctions.

(w) [reserved].

(x) [reserved].

(y) [reserved].

(z) Lender FA. Each Loan Party acknowledges that the Term DIP Agent and the Term DIP Lenders, and the ABL DIP Agent and the ABL DIP Lenders, have jointly engaged the Lender FA as financial advisor for the sole benefit of the Term DIP Agent and the Term DIP Lenders and the ABL DIP Loan Agent and the ABL DIP Lenders. Each Loan Party and agrees that (i) such Loan Party shall provide its complete cooperation during business hours with the Lender FA; and (ii) all reasonable fees, costs and expenses of any such Lender FA shall be paid by the Loan Parties and shall form part of the Obligations; and (iii) all reports, determinations and other written and verbal information provided by the Lender FA shall be confidential and no Loan Party shall be entitled to have access to same; provided, that the Loan Parties shall be provided with a reasonable opportunity to review and respond to any written reports prepared by the Lender FA to the extent that disclosure of any such written reports to the Loan Parties will not be prejudicial to the ABL DIP Agent, the ABL DIP Lenders, the Term DIP Agent and the Term DIP Lenders, as reasonably determined by each party.

(aa) Acceptable Liquidator. Engage an Acceptable Liquidator on or before June 30, 2017 on terms acceptable to the Term DIP Agent acting reasonably, and shall cause the Acceptable Liquidator to provide weekly reports in form and substance reasonably satisfactory to the Term DIP Agent regarding the results and status of the Permitted Store Closings, including a schedule of applicable discounts then in effect and to be established in the future;

(bb) Access to Advisors. Allow the Term DIP Agent, the Term DIP Lenders and their consultants, counsel and advisors (including the Lender FA) access to, upon reasonable notice during normal business hours, all professional advisors engaged by the Loan Parties (which engagement with respect to any professional advisors engaged after the Effective Date, shall be on terms and conditions reasonably satisfactory to the Term DIP Agent and the Required Term DIP Lenders).

(cc) Compliance with DIP Budget. Adhere to the DIP Budget subject to the following variances (“Permitted Variances”), which shall be tested on the Wednesday of each week following the Reporting and Variance Trigger Date:

(i) the cumulative negative variance (if any) in the amount of the Loan Parties’ Operating Net Cash Flow since the Effective Date shall not exceed the Permitted Net Cash Variance Amount for the relevant Testing Period as compared to the DIP Budget as of the Effective Date; and

(ii) the actual amount of the Loan Parties’ Total Eligible Inventory Available in respect of any Testing Period shall be equal to at least 90% of the amount of Total Eligible Inventory Available reflected in the DIP Budget as of the Effective Date for such Testing Period (the “Minimum Inventory Amount”), provided that, if for any Testing Period the actual amount of Total Eligible Inventory Available is less than the Minimum Inventory Amount (the amount of such shortfall being, the “Inventory Shortfall Amount”) and such Inventory Shortfall Amount is a result of any Store Closure Sale not set out in the DIP Budget and set out on Schedule 1.01D as of the Effective Date, the Permitted Net Cash Variance Amount in effect at such time shall be decreased by the amount of the Inventory Shortfall Amount and if, after giving effect to such decrease in the Permitted Net Cash Variance Amount the Loan Parties remain in compliance with the covenant in paragraph (i) above, it shall not constitute an Event of Default pursuant to this paragraph (ii).

Notwithstanding the foregoing, the Loan Parties shall not be required to comply with the

covenant in this Section 5.01 (cc) at any time prior to the Final Availability Date so long as the Total Extensions of Credit do not exceed the ABL DIP Line Cap by an amount greater than the Acceptable Excess Amount.

(dd) Compliance with Initial Order, SISP and Business Optimization Plan. Strictly comply with the terms of the Initial Order and any other CCAA Court Orders, the SISP and the Business Optimization Plan, and operate the business of the Loan Parties in a manner consistent therewith, except as consented to by the Agent

(ee) Milestones. The Loan Parties shall achieve each of the following milestones (the “Milestones”) on the timeline set out below or such later dates as may be agreed by the Term DIP Agent and the Term DIP Lenders in their sole and absolute discretion, provided however, that the Term DIP Agent and the Term DIP Lenders agree, no later than September 5, 2017 to review the Milestones set out in (vii)-(xi) below in good faith based on, among other things, the Loan Parties’ progress under the SISP at that time, proceeds collected and applied to the Obligations to that date, the Loan Parties’ liquidity and financial performance:

(i) The Borrower shall have commenced the CCAA Proceedings and obtained the Initial Order on or prior to June 23, 2017 (the “Petition Date”);

(ii) The Comeback Motion in respect of the Initial Order, which shall be in form and substance satisfactory to the Term DIP Agent, and which Comeback Motion shall include seeking authority to implement the SISP and approve the Term DIP Charge and the ABL DIP Charge on a final basis shall be heard on or before July 13, 2017;

(iii) The Final Availability Date shall have occurred on or before July 13, 2017.

(iv) On or before July 21, 2017, the CCAA Court shall enter an order approving the SISP Motion (the “SISP Order”), which shall be in form and substance acceptable to the Term DIP Agent;

(v) Within 3 Business Days of the issuance of the SISP Order, the Borrower shall forward process letters to any potential bidders;

(vi) On or before September 25, 2017, the Borrower, with the consent of the Term DIP Agent and the Term DIP Lenders, shall have selected the binding bid(s) (the “Successful Bid”) and negotiated definitive documentation in respect of the Successful Bid(s) in form and substance acceptable to the Term DIP Agent and the Term DIP Lenders;

(vii) On or before September 27, 2017, the Borrower, with the consent of the Agent and the Lenders, shall have identified locations, if any, where the inventory at such locations is not included in any Successful Bid (s) and shall have sought the required authority to and shall have commenced store closure sales for all such locations and inventory located thereon;

(viii) On or before September 29, 2017, the Borrower shall have served a motion seeking approval of the Successful Bid(s) by the CCAA Court;

(ix) On or before October 4, 2017, the CCAA Court shall have approved the Successful Bid(s); and

(x) On or before October 25, 2017, the Borrower shall have consummated the Successful Bid(s), which shall be in form and substance Acceptable to the Term DIP Agent and the Term DIP Lenders.

(ff) Conference Calls. The Borrower shall, and shall use commercially reasonable efforts if requested by the Term DIP Lenders to cause:

(i) its advisors to participate on weekly (or more frequently as the Term DIP Agent or the Term DIP Lenders may reasonably request) conference calls with the Term DIP Agent and the Term DIP Lenders and their respective advisors, to discuss the DIP Budget, the Borrower's current and projected operational performance, and any related financial matters (and for certainty, the Borrower's counsel shall be permitted to participate on such calls in the Borrower's discretion); and

(ii) subject to the applicable restrictions that may exist in the Initial Order, any professional advisor or agent of the Borrower working for it or any Loan Party with respect to the SISP or any Bankruptcy Sale to participate on weekly (or more frequently as the Term DIP Agent or the Term DIP Lenders may request) conference calls with the Term DIP Agent and the Term DIP Lenders and their respective advisors to discuss any matters related to such matters (and for certainty, the Borrower's counsel shall be permitted to participate on such calls in the Borrower's discretion).

(gg) Payment of Term Prepetition Obligations. Immediately upon the payment of all liabilities, obligations and indebtedness owing pursuant to the ABL Prepetition Credit Agreement, the Borrower shall and shall cause each other Loan Party to repay the Term Prepetition Obligations using all operating receipts and proceeds from all Collateral, provided that notwithstanding the foregoing, the Borrower shall use all operating receipts and proceeds from the sale of any Term Priority Collateral, when received by such Loan Party, to repay firstly the Term Prepetition Obligations and secondly the Obligations.

SECTION 5.02. Negative Covenants. So long as the Term DIP Loan or other Obligation (other than contingent indemnification obligations for which no claim shall have then been asserted) shall remain unpaid, each of the Borrower will not, and will not permit any of its Subsidiaries to:

(a) Liens, Etc.

- (i) Create or suffer to exist any Lien upon property of the Borrower, any Subsidiary or any other Loan Party constituting Inventory, Credit Card Accounts Receivable or any other Collateral (as defined in the Guarantee and Collateral Agreement, any other Security Document or any owned or leased real estate or Related Intellectual Property, other than Permitted Liens;
- (ii) Create or suffer to exist any Lien upon property of any Loan Party constituting Inventory, Credit Card Accounts Receivable or any other Collateral in priority to the Lender DIP Charge except the Permitted Priority Liens.

(b) Fundamental Changes. Amalgamate with, merge into or consolidate with any other Person, or permit any other Person to amalgamate with, merge into or consolidate with it, or

sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except to the extent permitted by the Initial Order, or if applicable, a CCAA Court Order.

(c) Acquisitions. Make any Acquisition.

(d) Restricted Payments. Declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment except Restricted Payments by any Subsidiary of the Borrower to the Borrower or another wholly owned Subsidiary of the Borrower that is a Loan Party.

(e) 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 Subsidiary of the Borrower to create, incur, assume or suffer to exist any Lien in favor of the Term DIP Agent required under this Agreement or any other Loan Document upon any of their property or revenues, whether now owned or hereafter acquired, other than any agreement relating to any Lien not prohibited by Section 5.02(a) (provided that any prohibition or limitation shall apply only to the assets subject to such Lien).

(f) Clauses Restricting Subsidiary Distributions. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary of the Borrower other than a Loan Party to (a) make Restricted Payments in respect of any equity interests of such Subsidiary held by, or pay any indebtedness owed to, the Borrower or any other Subsidiary of the Borrower, (b) make loans or advances to, or other investments in, the Borrower or any other Subsidiary of the Borrower or (c) transfer any of its assets to the Borrower or any other Subsidiary of the Borrower, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under this Agreement and the other Loan Documents; (ii) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with the disposition of all or any portion of the equity interests or assets of such Subsidiary; (iii) the provisions contained in any existing indebtedness (and in any refinancing of such indebtedness so long as no more restrictive than those contained in the respective existing indebtedness so refinanced); (iv) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or a Subsidiary of the Borrower entered into in the ordinary course of business, (v) customary restrictions and conditions contained in the documents relating to any Lien, so long as such Lien is not prohibited hereunder and such restrictions or conditions relate only to the specific asset subject to such Lien; (vi) customary provisions restricting assignment of any contract entered into by the Borrower or any Subsidiary of the Borrower in the ordinary course of business, (vii) [reserved]; (viii) customary provisions restricting the assignment of licensing agreements, management agreements or franchise agreements entered into by the Borrower or any of its Subsidiaries in the ordinary course of business; (ix) restrictions on the transfer of assets securing purchase money obligations and capitalized lease obligations; (x) customary net worth provisions contained in real property leases entered into by Subsidiaries of the Borrower, so long as the Borrower has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligations.

(g) Accounting Changes. Make or permit any change in accounting policies or reporting practices, except as required or permitted by GAAP.

(h) Dispositions. Make any Disposition except Permitted Dispositions.

(i) Debt; Prepayment of Debt.

(i) Create, incur, assume, suffer to exist or otherwise become or remain liable with respect to, any Debt, except Permitted Debt.

(ii) Prepay any Debt except as set out in Section 2.08(c) and Section 2.08(d).

(j) Investments. Make any Investments, except Permitted Investments.

(k) [reserved]

(l) Amendment of Material Documents. Amend, modify or waive any of the Borrower's rights under (a) its organization documents in a manner materially adverse to the Credit Parties, or (b) any Material Contract, except in accordance with a CCAA Court Order.

(m) Amendment of ABL DIP Credit Agreement. Do (or permit or cause to exist) the following under and in the ABL DIP Credit Agreement (or the ABL DIP Agent and lenders under the ABL DIP Credit Agreement do (or permit or cause to exist) the following under the ABL DIP Credit Agreement)): (i) amend or modify the definitions in the ABL DIP Credit Agreement of Availability Reserves (including all defined term used or referenced therein), Borrowing Base (including all defined term used or referenced therein), Cash Dominion Event, Eligible Credit Card Accounts Receivable, Eligible Inventory, Eligible In-Transit Inventory, Excess Availability, Term DIP Line Cap, Pension Wind-up Deficit, Term Loan Push Down Reserve, Wind-up Reserve, Wind-up Reserve Period, (ii) increase any advance rates in respect of the ABL DIP Borrowing Base, (iii) except relating to any mathematical calculation thereof, reduce or eliminate any Availability Reserve as in effect on the Effective Date, (iv) reduce or eliminate the Push-Down Reserve or the Wind-up Reserve, in each case, without the Term DIP Agent's prior written consent, (v) fail to implement the Push-Down Reserve or the Wind-up Reserve, in each case, as requested by the Term DIP Agent, (vi) include any Eligible In-Transit Inventory in the calculation of the ABL DIP Borrowing Base, (vii) amend Section [5.03] of the ABL DIP Credit Agreement as in effect on the date hereof and/or (viii) refinance or replace extensions of credit under the ABL DIP Credit Agreement on terms that are materially adverse or disadvantageous to the Term DIP Lenders without the consent of the Term DIP Lenders, such consent not to be unreasonably withheld.

(n) No new pension plans. Commence or agree to commence payment of contributions to a Canadian Pension Plan which provides for defined benefits to which the Loan Parties had not previously been contributing.

(o) Corruption Laws. Provide, offer, promise, authorize the provision of any contribution, gift, entertainment or other expenses relating to political activity, or any other money, property, or thing of value, directly or indirectly, to any government official, including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any political party or party official or candidate for political office, or any other Person acting in an official capacity, to influence official action or secure an improper advantage, or to encourage the recipient to breach a duty of good faith or loyalty or the policies of his/her employer, or otherwise in violation of any Anti-Corruption Law.

(p) Sanctions. Engage in any dealings or transactions with or for the benefit of any Sanctioned Person, or otherwise in violation of Sanctions.

(q) Additional Subsidiaries. Create or acquire any Subsidiary after the date of this Agreement.

(r) Change in Name or Location. Change the name, trade name or locations of business of any Loan Party without giving the Term DIP Agent at least fifteen (15) days prior notice thereof.

(s) Payments under Employment Benefit Plans. Make any payment or distribution in respect of post-employment benefit payments (excluding any such payments to be made in accordance with the DIP Budget and approved by the CCAA Court).

(t) Fiscal Year. With respect to the Borrower and its Subsidiaries, change their fiscal year-end.

(u) Expenditures. Make any expenditures inconsistent with the DIP Budget, subject to Permitted Variances.

(v) Advisors. Retain any advisors to assist the Loan Parties in connection with the SISP and the Business Optimization Plan unless reasonably acceptable to the Term DIP Agent, provided that that the Term DIP Agent acknowledges and confirms that the Financial Advisor and the Monitor are acceptable to it.

(w) CCAA Proceeding. Seek, consent to, or permit to exist any of the following:

(i) any modification (other than extension of the Stay of Proceedings made under the Initial Order in the ordinary course with the prior written consent of the Term DIP Agent), stay, vacation or amendment to the Initial Order or the SISP Order to which the Term DIP Agent has not consented in writing;

(ii) a priority claim or administrative expense or unsecured claim against any Loan Party (now existing or hereafter) arising of any kind or nature whatsoever, *pari passu* with in priority to the DIP Charges other than (i) statutory Liens and charges not capable of being subordinated by the entry of the Initial Order, and (ii) the Administration Charge, the FA Charge, the D&O Charge (solely with respect to the portion thereof intended to rank ahead of the DIP Charges as provided in the definition thereof) and the KERP Charge (solely with respect to the portion thereof intended to rank ahead of the DIP Charges as provided in the definition thereof);

(iii) any order which authorizes the return of any of the Loan Parties property pursuant to any provisions of the CCAA or applicable Law;

(iv) any order which authorizes the payment of any Debt (other than in accordance with this Agreement and the Intercreditor Agreement, as authorized by the Initial Order) incurred prior to the Petition Date; or

(v) any order seeking authority to take any action that is prohibited by the terms of this Agreement or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Loan Documents.

SECTION 5.03. Financial Covenant. The Borrower will not permit Excess Availability to be less than the greater of (i) \$40,000,000 and (ii) ten percent (10%) of the Combined Borrowing Base as at the date of calculation provided that the Borrower shall not be required to comply with the foregoing

financial covenant at any time prior to the Final Availability Date so long as the “Total Extensions of Credit” (as defined in the ABL DIP Credit Agreement) do not exceed the ABL DIP Line Cap by an amount greater than the Acceptable Excess Amount. Notwithstanding the definition of “Maximum ABL Facility Amount” (as defined in the Intercreditor Agreement), prior to the Final Availability Date, the Maximum ABL Facility Amount shall be deemed to be an amount allowing for the Acceptable Excess Amount (as defined in this Agreement).

## ARTICLE VI

### EVENTS OF DEFAULT

SECTION 6.01. Events of DefaultIf any of the following events (“Events of Default”) shall occur and be continuing:

- (a) The Borrower shall fail to pay (i) any principal of the Term DIP Loan when the same becomes due and payable, or (ii) any interest on the Term DIP Loan or any fees, or any other amounts payable under this Agreement or any other Loan Document, in each case under this clause (ii), within three (3) days after the same becomes due and payable; or
- (b) Any representation or warranty made by any Loan Party herein or in any other Loan Document shall prove to have been incorrect in any material respect when made; or
- (c) (i) Any Loan Party shall fail to perform or observe any term, covenant or agreement contained in Section 5.01 (d), (e), (h), (k), (l), (n), (z), (aa), (bb), (ee), or (ff), 5.02 or 5.03 of this Agreement or (ii) any Loan Party shall fail to perform or observe any other term, covenant or agreement contained in this Agreement or any other Loan Document, if such failure shall remain unremedied for three (3) Business Days after the earlier to occur of (x) written notice thereof shall have been given to the Borrower by the Term DIP Agent or any Term DIP Lender and (y) the Borrower or such other Loan Party having knowledge of or receiving notice of such failure; or
- (d) Except to the extent resulting from the CCAA Proceeding or subject to the Stay of Proceedings, any Group Member shall fail to pay principal of at least CAN\$5,000,000 on any Debt that is outstanding (but excluding Debt outstanding hereunder) when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or any other event shall occur or condition shall exist under any agreement or instrument relating to any Debt that is outstanding in a principal amount of at least CAN\$5,000,000 and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate the maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid or redeemed, purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made and is accepted in an amount of at least CAN\$5,000,000 (in each case other than (i) a scheduled prepayment, redemption or purchase, or (ii) a mandatory prepayment, redemption or purchase, or a required offer to prepay, redeem or purchase, that results from the voluntary sale or transfer of property or assets), in each case prior to the stated maturity thereof; or
- (e) Except to the extent subject to the Stay of Proceedings, any Group Member shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against any Group Member seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it

or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, receiver-manager, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 60 days, or any of the actions sought in such proceeding (including the entry of an order for relief against, or the appointment of a receiver, trustee, receiver-manager, custodian or other similar official for, it or for any substantial part of its property) shall occur; or any Group Member shall take any corporate action to authorize any of the actions set forth above in this subsection (e); or

(f) A judgment or order for the payment of money in excess of CAN\$5,000,000 (net of any portion of such judgment to be paid by a third-party insurer as to which coverage has not been disputed) shall be rendered against any Group Member and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 10 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(g) (i) Any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its Subsidiaries, and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than a Permitted Holder becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the equity securities of Borrower entitled to vote for members of the Board of Directors of Borrower on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right) and such "person" or "group" shall beneficially own (as such term is used herein) a greater percentage of the equity Securities of Borrower entitled to vote for members of the Board of Directors than the Permitted Holders shall, collectively, beneficially own; provided that for purposes of this provision, no person or group shall be deemed to have beneficial ownership of the securities of Borrower owned directly or indirectly by Parent or any of its Subsidiaries unless such person or group shall control (as defined in the definition of "Affiliate") Parent; or (ii) during any period of 12 consecutive months, a majority of the members of the Board of Directors or other equivalent governing body of Borrower cease to be composed of individuals (x) who were members of that board or equivalent governing body on the first day of such period, (y) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (x) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (z) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (x) and (y) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (y) and clause (z), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the Board of Directors); or (iii) except as a result of a Permitted Disposition, the Borrower shall cease for any reason to own, directly or indirectly, 100% of the Voting Stock of each other Loan Party; or

(h) The indictment or institution of any legal process or proceeding against, the Borrower or any Subsidiary thereof, under any federal, provincial, state, municipal, and other criminal statute, rule, regulation, order, or other requirement having the force of law for an indictable offense; or

(i) Any of the Loan Documents shall cease, for any reason, to be in full force and effect, or any Loan Party shall so state in writing, or any Lien created by any of the Security Documents or by the Term DIP Charge shall cease to be enforceable and of the same effect and priority purported to be created thereby, including as a result of the failure to comply with Section 5.4 of the Guarantee and Collateral Agreement; or

(j) The guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason, to be in full force and effect or any Loan Party shall so state in writing; or

(k) (i) Any event or condition shall occur with respect to a Canadian Pension Plan which results in a Loan Party having a payment obligation under (x) such Canadian Pension Plan, or (y) the Pension Benefits Act (Ontario) or any other similar law, in either case in an amount that is in excess of the payment obligations arising under such Canadian Pension Plan in the ordinary course by more than CAN\$5,000,000, which payment obligation is not met within the period required by the terms of such Canadian Pension Plan and applicable law (unless such payment is required not to be paid pursuant to the Initial Order or any other CCAA Court Order) or (ii) the occurrence of a Canadian Defined Benefit Pension Termination Event; or

(l) There shall occur (i) any “Event of Default” (as such term is defined in the ABL DIP Credit Agreement) which is continuing under or pursuant to the ABL DIP Credit Agreement, (ii) any breach of the Intercreditor Agreement or (iii) any ABL DIP Termination Date;

(m) Except to the extent subject to the Stay of Proceedings any Loan Party or any Subsidiary thereof fails to observe or perform any agreement or obligation relating to any Material Contract or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is the termination of, or to permit the counterparty to such Material Contract to terminate, such Material Contract;

(n) If any Loan Party commences an action or takes any other proceeding to obtain any form of relief against the Term DIP Agent, the Term DIP Lenders, or the “Agent” and/or any of the “Lenders” under and as those terms are defined in the Term Prepetition Credit Agreement (collectively, the “Term Prepetition Creditors”), including a proceeding to recover damages or to obtain payment of any amounts purported to be owing by the Term DIP Agent, the Term DIP Lenders, or the Term Prepetition Creditors or any Affiliate thereof to any Loan Party or any Affiliate thereof if the Term DIP Agent, any Term DIP Lender, any Term Prepetition Creditor or such Affiliate disputes any of the same;

(o) There shall exist any variance in the Operating Net Cash Flow or the Total Eligible Inventory Available in excess of the variances permitted under Section 5.01(c)(i) and Section 5.01(cc)(ii) respectively for any period required to be tested thereunder; or

(p) The Loan Parties shall fail to engage an Acceptable Liquidator on or before the date set out in Section 5.01(z); or

(q) The Loan Parties shall fail to meet any Milestone; or

(r) Any of the following shall occur in the CCAA Proceedings:

(i) if any Plan is sanctioned or any Restructuring Option is consummated by any of the Loan Parties or any CCAA Order is entered that contravenes or is not consistent with this Agreement or any other Loan Document so as to adversely impact the rights or interests of the

Term DIP Agent or the Term DIP Lenders, as determined by the Term DIP Agent or the Required Term DIP Lenders; or

(ii) the filing of any application by any Loan Party without the express prior written consent of the Term DIP Agent for the approval of any super-priority claim in the CCAA Proceedings which is *pari passu* with or senior to the priority of the DIP Charge, or there shall arise any such super-priority claim under the CCAA (in each case, other than the Permitted Priority Liens); or

(iii) if any Loan Party shall pass an effective resolution or initiate steps or proceedings (including applications to the CCAA Court) without the prior written consent of the Term DIP Agent on behalf of the Required Term DIP Lenders for the purpose of authorizing the disposition of all or substantially all of its property, assets and undertakings, except for Permitted Disposition; or

(iv) the payment or other discharge by any Loan Party of any Prepetition Obligations, except as expressly permitted hereunder, or by order in the CCAA Proceedings to which order the Term DIP Agent has provided its written prior consent; or

(v) the failure of any Loan Party (i) to comply in all material respects with each and all of the terms and conditions of the Initial Order, the SISP Order and the Business Optimization Plan, or (ii) to comply in all material respects with any other CCAA Order; or

(vi) the filing of any motion by any Loan Party or the entry of any CCAA Order or an order of any other court of competent jurisdiction: (A) permitting working capital or other financing (other than ordinary course trade credit or unsecured debt) for any Loan Party from any Person other than the Term DIP Agent (unless the proceeds of such financing are used to pay in full all Obligations (including the "Obligations" under and as defined in the Term Prepetition Credit Agreement), and the establishment of a reserve account for all other Obligations and indemnification obligations hereunder), (B) granting a Lien on, or security interest in any of the Collateral, other than with respect to this Agreement or as otherwise permitted herein (unless such liens are granted in connection with a financing, the proceeds of which are applied to the payment in full of all Obligations (including Prepetition Obligations), cash collateralization of all Letters of Credit and the cash collateralization of all Letters of Credit, and the establishment of a reserve account for all other Obligations and indemnification obligations hereunder), or (C) dismissing the CCAA Proceeding or lifting the Stay of Proceedings to permit (1) the enforcement of any Lien against a material portion of a Loan Party's property, assets or undertaking, or (2) the appointment of a receiver, receiver and manager or interim receiver, or similar official or the making of a bankruptcy order against or an order winding-up a Loan Party, (D) granting any Lien which is senior to or *pari passu* with the Term Lender DIP Charge, other than the Permitted Priority Liens or, for applicable Collateral, the ABL DIP Charge, (E) staying, reversing, vacating or otherwise modifying the Loan Documents or any CCAA Court Order in a manner materially adverse to the interests of the Term DIP Lenders, as determined by the Term DIP Agent in its Permitted Discretion, (F) materially adversely impacting the rights and interests of the Term DIP Agent or the Term DIP Lenders, as determined by the Term DIP Agent in its Permitted Discretion, without the prior written consent of the Term DIP Agent and the Required Term DIP Lenders, as applicable; or (G) directing any Loan Party to pay any post-employment benefits; or

(vii) the filing of a motion by any Loan Party seeking approval of a Plan or the entry of an order confirming a Plan, that does not require repayment in full in cash of all Obligations (including Prepetition Obligations) on the date of a final approval order under the CCAA; or

(viii) if any proceeding, motion or application is commenced or filed by any of the Loan Parties or, if commenced by any other Person, is supported or otherwise consented to, or remains uncontested by a Loan Party for a period of five (5) Business Days, challenging the validity, priority, perfection, or enforceability of the Loan Documents, the Prepetition Obligations, or any Lien granted pursuant to the Loan Documents, or (b) any Lien granted pursuant to the Loan Documents is determined to be null and void, invalid or unenforceable by the CCAA Court or another court of competent jurisdiction in any action commenced or asserted by any other party in interest in the CCAA Proceedings; or

(ix) termination of the CCAA Proceedings or the stay thereunder or conversion to proceedings under the *Bankruptcy and Insolvency Act* (Canada),

then, and in any such event, the Term DIP Agent may, or, at the request of the Required Term DIP Lenders shall, take any or all of the following actions upon notice to the Borrower: declare the Term DIP Loan, all interest thereon and all other amounts payable under this Agreement and the other Loan Documents to be forthwith due and payable, whereupon the Term DIP Loan, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; provided, however, that if an Event of Default under Section 6.01(e) or Section 6.01(r)(ix) occurs the Term DIP Loan, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower provided, further, however, that with respect to the enforcement of Liens or other rights or remedies against the Loan Parties or with respect to the Collateral, the Term DIP Agent shall provide the Loan Parties and Monitor with seven (7) days' written notice prior to taking the action contemplated thereby and any such enforcement or other exercise of remedies shall be subject to the CCAA Court's approval.

## ARTICLE VII

### THE TERM DIP AGENT

**SECTION 7.01. Appointment.** Each Term DIP Lender hereby irrevocably designates and appoints GACP Finance Co., LLC as the Term DIP Agent under this Agreement and the other Loan Documents, and each such Term DIP Lender irrevocably authorizes the Term DIP Agent, in such capacity, 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 Term DIP Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. For clarity, and notwithstanding anything to the contrary contained in this Agreement and the other Loan Documents, no consent of the Term DIP Lenders shall be required to amend this Agreement or the Loan Documents to (i) cause additional assets to become Collateral or to add additional Subsidiaries as guarantors of the Obligations or (ii) implement the provisions of Section 7.12, and the Term DIP Agent and the Loan Parties shall be entitled to execute any and all amendments necessary or desirable to accomplish any of the foregoing and such amendments shall be binding on the other parties hereto Notwithstanding any provision to the contrary elsewhere in this Agreement, the Term DIP Agent shall have no duties or responsibilities, except those expressly set forth in this Agreement and the other Loan Documents to which it is a party, or any fiduciary relationship with any Term DIP 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 Term DIP Agent.

**SECTION 7.02. Delegation of Duties.** The Term DIP Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall

be entitled to advice of counsel concerning all matters pertaining to such duties. The Term DIP Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care. The Term DIP Agent reserves the right to execute any of its duties under this Agreement or any other Loan Document by or through agents, including a separate Canadian agent, to hold, realize or enforce any Loan Document.

**SECTION 7.03. Exculpatory Provisions.** No Agent (for purposes of this Section 7.03, “Agent” shall mean the collective reference to the Term DIP Agent and any other Term DIP Lender designated as an “Agent” for purposes of this Agreement) nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (i) liable 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 (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person’s own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Term DIP Lenders 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 Term DIP Agent 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 that is a party thereto to perform its obligations hereunder or thereunder. The Term DIP Agent shall not be under any obligation to any Term DIP Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party.

**SECTION 7.04. Reliance by Agent.** The Term DIP Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order 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 Borrower), independent accountants and other experts selected by the Term DIP Agent. The Term DIP 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 the Term DIP Agent. The Term DIP 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 Term DIP Lenders (or, if so specified by this Agreement, the Supermajority Term DIP Lenders or all Term DIP Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Term DIP 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. The Term DIP 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 Term DIP Lenders (or, if so specified by this Agreement, the Supermajority Term DIP Lenders or all Term DIP Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Term DIP Lenders and all future holders of the Term DIP Loan.

**SECTION 7.05. Notice of Default.** The Term DIP Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Term DIP Agent has received notice from a Term DIP Lender 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 Term DIP Agent receives such a notice, the Term DIP Agent shall give notice thereof to the Term DIP Lenders. The Term DIP Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Term DIP Lenders (or, if so specified by this Agreement, the Supermajority Term DIP Lenders or all Term DIP Lenders); provided that unless and until the Term DIP

Agent shall have received such directions, the Term DIP 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 Term DIP Lenders.

**SECTION 7.06. Non-Reliance on Agent and Other Term DIP Lenders.** Each Term DIP Lender expressly acknowledges that neither the Term DIP Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by the Term DIP 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 the Term DIP Agent to any Term DIP Lender. Each Term DIP Lender represents to the Term DIP Agent that it has, independently and without reliance upon the Term DIP Agent or any other Term DIP 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 Term DIP Loan hereunder and enter into this Agreement. Each Term DIP Lender also represents that it will, independently and without reliance upon the Term DIP Agent or any other Term DIP 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 Term DIP Lenders by the Term DIP Agent hereunder, the Term DIP Agent shall not have any duty or responsibility to provide any Term DIP 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 the Term DIP Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

**SECTION 7.07. Reports and Financial Statements.**

By signing this Agreement, each Term DIP Lender:

(a) [reserved];

(b) is deemed to have requested that the Term DIP Agent furnish such Term DIP Lender, promptly after they become available, copies of all financial statements and reports required to be delivered by the Loan Parties hereunder and all commercial finance examinations and appraisals of the Collateral received by the Term DIP Agent (collectively, the “Reports”) (which the Term DIP Agent agrees to so deliver);

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

(d) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Term DIP Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;

(e) agrees to keep all Reports confidential in accordance with the provisions of this Agreement; and

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

**SECTION 7.08. Indemnification.** The Term DIP Lenders agree to indemnify the Term DIP Agent in its capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Pro Rata Share in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Term DIP Loan shall have been paid in full, ratably in accordance with such Pro Rata Share immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Term DIP Loan) be imposed on, incurred by or asserted against such Agent in any way relating to or arising out of, 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 under or in connection with any of the foregoing; provided that no Term DIP Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the Term DIP Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of the Term DIP Loan and all other amounts payable hereunder.

**SECTION 7.09. Agent in Its Individual Capacity.** The Term DIP Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Term DIP Agent was not a Term DIP Agent. With respect to its Term DIP Loan made or renewed by it, the Term DIP Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Term DIP Lender and may exercise the same as though it were not the Term DIP Agent, and the terms "Term DIP Lender" and "Term DIP Lenders" shall include each Term DIP Agent in its individual capacity.

**SECTION 7.10. Successor Agent.** The Term DIP Agent may resign as Agent upon 30 days' notice to the Term DIP Lenders and the Borrower. If the Term DIP Agent shall resign as Agent under this Agreement and the other Loan Documents, then the Required Term DIP Lenders shall appoint from among the Term DIP Lenders a successor agent for the Term DIP Lenders, which successor agent shall (unless an Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Term DIP Agent, and the term "Agent" shall mean such successor agent effective upon such appointment and approval, and the former Agent's rights, powers and duties as Agent 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 Term DIP Loan. If no successor agent has accepted appointment as Agent by the date that is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective, and the Term DIP Lenders shall assume and perform all of the duties of the hereunder, as until such time, if any, as the Required Term DIP Lenders appoint a successor agent as provided for above.

After any retiring Agent's resignation as Agent, the provisions of this Article VII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement and the other Loan Documents.

#### SECTION 7.11. Defaulting Term DIP Lenders.

(a) If a Term DIP Lender becomes a Defaulting Term DIP Lender, then, in addition to the rights and remedies that may be available to the other Credit Parties, the Loan Parties or any other party at law or in equity, and not at limitation thereof, (i) such Defaulting Term DIP Lender's right to participate in the administration of, or decision-making rights related to, the Obligations in respect of Required Term DIP Lender and Supermajority Term DIP Lender votes, this Agreement or the other Loan Documents shall be suspended during the pendency of such failure or refusal, (ii) a Defaulting Term DIP Lender shall be deemed to have permanently (unless reinstated as set forth below) assigned, without further consideration any and all payments due to it from the Loan Parties, whether on account of outstanding Term DIP Loan, interest, fees or otherwise, to the remaining non-Defaulting Term DIP Lenders for application to, and reduction of, their proportionate shares of all outstanding Obligations until, such Term DIP Lender is no longer a Defaulting Term DIP Lender, or (iii) at the option of the Term DIP Agent, any amount payable to such Defaulting Term DIP Lender hereunder (whether on account of principal, interest, fees or otherwise) shall, in lieu of being distributed to such Defaulting Term DIP Lender, be retained by the Term DIP Agent as cash collateral for, and applied by the Term DIP Agent to, defaulted and future funding obligations of the Defaulting Term DIP Lender (including, without limitation, any indemnification and reimbursement obligations of such Defaulting Term DIP Lender). The Defaulting Term DIP Lender's decision-making and participation rights and rights to payments as set forth in clauses (i) and (ii) hereinabove shall be restored only upon (a) the payment by the Defaulting Term DIP Lender of its any participation obligation, or expenses as to which it is delinquent, together with interest thereon at a rate equal to the Adjusted LIBOR Rate from time to time in effect from the date when originally due until the date upon which any such amounts are actually paid and (b) receipt by the Term DIP Agent and the Borrower of a certification by such Defaulting Term DIP Lender of its ability and intent to comply with the provisions of this Agreement going forward.

(b) [reserved]

(c) In addition to the rights of the non-Defaulting Term DIP Lenders set forth in Section 7.11(b) above, the Borrower shall have the right, at any time, upon at least five Business Days' notice to a Defaulting Term DIP Lender or a Deteriorating Term DIP Lender (with a copy to the Term DIP Agent), to replace such Defaulting Term DIP Lender in accordance with the provisions of Section 8.16 hereof.

(d) Each Defaulting Term DIP Lender shall indemnify the Term DIP Agent and each non-Defaulting Term DIP Lender from and against any and all loss, damage or expenses, including but not limited to reasonable attorneys' fees and funds advanced by the Term DIP Agent or by any non-Defaulting Term DIP Lender, on account of a Defaulting Term DIP Lender's failure to timely perform its obligations under the Loan Documents.

#### SECTION 7.12. Agent as hypothecary representative.

Without limiting the power of the Term DIP Agent hereunder or under any other Loan Document, each of the Credit Parties hereby acknowledges that for the purposes of holding any hypothec granted or to be granted by the Borrower or any Loan Party under any deed of hypothec (each "Deed of Hypothec") pursuant to the laws of the Province of Quebec to secure payment of any obligation under this Agreement or any other Loan Document entered into by the Borrower or any Loan Party, the Term DIP Agent is hereby appointed to act as the hypothecary representative pursuant to Article 2692 of the *Civil*

*Code of Quebec* to act on behalf of each of the Credit Parties, and the Borrower, each Loan Party and each Credit Party hereby confirms and agrees to such appointment. Each Person who is or becomes a Credit Party and each assignee holder under this Agreement or any other Loan Document shall be deemed to ratify the aforesaid appointment of the Term DIP Agent by its execution of an Assignment and Assumption. The Term DIP Agent agrees to act in such capacity. The Term DIP Agent, in such aforesaid capacity shall (x) 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 Term DIP Agent with respect to the Collateral under the Deed of Hypothec, applicable law or otherwise, and (y) benefit from and be subject to all provisions hereof with respect to the Term DIP Agent, *mutatis mutandis*, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Credit Parties. The execution prior to the date hereof by the Term DIP Agent of any Deed of Hypothec or other security documents made pursuant to the applicable law of the Province of Quebec is hereby ratified and confirmed. Without prejudice to section 8.09 hereof, the provisions of this paragraph shall be also governed by the laws of the Province of Quebec.

## ARTICLE VIII

### MISCELLANEOUS

**SECTION 8.01. Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, nor consent to any departure by the Borrower or any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Term DIP Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall (a) unless in writing and signed by each Term DIP Lender directly affected thereby, do any of the following: (i) increase the amount or extend the expiration date of any Term DIP Lender's Commitment, (ii) reduce the principal of, or interest on, the Term DIP Loan or any fees or other amounts payable hereunder or (iii) postpone any date fixed for any payment of principal of, or interest on, the Term DIP Loan or any fees or other amounts payable hereunder, (b) unless in writing and signed by all of the Term DIP Lenders, do any of the following: (i) change the aggregate unpaid principal amount of the Term DIP Loan, or the number of Term DIP Lenders, that shall be required for the Term DIP Lenders or any of them to take any action hereunder, (ii) other than in accordance with Section 8.13, release all or substantially all of the Collateral or release all or substantially all of the guarantors from their obligations under the Guarantee and Collateral Agreement, (iii) amend this Section 8.01, (iv) amend Section 6.01(g) or waive any provision of Section 6.01(g) or any change of control resulting therefrom, (v) amend Section 6.01(l), (vi) change the definition of the terms Required Term DIP Lenders or Supermajority Term DIP Lenders or the percentage of Term DIP Lenders which shall be required for Lenders to take any action hereunder, (vii) consent to the assignment, delegation or other transfer by any Loan Party of any of its rights and obligations under any Loan Document or other than in accordance with Section 5.01(d), release the Borrower from all of its obligations hereunder, (viii) amend the definition of Eligible Assignee, (ix) amend Section 2.12, or (x) except as set forth herein or in the Intercreditor Agreement, consent to the subordination of the Term DIP Loan to any Debt, (c) unless in writing and signed by the Supermajority Term DIP Lenders, (i) amend the definition of "Borrowing Base" (and the component definitions therein), (ii) increase any advance rate percentage set forth in the definition of "Borrowing Base", (iii) remove any previously established Availability Reserve, (iii) amend the Intercreditor Agreement, (iv) amend or waive any provision of Section 5.01(k)(iii) or (v) amend or waive any provision of Section 5.03; *provided that* the foregoing shall not (except as otherwise provided in this Agreement and in respect of changes in methodology of calculating Availability Reserves) limit the discretion of the Term DIP Agent to change or establish reserves, or (d) unless in writing and signed by the Term DIP Agent (in addition to the Lenders required above to take such action), as applicable, amend, modify or waive any provision of

Article VII or affect the rights or duties of the Term DIP Agent under this Agreement or any other Loan Document.

**SECTION 8.02. Notices, Etc.** All notices and other communications provided for hereunder shall be in writing (including telecopier communication) and mailed, telecopied or delivered, (i) if to the Borrower or any Loan Party, at its address at 290 Yonge St., Suite 700, Toronto, Ontario, M5B 2C3, Attention: General Counsel, with a copy to Osler, Hoskin & Harcourt LLP, Box 50, 1 First Canadian Place, Toronto, Ontario, Canada M5X 1B, Attention: Kevin Morley; (ii) if to any Lender, at its address set forth in its completed administrative questionnaire delivered to the Term DIP Agent; (iii) if to GACP, in its capacity as Term DIP Agent, at its address at 11100 Santa Monica Blvd., Suite 800, Los Angeles, CA 90025, Attention: Robert A. Louzan, with a copy to Paul Hastings LLP, 200 Park Avenue, New York, New York 10166, Attention: Leslie A. Plaskon, Cassels Brock & Blackwell LLP, Scotia Plaza, 40 King Street West, Suite 2100, Toronto, Ontario M5H 3C2, Attention: Ryan C. Jacobs; and, as to each other party, at such other address as shall be designated by such party in a written notice to the Borrower and the Term DIP Agent; provided that notices required to be delivered pursuant to Section 5.01(k)(i), (ii), (iii), and (v) shall be delivered to the Term DIP Agent and the Term DIP Lenders as specified in Section 8.02(b). All such notices and communications shall, when mailed, telecopied, telegraphed or emailed, be effective when deposited in the mails, telecopied, delivered to the telegraph company or confirmed by email, respectively, except that notices and communications to the Term DIP Agent pursuant to Article II or VII shall not be effective until received by the Term DIP Agent. Delivery by telecopier or by electronic transmission of a pdf formatted copy of an executed counterpart of any amendment or waiver of any provision of this Agreement or any Loan Document or of any exhibit hereto or thereto to be executed and delivered hereunder shall be effective as delivery of a manually executed counterpart thereof.

(b) The Borrower agrees that materials required to be delivered pursuant to Sections 5.01(k)(i), (ii), (iii) and (v), shall be deemed delivered to the Term DIP Agent on the date on which the Borrower causes such reports, or reports containing such financial statements, to be posted on the Internet at such website identified by the Borrower in a written notice to the Term DIP Agent and the Term DIP Lenders and that is accessible by the Term DIP Lenders without charge or if not so posted, may be delivered to the Term DIP Agent in an electronic medium in a format acceptable to the Term DIP Agent by email. The Borrower agrees that the Term DIP Agent may make such materials, as well as any other written information, documents, instruments and other material relating to The Borrower, any of its Subsidiaries or any other materials or matters relating to this Agreement, the Loan Documents or any of the transactions contemplated hereby (collectively, the “Communications”) available to the Term DIP Lenders by posting such notices on Intralinks or a substantially similar electronic system (the “Platform”). The Borrower acknowledges that (i) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (ii) the Platform is provided “as is” and “as available” and (iii) neither the Term DIP Agent nor any of its Affiliates warrants the accuracy, adequacy or completeness of the Communications or the Platform and each expressly disclaims liability for errors or omissions in the Communications or the Platform. 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 the Term DIP Agent or any of its Affiliates in connection with the Platform.

(c) Each Term DIP Lender agrees that notice to it (as provided in the next sentence) (a “Notice”) specifying that any Communications have been posted to the Platform shall constitute effective delivery of such information, documents or other materials to such Term DIP Lender for purposes of this Agreement; provided that if requested by any Term DIP Lender the Term DIP Agent shall deliver a copy of the Communications to such Lender by email or telecopier. Each Term DIP Lender agrees (i) to notify the Term DIP Agent in writing of such Term DIP Lender’s e-mail address to which a Notice may be sent

by electronic transmission (including by electronic communication) on or before the date such Term DIP Lender becomes a party to this Agreement (and from time to time thereafter to ensure that the Term DIP Agent has on record an effective e-mail address for such Term DIP Lender) and (ii) that any Notice may be sent to such e-mail address.

**SECTION 8.03. No Waiver; Remedies.** No failure on the part of any Term DIP Lender or the Term DIP Agent to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**SECTION 8.04. Costs and Expenses.** (a) The Borrower agrees to pay promptly all reasonable costs and expenses of the Term DIP Agent in connection with the preparation, execution, delivery, distribution (including via the internet or through a service such as Intralinks), administration, modification and amendment of this Agreement, the other Loan Documents and the other documents to be delivered hereunder, including, (A) all due diligence, syndication (including printing, distribution and bank meetings), transportation, computer, duplication, appraisal, consultant, and audit expenses, (B) subject to Section 5.01(l), all expenses incurred in connection with inspections, verifications, examinations and appraisals relating to the Borrowing Base and the Collateral, and (C) the reasonable fees and expenses of counsel for the Term DIP Agent with respect thereto and with respect to advising the Term DIP Agent as to its rights and responsibilities under this Agreement and the other Loan Documents, the reasonable fees and expenses of the Lender FA and any other advisors retained by the Term DIP Agent and the Term DIP Lenders or any of their counsel to provide assistance in connection with the transactions contemplated hereby and the CCAA Proceedings, and any fees, or expenses, which the Borrower has agreed to pay pursuant to any Fee Letter or this Agreement. The Borrower further agrees to pay on demand all costs and expenses of the Term DIP Agent and the Term DIP Lenders, if any (including reasonable fees and expenses of counsel, the Lender FA and any other advisors retained by the Term DIP Agent, the Term DIP Lenders or any of their counsel), in connection with the enforcement of, or protection of their rights under, (whether through negotiations, legal proceedings or otherwise) of this Agreement, the other Loan Documents and the other documents to be delivered hereunder and to provide assistance in connection with the transactions contemplated hereby, and, for greater certainty, including, without limitation, all costs and expenses of the Term DIP Agent and the Term DIP Lenders incurred in connection with any proceeding or potential proceeding under Insolvency Legislation including without limitation the CCAA Proceedings, including reasonable fees and expenses of one U.S. counsel and one Canadian counsel (including local counsel, as required) for the Term DIP Agent, and one U.S. counsel and one Canadian counsel (including local counsel, as required) for the Lenders in connection with the enforcement of or protection rights under this Section 8.04(a).

(b) The Borrower agrees to indemnify and hold harmless the Term DIP Agent and each Term DIP Lender and each of their Affiliates and their officers, directors, employees, members, partners, agents and advisors (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and expenses (including reasonable fees and expenses of counsel) incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (i) this Agreement, the other Loan Documents, any of the transactions contemplated herein or therein or the proceeds of the Term DIP Loan, and (ii) the actual or alleged presence of Hazardous Materials on any property of the Borrower or any of its Subsidiaries or any Environmental Action relating in any way to the Borrower or any of its Subsidiaries, except to the extent such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this

Section 8.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Borrower, its directors, equityholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Borrower also agrees not to assert, and hereby waives to the fullest extent permitted by applicable Law, any claim for special, indirect, consequential or punitive damages against the Term DIP Agent, any Term DIP Lender, any of their Affiliates, or any of their respective directors, officers, employees, attorneys and agents, on any theory of liability, arising out of or otherwise relating to this Agreement, the other Loan Documents, any of the transactions contemplated herein or the proceeds of the Term DIP Loan.

(c) Except for a repayment effected in accordance with clause (d) below, if any payment of principal of the Term DIP Loan is made by the Borrower to or for the account of a Term DIP Lender other than on the last day of the Interest Period for the Term DIP Loan, as a result of a payment pursuant to Section 2.08, acceleration of the maturity of the Term DIP Loan pursuant to Section 6.01 or for any other reason, or by an Eligible Assignee to a Term DIP Lender other than on the last day of the Interest Period for the Term DIP Loan upon an assignment of rights and obligations under this Agreement pursuant to Section 8.07 as a result of a demand by the Borrower pursuant to Section 8.07(a), the Borrower shall, promptly after notice by such Term DIP Lender setting forth in reasonable detail the calculations used to quantify such amount (with a copy of such notice to the Term DIP Agent), pay to the Term DIP Agent for the account of such Term DIP Lender any amounts required to compensate such Term DIP Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment, including any loss (including loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Term DIP Lender to fund or maintain the Term DIP Loan.

(d) The Borrower may prepay the amount of the Term DIP Loan by depositing with the Term DIP Agent an amount equal to the aggregate of (a) the principal amount of the Term DIP Loan and (b) the amount of interest accruing during the Interest Period applicable to the Term DIP Loan in accordance with Section 2.05(a)(ii). Such amount (the "Invested Amount") shall be invested by the Term DIP Agent in an interest bearing account for the balance of the applicable Interest Period. The Invested Amount shall be applied by the Term DIP Agent to payment of the principal amount of the Term DIP Loan together with the interest payable thereon on the last day of the Interest Period applicable to the Term DIP Loan. Interest earned on the Invested Amount shall be paid by the Term DIP Agent to the Borrower promptly after the payment in full of the Term DIP Loan and the interest payable thereon.

(e) Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in Sections 2.09, 2.11 and 8.04 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the other Loan Documents.

**SECTION 8.05. Right of Set-off.** Upon (i) the occurrence and during the continuance of any Event of Default and (ii) the making of the request or the granting of the consent specified by Section 6.01 to authorize the Term DIP Agent to declare the Term DIP Loan due and payable pursuant to the provisions of Section 6.01, each Term DIP Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Term DIP Lender or such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, the other Loan Documents and the Term DIP Loan of such Term DIP Lender, whether or not such Term DIP Lender shall have made any demand under this Agreement or the other Loan Documents. Each Term DIP Lender agrees promptly to notify the Borrower (with a copy to the Term DIP Agent) after any such set-off

and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Term DIP Lender and its Affiliate under this Section are in addition to other rights and remedies (including other rights of set-off) that such Term DIP Lender and its Affiliate may have.

**SECTION 8.06. Binding Effect; Effectiveness.** When this Agreement has been executed by the Borrower, the Term DIP Agent and the Term DIP Lenders, this Agreement shall thereafter be binding upon and inure to the benefit of the Borrower, the Term DIP Agent, each Term DIP Lender and their respective successors and assigns; provided, that, except with respect to Sections 8.07 and 8.08, this Agreement shall only become effective upon satisfaction of the conditions precedent set forth in Section 3.01 and none of the provisions of this Agreement, including without limitation provisions in respect of Term DIP Loan to be made by or issued by any Term DIP Lender, and in respect of any covenant, fee, indemnity, default, and expense reimbursement made by any Loan Party or for which any Loan Party is liable hereunder, shall become effective, nor shall any representation herein be deemed to be made, until the satisfaction of such conditions.

**SECTION 8.07. Assignments and Participations.** Each Term DIP Lender may, upon notice to the Borrower and the Term DIP Agent and with the consent, not to be unreasonably withheld, of the Term DIP Agent, assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of the Term DIP Loan and other amounts owing to it and any Note or Notes held by it); provided, however, that (i) each such assignment shall be of a constant, and not a varying, percentage of all rights and obligations under this Agreement, (ii) except in the case of an assignment to a Person that, immediately prior to such assignment, was a Term DIP Lender, an Affiliate of a Term DIP Lender or an Approved Fund or an assignment of all of a Term DIP Lender's rights and obligations under this Agreement, the amount of the Term DIP Loan of the assigning Term DIP Lender being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event be less than \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof unless the Term DIP Agent otherwise agrees, (iii) each such assignment shall be to an Eligible Assignee, (iv) the parties to each such assignment shall execute and deliver to the Term DIP Agent, for its acceptance and recording in the Register, an Assignment and Acceptance, and the parties to such assignment (other than the Borrower and the Term DIP Agent) shall deliver together therewith any Note subject to such assignment and a processing and recordation fee of \$3,500 (except no such fee shall be payable for assignments to a Term DIP Lender, an Affiliate of a Term DIP Lender or an Approved Fund), and (v) any Term DIP Lender may, without the approval of the Borrower, but with notice to the Borrower, assign all or a portion of its rights and obligations to any of its Affiliates or to another Term DIP Lender or an Approved Fund. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, (x) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of a Term DIP Lender hereunder and (y) the Term DIP Lender assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than its rights under Section 2.09, 2.11 and 8.04 to the extent any claim thereunder relates to an event arising prior such assignment) and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Term DIP Lender's rights and obligations under this Agreement, such Term DIP Lender shall cease to be a party hereto).

(b) By executing and delivering an Assignment and Acceptance, the Term DIP Lender assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Term DIP Lender makes no representation or warranty and assumes no responsibility with respect to any

statements, warranties or representations made in or in connection with this Agreement or the other Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (ii) such assigning Term DIP Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Loan Parties or the performance or observance by the Borrower of any of its obligations under this Agreement or any other instrument or document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements and other information referred to in Section 4.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the Term DIP Agent, such assigning Term DIP Lender or any other Term DIP Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee confirms that it is an Eligible Assignee; (vi) such assignee appoints and authorizes the Term DIP Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement and the other Loan Documents as are delegated to the Term DIP Agent by the terms hereof and thereof, together with such powers and discretion as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Term DIP Lender.

(c) Upon its receipt of an Assignment and Acceptance executed by an assigning Term DIP Lender and an assignee representing that it is an Eligible Assignee, together with any Note or Notes subject to such assignment, the Term DIP Agent shall, if such Assignment and Acceptance has been completed and is in substantially the form of Exhibit B hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Borrower.

(d) The Term DIP Agent shall maintain at its address referred to in Section 8.02 a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Term DIP Lenders and principal amount of the Term DIP Loan owing to, each Term DIP Lender from time to time (the “Register”). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Term DIP Agent and the Term DIP Lenders may treat each Person whose name is recorded in the Register as a Term DIP Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Term DIP Lender at any reasonable time and from time to time upon reasonable prior notice.

(e) Each Term DIP Lender may, without the consent of the Term DIP Agent or any Loan Party, sell participations to one or more banks or other entities that constitute an Eligible Assignee in or to all or a portion of its rights and obligations under this Agreement (including all or a portion of its Term DIP Loan owing to it and any Note or Notes held by it); provided, however, that (i) such Term DIP Lender’s obligations under this Agreement shall remain unchanged, (ii) such Term DIP Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such Lender shall remain the holder of any such Note for all purposes of this Agreement, (iv) the Borrower, the Term DIP Agent and the other Term DIP Lenders shall continue to deal solely and directly with such Term DIP Lender in connection with such Term DIP Lender’s rights and obligations under this Agreement and (v) no participant under any such participation shall have any right to approve any amendment or waiver of any provision of this Agreement or any Loan Document, or consent to any departure by the Borrower therefrom, except to the extent that such amendment, waiver or consent would require the affirmative vote of the Term DIP Lender from which it purchased its participation pursuant to Section 8.01(a).

(f) Any Term DIP Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 8.07, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Borrower or its Subsidiaries furnished to such Term DIP Lender by or on behalf of the Borrower; provided that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree to preserve the confidentiality of any Borrower Information relating to the Borrower or its Subsidiaries received by it from such Term DIP Lender in accordance with Section 8.08.

(g) Notwithstanding any other provision set forth in this Agreement, any Term DIP Lender may at any time create a security interest in all or any portion of its rights under this Agreement (including the Term DIP Loan owing to it and any Notes held by it), including, without limitation, in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

(h) The Borrower, upon receipt of written notice from the relevant Term DIP Lender, agrees to issue Notes to any Term DIP Lender to facilitate transactions of the type described in paragraph (g) above.

(i) The Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of each of the Term DIP Lenders.

**SECTION 8.08. Confidentiality.** Neither the Term DIP Agent nor any Term DIP Lender may disclose to any Person any confidential, proprietary or non-public information of the Borrower furnished to the Term DIP Agent or the Term DIP Lenders by the Borrower (such information being referred to collectively herein as the “Borrower Information”), except that each of the Term DIP Agent and the Term DIP Lenders may disclose Borrower Information (i) to its and its Affiliates’ employees, officers, directors, members, partners, investors, financing sources, agents and advisors to whom disclosure is required to enable the Term DIP Agent or such Term DIP Lender to perform its obligations under this Agreement and the other Loan Documents or in connection with the administration or monitoring of this Agreement and the other Loan Documents by the Term DIP Agent or such Term DIP Lender (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Borrower Information and instructed to keep such Borrower Information confidential on substantially the same terms as provided herein), (ii) to the extent requested by any regulatory authority, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement and the other Loan Documents, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement and the other Loan Documents or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section 8.08, to any assignee or participant, or any prospective assignee or participant, (vii) to the extent such Borrower Information (A) is or becomes generally available to the public on a non-confidential basis other than as a result of a breach of this Section 8.08 by the Term DIP Agent or such Term DIP Lender, as the case may be, or (B) is or becomes available to the Term DIP Agent or such Term DIP Lender on a non-confidential basis from a source other than the Borrower or any of its Subsidiaries and (viii) with the consent of the Borrower; provided that the foregoing obligations of the Term DIP Agent and the Term DIP Lenders under this Section 8.08 shall survive only until the second anniversary of (a) in the case of the Term DIP Agent, the date on which such Agent ceased to be Agent hereunder, (b) in the case of a Term DIP Lender, the date such Term DIP Lender ceased to be a Term DIP Lender hereunder, and (c) the date on which all Obligations were satisfied in full in accordance with Section 8.13(b).

**SECTION 8.09. Governing Law.** This Agreement and the Notes shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein without regard to conflicts of laws principles thereof.

**SECTION 8.10. Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or by electronic transmission of a pdf formatted counterpart shall be effective as delivery of a manually executed counterpart of this Agreement.

**SECTION 8.11. Jurisdiction, Etc.** Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any court sitting in Toronto, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such court. The Borrower hereby irrevocably consents to the service of process in any action or proceeding in such courts by the mailing thereof by any parties hereto by registered or certified mail, postage prepaid, to the Borrower at its address specified pursuant to Section 8.02. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents in the courts of any jurisdiction.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any court in Toronto. 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.

**SECTION 8.12. WAIVER OF JURY TRIAL.** EACH OF THE BORROWER, THE TERM DIP AGENT, AND THE TERM DIP LENDERS HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR THE ACTIONS OF THE TERM DIP AGENT OR ANY TERM DIP LENDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

**SECTION 8.13. Release of Collateral or Guarantee Obligation.** Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Term DIP Agent is hereby irrevocably authorized by each Term DIP Lender (without requirement of consent of or notice to any Term DIP Lender) to take, and hereby agree to take, any action requested by the Borrower having the effect of releasing any Collateral or guarantee obligations (i) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document (including, without limitation, any Permitted Disposition) or that has been consented to in accordance with Section 8.01 or (ii) under the circumstances described in paragraph (b) below.

(b) At such time as the Term DIP Loan and all other Obligations shall have been paid in full in cash, the Collateral shall be released from the Liens created by the Security Documents, and the

Security Documents and all obligations (other than those expressly stated to survive such termination) of the Term DIP Agent and each Loan Party under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

SECTION 8.14. Proceeds of Crime Act. Each Term DIP Lender that is subject to the Proceeds of Crime Act (the “Act”) and the Term DIP Agent (for itself and not on behalf of any Term DIP Lender) hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Term DIP Lender or the Term DIP Agent, as applicable, to identify the Borrower in accordance with the Act. The Borrower hereby agrees to provide such information promptly upon the request of any Term DIP Lender or the Term DIP Agent. No part of the proceeds of the Term DIP Loan will be used by any Loan Party, directly or indirectly, for any purpose which would contravene or breach the Act or the Criminal Code (Canada).

SECTION 8.15. Integration. This Agreement and the other Loan Documents represent the agreement of the Borrower, the Term DIP Agent and the Term DIP Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Term DIP Agent or any Term DIP Lender relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

SECTION 8.16. Replacement of Term DIP Lenders.

If any Term DIP Lender requests compensation under Section 2.09 or if the Borrower is required to pay any additional amount to any Term DIP Lender or any Governmental Authority for the account of any Term DIP Lender pursuant to Section 2.11, if any Term DIP Lender does not consent (a “Non-Consenting Term DIP Lender”) to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Term DIP Lender and that has been approved by the Required Term DIP Lenders or any Term DIP Lender is a Defaulting Term DIP Lender or Deteriorating Term DIP Lender, then the Borrower may, at its sole expense and effort, upon notice to such Term DIP Lender and the Term DIP Agent, require such Term DIP Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 8.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Term DIP Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Term DIP Agent the assignment fee specified in Section 8.07;

(b) such Term DIP Lender shall have received payment of an amount equal to the outstanding principal of its Term DIP Loan, accrued interest thereon, applicable Prepayment Premium, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents 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);

(c) in the case of any such assignment resulting from a claim for compensation under Section 2.09 or payments required to be made pursuant to Section 2.11, such assignment will result in a reduction in such compensation or payments thereafter;

(d) with respect to the replacement of any Non-Consenting Term DIP Lender, such amendment, waiver or consent can be effected as a result of such assignment (together with all other assignments required by the Term DIP Agent to be made pursuant to this paragraph); and

- (e) such assignment does not conflict with applicable laws.

A Term DIP Lender shall not be required to make any such assignment or 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.

#### SECTION 8.17. No Advisory or Fiduciary Capacity.

In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

#### SECTION 8.18. Press Releases.

(a) Except to the extent filed with the CCAA Court in connection with the CCAA Proceedings, each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Term DIP Agent or its respective Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to the Term DIP Agent and without the prior written consent of the Term DIP Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under applicable law and then, in any event, such Credit Party or Affiliate will consult with the Term DIP Agent before issuing such press release or other public disclosure.

(b) Subject to obtaining the approval referred to in the following sentence, the Borrower consents to the publication by the Term DIP Agent or any Term DIP Lender of advertising material relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo or trademark. The Term DIP Agent or such Term DIP Lender shall provide a

draft reasonably in advance of any advertising material to the Borrower for review and approval (which approval shall not be unreasonably withheld or delayed) prior to the publication thereof. The Term DIP Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

SECTION 8.19. Judgment Currency. If, for the purpose of obtaining or enforcing judgment against the Borrower in any court in any jurisdiction, it becomes necessary to convert into any other currency (the “Judgment Currency”) an amount due in Canadian Dollars or Dollars under this Agreement, the conversion will be made at the rate of exchange prevailing on the Business Day immediately preceding:

(i) the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of Ontario or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or

(ii) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the “Judgment Conversion Date”).

(b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 8.11(a) above, there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the Borrower will pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of Canadian Dollars or Dollars, as the case may be, which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date.

(c) The term “rate of exchange” in this Section 8.19 means:

(i) for a conversion of Canadian Dollars to the Judgment Currency, the reciprocal of the official noon rate of exchange published by the Bank of Canada for the date in question for the conversion of the Judgment Currency to Canadian Dollars;

(ii) for a conversion of Dollars to the Judgment Currency when the Judgment Currency is Canadian Dollars, the official noon rate of exchange published by the Bank of Canada for the date in question for the conversion of Dollars to Canadian Dollars;

(iii) for a conversion of Dollars to the Judgment Currency when the Judgment Currency is not Canadian Dollars, the effective rate obtained when a given amount of Dollars is converted to Canadian Dollars at the rate determined pursuant to Section 8.19(c)(ii) and the result thereof is then converted to the Judgment Currency pursuant to Section 8.19(c)(i); or

(iv) if a required rate is not so published by the Bank of Canada for any such date, the spot rate quoted by the Term DIP Agent at Toronto, Canada at approximately noon (Toronto time) on that date in accordance with its normal practice for the applicable currency conversion in the wholesale market.

SECTION 8.20. 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 Term DIP Lender that is an EEA Financial Institution arising under any Loan

Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Term DIP Lender that is an EEA Financial Institution; and
- (b) the effects of any Bail-in Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
  - (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

#### SECTION 8.21. Language.

The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein (including, without limitation, the other Loan Documents) be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement.*

[Remainder of page intentionally left blank]

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

**SEARS CANADA INC.**, as Borrower

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GACP FINANCE CO., LLC,**  
as Term DIP Agent and a Term DIP Lender

By: \_\_\_\_\_  
Name:  
Title:

**TPG SPECIALTY LENDING, INC.**  
as Documentation Agent and a Term DIP Lender

By: \_\_\_\_\_  
Name:  
Title:

**CORPORATE CAPITAL TRUST, INC.,**  
as a Term DIP Lender

By: \_\_\_\_\_  
Name:  
Title:

**CANYON VALUE REALIZATION FUND, L.P.**  
By: **Canyon Capital Advisors LLC,**  
**its investment Advisor**

By: \_\_\_\_\_  
Name:  
Title:

**CANYON BLUE CREDIT INVESTMENT FUND,  
L.P.**  
By: **Canyon Capital Advisors LLC,**  
**its Co-Investment Advisor**

By: \_\_\_\_\_  
Name:

By: **Canyon Partners Real Estate LLC,**  
**its Co-investment Advisor**  
By: \_\_\_\_\_  
Name:  
Title:





**GACP Finance Co., LLC**  
11100 Santa Monica Blvd., Suite 800  
Los Angeles, CA 90025

June 22, 2017

Sears Canada Inc.  
290 Yonge St., Suite 700  
Toronto, Ontario, M5B 2C3  
Attention: Billy Wong  
Chief Financial Officer

Fee Letter

Ladies and Gentlemen:

Reference is made to (i) the Senior Secured Superpriority Credit Agreement dated the date hereof (including the appendix and other attachments thereto, the “**DIP Credit Agreement**”) among GACP Finance Co., LLC (“**GACP**”), you and the other parties party thereto and (ii) the Credit Agreement dated as of March 20, 2017 (including the appendix and other attachments thereto, the “**Pre-Petition Credit Agreement**”) among GACP, you and the other parties thereto. Capitalized terms used but not defined in this letter agreement shall have the meanings assigned thereto in the DIP Credit Agreement. This letter agreement is the “Fee Letter” referred to in the DIP Credit Agreement.

Sears Canada Inc. (the “**Company**”) desires to obtain a senior secured term credit facility in the aggregate principal amount of up to CAD\$150,000,000 (the “**Term DIP Loan**”) available on the effective date of the DIP Credit Agreement (the “**Effective Date**”).

As compensation for the services under the DIP Credit Agreement, the other Loan Documents and this Fee Letter and in respect of the loans and commitments under the DIP Credit Agreement, the Company agrees to pay the following fees:

DIP Commitment Fee.

On the Effective Date, the Company shall pay to the Term DIP Agent a commitment fee equal to 3.5% of the Term DIP Loan as of the Effective Date, which shall be for the account of the Term DIP Lenders under the DIP Credit Agreement.

Administrative Agent Fees.

In its capacity as administrative agent in respect of the Term DIP Loan, the Term DIP Agent will be paid an annual administration fee (the “Administration Fee”) in an amount equal to U.S.\$100,000 per year. The Administration Fee will be paid (x) for the first year after the Effective Date, on the Effective Date and (y) thereafter, on each annual anniversary of the Effective Date prior to the termination of all Commitments and repayment of all amounts under the DIP Credit Agreement.

Pre-Petition Credit Agreement Termination Fee.

The Company hereby acknowledges and agrees that, the Prepayment Premium (as defined in the

Pre-Petition Credit Agreement) and the Partial Termination Fee (as defined in the Fee Letter (as defined in the Pre-Petition Credit Agreement)) (the Prepayment Premium and the Partial Termination Fee are herein collectively referred to as the “Pre-Petition Credit Agreement Early Termination Fee”) became fully earned, due and payable upon the filing of the CCAA Proceedings and were added to the outstanding amount of the Term Loan Outstanding (as defined in the Pre-Petition Credit Agreement). The Term Prepetition Agent, on behalf of itself and each Term Prepetition Lender, hereby agrees that, the Term Loan Outstanding (as such term is defined in the Pre-Petition Credit Agreement) shall be reduced by the Pre-Petition Credit Agreement Early Termination Fee that was added to the Term Loan Outstanding (as defined in the Pre-Petition Credit Agreement) provided that the Company prepays to the Term Prepetition Agent, on behalf of itself and each Term Prepetition Lender, in full in cash all of the Term Prepetition Obligations on or prior to August 19, 2017

Exit Fees.

Upon the expiration or termination of, or satisfaction of all of the Company’s Obligations under, the DIP Credit Agreement (including upon the maturity date thereunder), the Company shall pay to the Term DIP Agent an exit fee of 1.50% of the Term DIP Loan as of the Effective Date, which shall be for the account of the Term DIP Lenders under the DIP Credit Agreement.

Miscellaneous.

You agree that, once paid, the fees or any part thereof payable hereunder and under the DIP Credit Agreement will not be refundable under any circumstances.

**All fees payable hereunder and under the DIP Credit Agreement will be paid in immediately available funds in U.S. Dollars, and shall not be subject to reduction by way of setoff or counterclaim.**

You agree that you will not disclose this Fee Letter or the contents hereof other than as permitted by the DIP Credit Agreement.

It is understood that this Fee Letter shall not constitute or give rise to any obligation on the part of the Lenders to provide any financing. This Fee Letter is intended to be solely for the benefit of the parties hereto, and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto. This Fee Letter may not be amended or any provision hereof waived or modified except by an instrument in writing signed by each of the parties hereto. This Fee Letter shall not be assignable by any party without the prior written consent of each of the other parties hereto (and any purported assignment without such consent shall be null and void). The provisions of this Fee Letter shall survive the funding of the Term DIP Loan. **THIS FEE LETTER, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS FEE LETTER, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.** This Fee Letter may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one agreement. Delivery of an executed counterpart of a signature page of this Fee Letter by facsimile transmission or by “.pdf” or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Fee Letter.

*[Remainder of this page intentionally left blank]*

If the foregoing correctly sets forth our understanding, please indicate your acceptance of the terms hereof by returning to us an executed counterpart hereof, whereupon this Fee Letter shall become a binding agreement between us.

Very truly yours,

**GACP FINANCE CO., LLP**

By: 

Name: John Ahn

Title: President

Accepted and agreed to as of  
the date first above written:

**SEARS CANADA INC.**

By: \_\_\_\_\_

Name:

Title:

If the foregoing correctly sets forth our understanding, please indicate your acceptance of the terms hereof by returning to us an executed counterpart hereof, whereupon this Fee Letter shall become a binding agreement between us.

Very truly yours,

**GACP FINANCE CO., LLP**

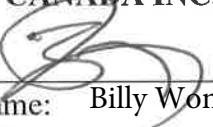
By: \_\_\_\_\_

Name:

Title:

Accepted and agreed to as of  
the date first above written:

**SEARS CANADA INC.**

By: 

Name: Billy Wong

Title: Executive Vice-President  
& Chief Financial Officer



June 22 2017

**CONFIDENTIAL**

Wells Fargo Capital Finance Corporation Canada  
% Wells Fargo Capital Finance  
19th Floor, MAC N2648-180  
One Boston Place  
Boston, MA  
USA 02108

Re: **FEE LETTER**

Ladies and Gentlemen:

Reference hereby is made to that certain Senior Secured Superpriority Debtor-in-Possession Amended and Restated Credit Agreement dated June 22, 2017 (as amended, restated, supplemented, or otherwise modified from time to time, the “**Credit Agreement**”) by and among Sears Canada Inc. as borrower (“**Borrower**”), the lenders named therein (“**Lenders**”), the L/C issuing Bank named therein (“**Issuing Bank**”) and Wells Fargo Capital Finance Corporation Canada as administrative agent, collateral agent and swingline lender (“**WFCFC**”). Capitalized terms used in this letter agreement (this “**Fee Letter**”) but not specifically defined herein shall have the meanings ascribed to them in the Credit Agreement.

A. **Fees**. In connection with the Credit Agreement, Borrower hereby agrees to pay to Agent the following fees, which fees shall be for its sole and separate account and not the account of any Lender:

1. **Closing Fee**. Borrower shall pay to WFCFC, for its own account, a closing fee equal to Cdn\$2,250,000. The closing fee shall be fully earned on the Effective Date and due and paid by the Borrower to WFCFC, in full on the Final Availability Date.

2. **Structuring Fee**. Borrower shall pay to WFCFC, solely for its own account, a structuring fee in an amount equal to Cdn\$1,500,000. The structuring fee shall be fully earned on the Effective Date and due and paid by the Borrower to WFCFC in full on the Final Availability Date.

3. **Agent's Fee**. Borrower shall pay to WFCFC in its capacity as Administrative Agent for its own account, an agent's fee in an amount equal to Cdn\$150,000 per annum, payable annually in advance, commencing on the Final Availability Date and continuing on each anniversary of the Final Availability Date.

B. **Miscellaneous.**

1. Borrower shall pay all amounts due and payable hereunder to Agent in the manner set forth in the Credit Agreement. Agent hereby is expressly authorized by Borrower to (x) charge such amounts due and owing to the Loan Account in accordance with the terms of the Credit Agreement, and (y) designate such amounts as a Revolving Loan under the Credit Agreement.

2. Borrower hereby acknowledges and agrees that each fee payable hereunder is fully earned and non-refundable and is due and payable as provided above and that each such fee constitutes Obligations and is in addition to any other fees payable by Borrower under the Credit Agreement or any other Loan Document.

3. This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein without regard to conflicts of laws principles thereof.

4. This Fee Letter is a Loan Document and is the "Fee Letter" referred to in the Credit Agreement. This Fee Letter may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of this Fee Letter by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Fee Letter but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Fee Letter.

[signature pages follow]

The contents of this Fee Letter are confidential. This Fee Letter shall not be disclosed or displayed or its contents otherwise disclosed to any third Person without the prior written consent of Agent, except as required by law.

Very truly yours,

Sears Canada Inc.

By:

Name:

Title:



---

---

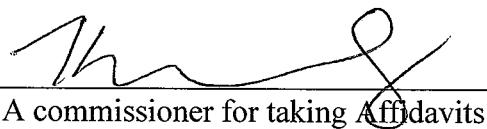
Accepted and agreed to  
as of the date first above written:

**Wells Fargo Capital Finance Corporation Canada**  
as Administrative Agent, Collateral Agent and Swingline Lender

By: 

Name: David G. Phillips  
Title: Senior Vice President  
Credit Officer, Canada  
Wells Fargo Capital Finance  
Corporation Canada

**THIS IS EXHIBIT "L" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 22<sup>nd</sup> DAY OF JUNE, 2017.**



---

A commissioner for taking Affidavits

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  
SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC.,  
THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND  
SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA  
INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC.,  
1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC.,  
168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

**MONITOR'S CONSENT**

We, FTI Consulting Canada Inc., hereby consent to act as Court-appointed monitor in respect of Sears Canada Inc., Corbeil Électrique Inc., S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs Inc., Initium Trading and Sourcing Corp., Sears Floor Covering Centres Inc., 173470 Canada Inc., 2497089 Ontario Inc., 6988741 Canada Inc., 10011711 Canada Inc., 1592580 Ontario Limited, 955041 Alberta Ltd., 4201531 Canada Inc., 168886 Canada Inc., and 3339611 Canada Inc. in their proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

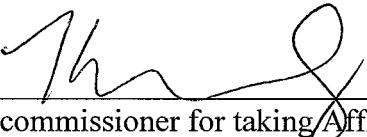
Dated at Toronto this 21st day of June, 2017.

FTI CONSULTING CANADA INC.

Per:

Name: Gregory P Watson  
Title: Senior Managing Director

**THIS IS EXHIBIT "M" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 22<sup>nd</sup> DAY OF JUNE, 2017.**

  
A commissioner for taking Affidavits

## Sears Canada Group

### CCAA Cash Flow Forecast

(CAD in thousands)

Week Ending (Saturday)	24-Jun-17	1-Jul-17	8-Jul-17	15-Jul-17	22-Jul-17	29-Jul-17	5-Aug-17	12-Aug-17	19-Aug-17	26-Aug-17	2-Sep-17	9-Sep-17	16-Sep-17	13-Week	
CCAA Filing Week	1	2	3	4	5	6	7	8	9	10	11	12	13	Total	
<b>Operating Receipts</b>	[2]	<b>39,311</b>	<b>38,031</b>	<b>40,949</b>	<b>47,870</b>	<b>47,274</b>	<b>45,818</b>	<b>43,696</b>	<b>37,018</b>	<b>40,548</b>	<b>41,489</b>	<b>38,143</b>	<b>33,915</b>	<b>33,934</b>	<b>527,998</b>
<b>Operating Disbursements</b>															
Payroll and Employee Related Costs	[3]	(16,643)	(8,944)	(9,945)	(3,114)	(9,945)	(7,043)	(13,930)	(2,407)	(6,889)	(6,347)	(11,723)	(2,407)	(6,593)	(105,931)
Merchandise Vendors	[4]	(14,530)	(30,353)	(4,389)	(9,511)	(7,616)	(9,590)	(22,568)	(28,014)	(25,077)	(23,885)	(27,307)	(22,758)	(27,526)	(253,125)
Non-Merchandise Vendors	[5]	(5,614)	(24,346)	(6,326)	(6,326)	(6,326)	(10,200)	(5,632)	(5,632)	(5,632)	(17,021)	(4,884)	(4,884)	(109,151)	
Rent and Property Taxes	[6]	-	(9,006)	-	(4,808)	-	-	(9,049)	-	(4,808)	-	(9,046)	-	(4,808)	(41,526)
Sales Taxes	[7]	(5,970)	-	-	-	(925)	(4,321)	-	-	-	(9,170)	-	-	-	(20,385)
Pension	[8]	-	(3,685)	-	-	-	-	-	-	-	-	-	-	(3,685)	
IT Costs	[9]	-	-	-	-	-	-	(12,767)	-	-	-	-	-	(12,767)	
Capital Expenditures	[10]	(492)	(492)	(697)	(697)	(697)	(697)	(530)	(530)	(530)	(424)	(424)	(424)	(7,165)	
<b>Total Operating Disbursements</b>		<b>(43,249)</b>	<b>(76,825)</b>	<b>(21,357)</b>	<b>(24,456)</b>	<b>(25,509)</b>	<b>(27,976)</b>	<b>(69,044)</b>	<b>(36,584)</b>	<b>(42,937)</b>	<b>(45,565)</b>	<b>(65,522)</b>	<b>(30,474)</b>	<b>(44,235)</b>	<b>(553,734)</b>
<b>Net Operating Cash Inflows / (Outflows)</b>		<b>(3,937)</b>	<b>(38,794)</b>	<b>19,592</b>	<b>23,413</b>	<b>21,765</b>	<b>17,842</b>	<b>(25,348)</b>	<b>434</b>	<b>(2,388)</b>	<b>(4,076)</b>	<b>(27,380)</b>	<b>3,441</b>	<b>(10,301)</b>	<b>(25,736)</b>
Professional Fees	[11]	(1,808)	(3,450)	(1,959)	(7,185)	(1,320)	(1,179)	(1,179)	(1,320)	(1,179)	(1,179)	(1,179)	(1,320)	(1,179)	(25,439)
Repayments of Existing Credit Facilities	[12]	-	-	-	(126,850)	(47,274)	(45,818)	(28,069)	-	-	-	-	-	-	(248,011)
DIP Fees and Interest Paid	[13]	(9,150)	-	-	(354)	(354)	(354)	(354)	(354)	(354)	(354)	(354)	(354)	(354)	(12,692)
<b>Net Cash Inflows / (Outflows)</b>		<b>(14,895)</b>	<b>(42,244)</b>	<b>17,633</b>	<b>(110,976)</b>	<b>(27,184)</b>	<b>(29,510)</b>	<b>(54,950)</b>	<b>(1,240)</b>	<b>(3,922)</b>	<b>(5,610)</b>	<b>(28,913)</b>	<b>1,766</b>	<b>(11,835)</b>	<b>(311,879)</b>
<b>Cash</b>															
Beginning Balance		125,035	110,139	67,895	85,528	150,752	103,769	58,059	30,009	30,069	30,047	30,038	30,025	30,091	125,035
Net Cash Inflows / (Outflows)		(14,895)	(42,244)	17,633	(110,976)	(27,184)	(29,510)	(54,950)	(1,240)	(3,922)	(5,610)	(28,913)	1,766	(11,835)	(311,879)
DIP Draws / (Repayments)	[14]	-	-	-	176,200	(19,800)	(16,200)	26,900	1,300	3,900	5,600	28,900	(1,700)	11,800	216,900
<b>Ending Balance</b>		<b>110,139</b>	<b>67,895</b>	<b>85,528</b>	<b>150,752</b>	<b>103,769</b>	<b>58,059</b>	<b>30,009</b>	<b>30,069</b>	<b>30,047</b>	<b>30,038</b>	<b>30,025</b>	<b>30,091</b>	<b>30,056</b>	<b>30,056</b>

### Notes:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Sears Canada Group during the forecast period.
- [2] Forecast Receipts include collections from the sale of merchandise and services performed, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality and management's current expectations adjusted for the estimated impact of the CCAA filing.
- [3] Forecast Payroll and Employee Related Costs are based on recent payroll amounts and include amounts to be paid under a Key Employee Retention Plan (KERP), subject to approval of the Court.
- [4] Forecast Merchandise Vendor disbursements include payments to vendors for purchase of merchandise goods and other products.
- [5] Forecast Non-Merchandise Vendor disbursements include selling, general, and administrative costs excluding rent, property taxes, sales taxes, pension costs, and some IT costs.
- [6] Forecast Rent and Property Taxes includes payment to landlords, common-area maintenance costs, and property taxes paid on properties.
- [7] Forecast Sales Taxes reflect payment to the federal and provincial governments. Payments are generally made one month in arrears.
- [8] Forecast Pensions reflect monthly payments related to the defined benefit pension plan. The regular payments relating to the defined contribution pension plan are included in the Payroll and Employee Related Costs line above.
- [9] Forecast IT Costs reflect disbursements made to the large IT-related vendors based on existing terms and conditions of the contract.
- [10] Forecast Capital Expenditures reflect estimated capital spending required to maintain the stores in the normal course of business.
- [11] Forecast Professional Fees include legal and financial advisor fees associated with the CCAA proceedings and are based on estimates provided by the advisors.
- [12] Forecast Repayments of Existing Credit Facilities reflect repayment of the existing credit facilities.
- [13] Forecast DIP Fees and Interest Paid reflect all payments relating to the DIP facilities including commitment and other fees during the forecast period.
- [14] Forecast DIP Draws / (Repayments) are based on funding requirements and maintaining a minimum \$30 million cash balance for the Sears Canada Group.

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 SEARS CANADA INC., CORBEL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

---

*Ontario*  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

---

**AFFIDAVIT OF BILLY WONG**  
(Sworn June 22, 2017)

---

**OSLER, HOSKIN & HARDCOURT, LLP**  
P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M  
Tel: 416.862.4908

Jeremy Dacks LSUC# 41851R  
Tel: 416.862.4923

Michael De Lellis LSUC# 48038U  
Tel: 416.862.5997

Karin Sachar LSUC# 59944E  
Tel: 416.862.5949  
Fax: 416.862.6666

Lawyers for the Applicants

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 SEARS CANADA INC., CORBEL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCIAL LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

*Ontario*  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

**APPLICATION RECORD OF THE APPLICANTS**  
Volume 3

**OSLER, HOSKIN & HARDCOURT, LLP**  
P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M  
Tel: 416.862.4908

Jeremy Dacks LSUC# 41851R  
Tel: 416.862.4923

Michael De Lellis LSUC# 48038U  
Tel: 416.862.5997

Karin Sachar LSUC# 59944E  
Tel: 416.862.5949  
Fax: 416.862.6666

Lawyers for the Applicants